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OFFICE OF GOVERNMENT ETHICS

5 CFR Parts 2634 and 2636

RINs 3209–AA00 and 3209–AA38

Civil Monetary Penalties Inflation Adjustments for Ethics in Government Act Violations

AGENCY: Office of Government Ethics.

ACTION: Final rule.

SUMMARY: The U.S. Office of Government Ethics (OGE) is issuing this final rule in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. This rulemaking adopts as final prior interim regulations making ''catch-up'' inflationary adjustments to each of the five civil monetary penalties provided in the Ethics in Government Act, as reflected in the executive branchwide financial disclosure and outside employment/activities regulations promulgated by OGE. This rulemaking also makes the 2017 annual adjustment to the Ethics in Government Act civil monetary penalties mandated by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

DATES: *Effective date:* This final rule is effective January 24, 2017.

Applicability date: This final rule is applicable January 15, 2017.

FOR FURTHER INFORMATION CONTACT: Kimberly L. Sikora Panza, Associate Counsel, General Counsel and Legal Policy Division, Office of Government Ethics, Telephone: 202–482–9300; TTY: 800–877–8339; FAX: 202–482–9237.

SUPPLEMENTARY INFORMATION:

I. Background

''Catch-up'' Adjustment to Ethics in Government Act Civil Monetary Penalties

In November 2015, Congress passed the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114–74) (the 2015 Act), which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410). The 2015 Act required Federal agencies to make inflationary adjustments to the civil monetary penalties (CMPs) within their jurisdiction with an initial ''catch-up'' adjustment through an interim final rule effective no later than August 1, 2016. The 2015 Act further mandates that Federal agencies make subsequent annual inflationary adjustments of their CMPs, to be effective no later than January 15 of each year.

In compliance with the 2015 Act and guidance issued by the Office of Management and Budget (OMB), on June 28, 2016, the U.S. Office of Government Ethics (OGE) published in the **Federal Register** an interim final rule with request for comments, 81 FR 41787 (June 28, 2016). The interim final rule, which became effective on August 1, 2016, made inflationary adjustments to the five CMPs provided in the Ethics in Government Act of 1978 as amended, 5 U.S.C. appendix (the Ethics Act).[1] The Ethics Act provides for penalties that can be assessed by an appropriate United States district court, based upon a civil action brought by the Department of Justice, for the following five types of violations: Knowing and willful failure to file, report required information on, or falsification of a public financial disclosure report; knowing and willful breach of a qualified trust by trustees and interested parties; negligent breach of a qualified trust by trustees and interested parties; misuse of a public report; and violation of outside employment/activities provisions. See sections 102(f)(6)(C)(i) and (ii), 104(a), 105(c)(2) and 504(a) of the Ethics Act, 5 U.S.C. appendix, 102(f)(6)(C)(i) and (ii), 104(a), 105(c)(2) and 504(a). These penalties are reflected in 5 CFR 2634.701(b), 2634.702(a) and (b), and 2634.703 of OGE's executive branchwide financial disclosure regulation and 5 CFR 2636.104(a) of OGE's executive branchwide covered noncareer employee outside employment/activities regulation.

As explained in the preamble to the interim final rule, the increased civil monetary penalty amounts calculated in OGE's ''catch-up'' adjustment applied only to civil penalties assessed after August 1, 2016 whose associated violations occurred after November 2, 2015, the date of enactment of the 2015 Act. For the sake of clarity, OGE's interim final rule stated the original, previously-adjusted and newly-adjusted Ethics Act CMP amounts. OGE received no comments on the interim final rule, and therefore is adopting it as final in this rulemaking.

Annual Inflationary Adjustment to the Ethics in Government Act Civil Monetary Penalties

Beginning in 2017, the 2015 Act requires Federal agencies to make annual inflationary adjustments to their CMPs. The annual adjustments are based on the percent change between the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October preceding the date of the adjustment, and the prior year's October CPI–U. Pursuant to OMB guidance, the cost-of-living adjustment multiplier for 2017, based on the CPI–U for October 2016, not seasonally adjusted, is 1.01636. To calculate the 2017 annual adjustment, agencies must multiply the most recent penalty by the 1.01636 multiplier, and round to the nearest dollar.

Applying the formula established by the 2015 Act and OMB guidance, OGE is amending the Ethics Act CMPs through this rulemaking to:

(1) Increase the three penalties reflected in 5 CFR 2634.702(a), 5 CFR 2634.703, and 5 CFR 2636.104(a)—which were previously adjusted to a maximum of $18,936—to a maximum of $19,246;

(2) Increase the penalty reflected in 5 CFR 2634.702(b)—which was previously adjusted to a maximum of $9,468—to a maximum of $9,623; and

(3) Increase the penalty reflected in 5 CFR 2634.701(b)—which was previously adjusted to a maximum of $56,916—to a maximum of $57,847. Consistent with the implementation of the ''catch-up'' penalty adjustments, these adjusted penalty amounts will

[1] OGE has previously determined, after consultation with the Department of Justice, that the $200 late filing fee for public financial disclosure reports that are more than 30 days overdue (see section 104(d) of the Ethics Act, 5 U.S.C. appendix, 104(d), and 5 CFR 2634.704 of OGE's regulations thereunder) is not a CMP as defined under the Federal Civil Penalties Inflation Adjustment Act, as amended. Therefore, that fee is not being adjusted in this rulemaking (nor was it adjusted by OGE in previous CMP rulemakings), and will remain at its current amount of $200.

apply only to penalties assessed after January 15, 2017 (the applicability date of this final rule) whose associated violations occurred after November 2, 2015.

OGE will continue to make future annual inflationary adjustments to the Ethics Act CMPs in accordance with the statutory formula set forth in the 2015 Act.

II. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b), as Director of the Office of Government Ethics, I find that good cause exists for waiving the general notice of proposed rulemaking and public comment procedures as to these technical amendments. The notice and comment procedures are being waived because these amendments, which concern matters of agency organization, procedure and practice, are being adopted in accordance with statutorily mandated inflation adjustment procedures of the 2015 Act, which specifies that agencies shall adjust civil monetary penalties notwithstanding Section 553 of the Administrative Procedure Act. It is also in the public interest that the adjusted rates for civil monetary penalties under the Ethics in Government Act become effective as soon as possible in order to maintain their deterrent effect.

Regulatory Flexibility Act

As the Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this final rule would not have a significant economic impact on a substantial number of small entities because it primarily affects current Federal executive branch employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain information collection requirements that require approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 5, subchapter II), this rule would not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Executive Order 13563 and Executive Order 12866

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select the regulatory approaches that maximize net benefits (including economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget has determined that rulemakings such as this implementing annual inflationary adjustments under the 2015 Act are not significant regulatory actions under Executive Order 12866.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

List of Subjects

5 CFR Part 2634

Certificates of divestiture, Conflict of interests, Government employees, Penalties, Reporting and recordkeeping requirements, Trusts and trustees.

5 CFR Part 2636

Conflict of interests, Government employees, Penalties.

Dated: January 9, 2017.

Walter M. Shaub, Jr.,

Director, U.S. Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the U.S. Office of Government Ethics is adopting the interim final rule published at 81 FR 41787 (June 28, 2016) as a final rule with the following changes:

PART 2634—EXECUTIVE BRANCH FINANCIAL DISCLOSURE, QUALIFIED TRUSTS, AND CERTIFICATES OF DIVESTITURE

■ 1. The authority citation for part 2634 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Sec. 31001, Pub. L. 104–134, 110 Stat. 1321 (Debt Collection Improvement Act of 1996) and Sec. 701, Pub. L. 114–74 (Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

■ 2. Section 2634.701 is amended by revising paragraph (b) to read as follows:

§ 2634.701 Failure to file or falsifying reports.

* * * * *

(b) *Civil action.* The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully falsifies or who knowingly and willfully fails to file or report any information required by filers of public reports under subpart B of this part. The court in which the action is brought may assess against the individual a civil monetary penalty in any amount, not to exceed the amounts set forth below, as provided by section 104(a) of the Act, as amended, and as adjusted in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended:

Date of violation	Penalty
Violation occurring between Sept. 14, 2007 and Nov. 2, 2015	$50,000
Violation occurring after Nov. 2, 2015	57,847

* * * * *

■ 3. Section 2634.702 is revised to read as follows:

§ 2634.702 Breaches by trust fiduciaries and interested parties.

(a) The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully violates the provisions of § 2634.408(d)(1) or (e)(1). The court in which the action is brought may assess against the individual a civil monetary penalty in any amount, not to exceed the amounts set forth below, as provided by section 102(f)(6)(C)(i) of the Act and as adjusted in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended:

Date of violation	Penalty
Violation occurring between Sept. 29, 1999 and Nov. 2, 2015	$11,000
Violation occurring after Nov. 2, 2015	19,246

(b) The Attorney General may bring a civil action in any appropriate United States district court against any individual who negligently violates the provisions of § 2634.408(d)(1) or (e)(1). The court in which the action is brought

may assess against the individual a civil monetary penalty in any amount, not to exceed the amounts set forth below, as provided by section 102(f)(6)(C)(ii) of the Act and as adjusted in accordance with the inflation adjustment procedures of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended:

Date of violation	Penalty
Violation occurring between Sept. 29, 1999 and Nov. 2, 2015	$5,500
Violation occurring after Nov. 2, 2015	9,623

■ 4. Section 2634.703 is revised to read as follows:

§ 2634.703 Misuse of public reports.

(a) The Attorney General may bring a civil action against any person who obtains or uses a report filed under this part for any purpose prohibited by section 105(c)(1) of the Act, as incorporated in § 2634.603(f). The court in which the action is brought may assess against the person a civil monetary penalty in any amount, not to exceed the amounts set forth below, as provided by section 105(c)(2) of the Act and as adjusted in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended:

Date of violation	Penalty
Violation occurring between Sept. 29, 1999 and Nov. 2, 2015	$11,000
Violation occurring after Nov. 2, 2015	19,246

(b) This remedy shall be in addition to any other remedy available under statutory or common law.

PART 2636—LIMITATIONS ON OUTSIDE EARNED INCOME, EMPLOYMENT AND AFFILIATIONS FOR CERTAIN NONCAREER EMPLOYEES

■ 5. The authority citation for part 2636 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Sec. 31001, Pub. L. 104–134, 110 Stat. 1321 (Debt Collection Improvement Act of 1996) and Sec. 701, Pub. L. 114–74 (Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

■ 6. Section 2636.104 is amended by revising paragraph (a) to read as follows:

§ 2636.104 Civil, disciplinary and other action.

(a) *Civil action.* Except when the employee engages in conduct in good faith reliance upon an advisory opinion issued under § 2636.103, an employee who engages in any conduct in violation of the prohibitions, limitations and restrictions contained in this part may be subject to civil action under 5 U.S.C. app. 504(a) and a civil monetary penalty of not more than the amounts set forth below, as adjusted in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, or the amount of the compensation the individual received for the prohibited conduct, whichever is greater.

Date of violation	Penalty
Violation occurring between Sept. 29, 1999 and Nov. 2, 2015	$11,000
Violation occurring after Nov. 2, 2015	19,246

* * * * *

[FR Doc. 2017–00627 Filed 1–23–17; 8:45 am]

BILLING CODE 6345–03–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 13

[NRC–2016–0165]

RIN 3150–AJ82

Adjustment of Civil Penalties for Inflation for FY 2017

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to adjust the maximum civil monetary penalties (CMPs) it can assess under statutes enforced by the agency. These changes are mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Improvements Act). The NRC is amending its regulations to adjust the maximum CMP for a violation of the Atomic Energy Act of 1954, as amended (AEA), or any regulation or order issued under the AEA from $280,469 to $285,057 per violation, per day. Additionally, the NRC is amending provisions concerning program fraud civil penalties by adjusting the maximum CMP under the Program Fraud Civil Remedies Act from $10,781 to $10,957 for each false claim or statement.

DATES: This final rule is effective on January 24, 2017.

ADDRESSES: Please refer to Docket ID NRC–2016–0165 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–2016–0165. 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.* 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.

FOR FURTHER INFORMATION CONTACT: Eric Michel, Office of the General Counsel, telephone: 301–287–3704, email: *Eric.Michel2@nrc.gov,* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

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I. Background

Congress passed the FCPIAA in 1990 to allow for regular adjustment for inflation of CMPs, maintain the deterrent effect of such penalties and promote compliance with the law, and improve the collection of CMPs by the Federal government (Pub. L. 101–410, 104 Stat. 890; 28 U.S.C. 2461 note). The Debt Collection Improvement Act of 1996 amended the FCPIAA to require the head of each agency to review, and if necessary adjust by regulation, the CMPs assessed under statutes enforced by that agency at least once every 4 years, in accordance with a statutory formula linked to the percentage change in the Consumer Price Index (CPI) (Pub. L. 104–34, 110 Stat. 1321–373). Pursuant to this authority, the NRC increased the CMP amounts for violations of the AEA (codified at § 2.205 of title 10 of the *Code of Federal Regulations* (10 CFR)) and Program Fraud Civil Remedies Act (codified at 10 CFR 13.3) on four occasions between 1996 and 2008.[1]

On November 2, 2015, Congress amended the FCPIAA through the 2015 Improvements Act (Sec. 701, Pub. L. 114–74, 129 Stat. 599). The 2015 Improvements Act required that the head of each agency perform a ''catch-up'' adjustment by rulemaking, not later than July 1, 2016, adjusting the CMPs within the jurisdiction of that agency according to the percentage change in the CPI between the month of October 2015 and October of the calendar year when the CMP amount was last established by Congress. The NRC performed this rulemaking on July 1, 2016 (81 FR 43019), increasing the amounts codified at 10 CFR 2.205 and 10 CFR 13.3 to $280,469 and $10,781, respectively.

The 2015 Improvements Act also requires that the head of each agency continue to adjust CMP amounts, rounded to the nearest dollar, each year thereafter. Specifically, each CMP is to be adjusted based on the percentage change between the CPI for the previous month of October, and the CPI for the month of October in the year preceding that. Therefore, the CMP adjustment required to be performed in 2017 is to be based on the percentage change between the CPI for the month of October 2016 and October 2015.

II. Discussion

Section 234 of the AEA limits civil penalties for violations of the AEA to $100,000 per day, per violation (42 U.S.C. 2282). However, as discussed in the Background section of this document, the NRC has increased this amount several times since 1996 under the FCPIAA, as amended. Using the formula in the 2015 Improvements Act, the $280,469 amount last established in July 2016 will increase by 1.636 percent, resulting in a new CMP amount of $285,057. This is based on the percentage change between the October 2016 CPI (241.729) and the October 2015 CPI (237.838).[2] The NRC is amending 10 CFR 2.205 to reflect a new maximum CMP under the AEA in the amount of $285,057 per day, per violation. This represents an increase of $4,588.

Monetary penalties under the Program Fraud Civil Remedies Act were established in 1986 at $5,000 per claim (Pub. L. 99–509, 100 Stat. 1938; 31 U.S.C. 3802). Since 1996 the NRC has adjusted this amount (currently set at $10,781) multiple times under the FCPIAA, as amended. Using the same previously discussed formula in the 2015 Improvements Act, the $10,781 amount will increase by 1.636 percent, resulting in a new CMP amount of $10,957. Therefore, the NRC is amending 10 CFR 13.3 to reflect a new maximum CMP amount of $10,957 per claim. This represents an increase of $176.

As permitted by the 2015 Improvements Act, the NRC may apply these increased CMP amounts to any penalties assessed by the agency after the effective date of this final rule (January 24, 2017), regardless of whether the associated violation occurred before or after this date (Pub. L. 114–74, 129 Stat. 600; 28 U.S.C. 2461 note). The NRC assesses civil penalty amounts, based on the class of licensee and severity of the violation, in accordance with the NRC Enforcement Policy (ADAMS Accession No. ML16197A561).

III. Rulemaking Procedure

The 2015 Improvements Act expressly states that agencies shall make the adjustments required by the act ''notwithstanding section 553 of title 5, United States Code''. Therefore, because this final rule has been expressly exempted by Congress from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553), it is being issued without prior public notice or opportunity for public comment, with an immediate effective date.

IV. Section-by-Section Analysis

10 CFR 2.205

Paragraph (j) in § 2.205 is revised by replacing ''$280,469'' with ''$285,057.''

10 CFR 13.3

Paragraphs (a)(1)(iv) and (b)(1)(ii) in § 13.3 are revised by replacing ''$10,781'' with ''$10,957.''

V. Regulatory Analysis

This final rule adjusts for inflation the maximum CMPs the NRC may assess under the AEA and under the Program Fraud Civil Remedies Act of 1986. The formula for determining the amount of the adjustment is mandated by Congress in the FCPIAA, as amended by the 2015 Improvements Act (codified at 28 U.S.C. 2461 note). Congress passed this legislation on the basis of its findings that the power to impose monetary civil penalties is important to deterring violations of Federal law and furthering the policy goals of Federal laws and regulations. Congress has also found that inflation has diminished the impact of these penalties and their effect. The principal purposes of this legislation are to provide for adjustment of civil monetary penalties for inflation, maintain the deterrent effect of civil monetary penalties, and promote compliance with the law. Therefore, these are the anticipated impacts of this final rule. Direct monetary impacts fall only upon licensees or other persons subjected to NRC enforcement for violations of the AEA and regulations and orders issued under the AEA (10 CFR 2.205), or those licensees or persons subjected to liability pursuant to the provisions of the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–3812) and the NRC's implementing regulations (10 CFR part 13).

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to regulations for which a Federal agency is not required by law, including the rulemaking provisions of

[1] Adjustment of Civil Penalties for Inflation, 73 FR 54671 (September 23, 2008); Adjustment of Civil Penalties for Inflation, 69 FR 62393 (October 26, 2004); Adjustment of Civil Penalties for Inflation; Miscellaneous Administrative Changes, 65 FR 59270 (October 4, 2000); Adjustment of Civil Monetary Penalties for Inflation, 61 FR 53554 (October 11, 1996). An adjustment was not performed in 2012 because the FCPIAA at the time required agencies to round their CMP amounts to the nearest multiple of $1,000 or $10,000, depending on the size of the CMP amount, and the 2012 adjustments based on the statutory formula were not large enough to warrant an adjustment.

[2] These figures are confirmed by guidance from the Office of Management and Budget (OMB) concerning implementation of the 2015 Improvements Act. *See* OMB M–17–11, Implementation of the 2017 annual adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (December 16, 2016), *available at https://www.whitehouse.gov/sites/default/files/omb/memoranda/2017/m-17-11_0.pdf.*

the Administrative Procedure Act, 5 U.S.C 553(b), to publish a general notice of proposed rulemaking. 5 U.S.C. 604. As discussed in this notice under Section III, ''Rulemaking Procedure,'' the NRC has determined that this final rule is exempt from the requirements of 5 U.S.C. 553(b) and that notice and comment need not be provided. Accordingly, the NRC also determines that the requirements of the Regulatory Flexibility Act do not apply to this final rule.

VII. Backfitting and Issue Finality

The NRC has not prepared a backfit analysis for this final rule. This final rule does not involve any provision that would impose a backfit, nor is it inconsistent with any issue finality provision, as those terms are defined in 10 CFR chapter I. As mandated by Congress, this final rule adjusts CMP amounts for violations of already-existing NRC regulations and requirements. This final rule does not modify any licensee system, structures, components, designs, approvals, or procedures required for the construction or operation of any facility.

VIII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883).

IX. National Environmental Policy Act

The NRC has determined that this final rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

X. Paperwork Reduction Statement

This final rule does not contain a collection of information as defined in the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995.

XI. Congressional Review Act

This final rule is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Confidential business information, Freedom of information, Environmental protection, Hazardous waste, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 13

Administrative practice and procedure, Claims, Fraud, Organization and function (government agencies), Penalties.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; 28 U.S.C. 2461 note; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 2 and 13.

PART 2—AGENCY RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 2 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 29, 53, 62, 63, 81, 102, 103, 104, 105, 161, 181, 182, 183, 184, 186, 189, 191, 234 (42 U.S.C. 2039, 2073, 2092, 2093, 2111, 2132, 2133, 2134, 2135, 2201, 2231, 2232, 2233, 2234, 2236, 2239, 2241, 2282); Energy Reorganization Act of 1974, secs. 201, 206 (42 U.S.C. 5841, 5846); Nuclear Waste Policy Act of 1982, secs. 114(f), 134, 135, 141 (42 U.S.C. 10134(f), 10154, 10155, 10161); Administrative Procedure Act (5 U.S.C. 552, 553, 554, 557, 558); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note.

Section 2.205(j) also issued under 28 U.S.C. 2461 note.

■ 2. Amend § 2.205 by revising paragraph (j) to read as follows:

§ 2.205 Civil penalties.

* * * * *

(j) *Amount.* A civil monetary penalty imposed under Section 234 of the Atomic Energy Act of 1954, as amended, or any other statute within the jurisdiction of the Commission that provides for the imposition of a civil penalty in an amount equal to the amount set forth in Section 234, may not exceed $285,057 for each violation. If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purposes of computing the applicable civil penalty.

PART 13—PROGRAM FRAUD CIVIL REMEDIES

■ 3. The authority citation for part 13 continues to read as follows:

Authority: 31 U.S.C. 3801 through 3812; 44 U.S.C. 3504 note. Section 13.3 also issued under 28 U.S.C. 2461 note. Section 13.13 also issued under 31 U.S.C. 3730.

■ 4. Amend § 13.3 by revising paragraphs (a)(1)(iv) and (b)(1)(ii) to read as follows:

§ 13.3 Basis for civil penalties and assessments.

(a) * * *

(1) * * *

(iv) Is for payment for the provision of property or services which the person has not provided as claimed, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $10,957 for each such claim.

* * * * *

(b) * * *

(1) * * *

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $10,957 for each such statement.

* * * * *

Dated in Rockville, Maryland, this 9th day of January, 2017.

For the Nuclear Regulatory Commission.

Victor M. McCree,

Executive Director for Operations.

[FR Doc. 2017–01313 Filed 1–23–17; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 1

Adjustments to Civil Penalty Amounts

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') is confirming certain amendments made on an interim final basis to the civil penalty amounts within its jurisdiction in June 2016 and implementing further adjustments to the civil penalty amounts within its jurisdiction to account for inflation, as required by law.

DATES: *Effective:* January 24, 2017.

FOR FURTHER INFORMATION CONTACT: Kenny A. Wright, Attorney, Office of the General Counsel, FTC, 600 Pennsylvania Avenue NW., Washington,

DC 20580, (202) 326–2907, *kwright@ftc.gov.*

SUPPLEMENTARY INFORMATION:

Commission Rule 1.98 sets forth civil penalty amounts for violations of certain laws enforced by the Commission.[1] As mandated by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,[2] the Commission adjusted the maximum civil penalty amounts under its jurisdiction through an Interim Final Rulemaking in June 2016.[3] This statutorily mandated ''catch-up'' adjustment was designed to address inflation since the civil penalties were first enacted. This Notice confirms those amendments and implements additional inflationary adjustments mandated by law.

Following the initial catch-up adjustment, the FCPIAA, as amended, directs agencies to adjust their civil penalties for inflation every January thereafter. Accordingly, the Commission is increasing these maximum civil penalty amounts to address inflation since the initial ''catch-up'' adjustment. The following adjusted amounts will take effect on January 24, 2017:

- Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1) (premerger filing notification violations under the Hart-Scott-Rodino Improvements Act)—Increase from $40,000 to $40,654;
- Section 11(*l*) of the Clayton Act, 15 U.S.C. 21(*l*) (violations of cease and desist orders issued under Clayton Act section 11(b))—Increase from $21,250 to $21,598;
- Section 5(*l*) of the FTC Act, 15 U.S.C. 45(*l*) (unfair or deceptive acts or practices)—Increase from $40,000 to $40,654;
- Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. 45(m)(1)(A) (unfair or deceptive acts or practices)—Increase from $40,000 to $40,654;
- Section 5(m)(1)(B) of the FTC Act, 15 U.S.C. 45(m)(1)(B) (unfair or deceptive acts or practices)—Increase from $40,000 to $40,654;
- Section 10 of the FTC Act, 15 U.S.C. 50 (failure to file required reports)—Increase from $525 to $534;
- Section 5 of the Webb-Pomerene (Export Trade) Act, 15 U.S.C. 65 (failure by associations engaged solely in export trade to file required statements)—Increase from $525 to $534;
- Section 6(b) of the Wool Products Labeling Act, 15 U.S.C. 68d(b) (failure by wool manufacturers to maintain required records)—Increase from $525 to $534;
- Section 3(e) of the Fur Products Labeling Act, 15 U.S.C. 69a(e) (failure to maintain required records regarding fur products)—Increase from $525 to $534;
- Section 8(d)(2) of the Fur Products Labeling Act, 15 U.S.C. 69f(d)(2) (failure to maintain required records regarding fur products)—Increase from $525 to $534;
- Section 333(a) of the Energy Policy and Conservation Act, 42 U.S.C. 6303(a) (knowing violations of EPCA § 332, including labeling violations)—Increase from $433 to $440;
- Section 525(a) of the Energy Policy and Conservation Act, 42 U.S.C. 6395(a) (recycled oil labeling violations)—Increase from $21,250 to $21,598;
- Section 525(b) of the Energy Policy and Conservation Act, 42 U.S.C. 6395(b) (willful violations of recycled oil labeling requirements)—Increase from $40,000 to $40,654;
- Section 621(a)(2) of the Fair Credit Reporting Act, 15 U.S.C. 1681s(a)(2) (knowing violations of the Fair Credit Reporting Act)—Increase from $3,756 to $3,817;
- Section 1115(a) of the Medicare Prescription Drug Improvement and Modernization Act of 2003, Public Law 108–173, 21 U.S.C. 355 note (failure to comply with filing requirements)—Increase from $14,142 to $14,373; and
- Section 814(a) of the Energy Independence and Security Act of 2007, 42 U.S.C. 17304 (violations of prohibitions on market manipulation and provision of false information to federal agencies)—Increase from $1,138,330 to $1,156,953.

Calculation of Inflation Adjustments

The FCPIAA, as amended, directs federal agencies to adjust each civil monetary penalty under their jurisdiction for inflation no later than January 15 of every year pursuant to a cost-of-living adjustment.[4] The cost-of-living adjustment is based on the percent change between the U.S. Department of Labor's Consumer Price Index for all-urban consumers (''CPI–U'') for the month of October preceding the date of the adjustment, and the CPI–U for October of the prior year.[5] Based on that formula, the cost-of-living adjustment multiplier for 2017 is 1.01636. The FCPIAA also directs that these penalty level adjustments should be rounded to the nearest dollar. Agencies do not have discretion over whether to adjust a maximum civil penalty, or the method used to determine the adjustment.

The following chart illustrates the application of these adjustments to the civil monetary penalties under the Commission's jurisdiction.

CALCULATION OF ADJUSTMENTS TO MAXIMUM CIVIL MONETARY PENALTIES

Citation	Description	Current penalty (2016)	Adjustment multiplier	Adjusted penalty
16 CFR 1.98(a): 15 U.S.C. 18a(g)(1)	Premerger filing notification violations	$40,000	1.01636	$40,654
16 CFR 1.98(b): 15 U.S.C. 21(*l*)	Violations of cease and desist orders	21,250	1.01636	21,958
16 CFR 1.98(c): 15 U.S.C. 45(*l*)	Unfair or deceptive acts or practices	40,000	1.01636	40,654
16 CFR 1.98(d): 15 U.S.C. 45(m)(1)(A)	Unfair or deceptive acts or practices	40,000	1.01636	40,654
16 CFR 1.98(e): 15 U.S.C. 45(m)(1)(B)	Unfair or deceptive acts or practices	40,000	1.01636	40,654
16 CFR 1.98(f): 15 U.S.C. 50	Failure to file required reports	525	1.01636	534
16 CFR 1.98(g): 15 U.S.C. 65	Failure to file required statements	525	1.01636	534
16 CFR 1.98(h): 15 U.S.C. 68d(b)	Failure to maintain required records	525	1.01636	534
16 CFR 1.98(i): 15 U.S.C. 69a(e)	Failure to maintain required records	525	1.01636	534
16 CFR 1.98(j): 15 U.S.C. 69f(d)(2)	Failure to maintain required records	525	1.01636	534
16 CFR 1.98(k): 42 U.S.C. 6303(a)	Knowing violations	433	1.01636	440
16 CFR 1.98(*l*): 42 U.S.C. 6395(a)	Recycled oil labeling violations	21,250	1.01636	21,598
16 CFR 1.98(*l*): 42 U.S.C. 6395(b)	Willful violations	40,000	1.01636	40,654

[1] 16 CFR 1.98.

[2] Public Law 114–74, 701, 129 Stat. 599 (2015). The Act amends the Federal Civil Penalties Inflation Adjustment Act (''FCPIAA''), Public Law 101–410, 104 Stat. 890 (codified at 28 U.S.C. 2461 note).

[3] 81 FR 42476 (June 30, 2016).

[4] 28 U.S.C. 2461 note (4).

[5] *Id.* (3), (5)(b); Office of Management and Budget, M–17–11, Memorandum for the Heads of Executive Departments and Agencies, Implementation of the 2017 annual adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Dec. 16, 2016), available at *https://www.whitehouse.gov/sites/default/files/omb/memoranda/2017/m-17-11_0.pdf.*

CALCULATION OF ADJUSTMENTS TO MAXIMUM CIVIL MONETARY PENALTIES—Continued

Citation	Description	Current penalty (2016)	Adjustment multiplier	Adjusted penalty
16 CFR 1.98(m): 15 U.S.C. 1681s(a)(2)	Knowing violations	3,756	1.01636	3,817
16 CFR 1.98(n): 21 U.S.C. 355 note	Non-compliance with filing requirements	14,142	1.01636	14,373
16 CFR 1.98(o): 42 U.S.C. 17304	Market manipulation or provision of false information to federal agencies.	1,138,330	1.01636	1,156,953

Effective Dates of New Penalties

These new penalty levels apply to civil penalties assessed after the effective date of the applicable adjustment, including civil penalties whose associated violation predated the effective date.[6] These adjustments do not retrospectively change previously assessed or enforced civil penalties that the FTC is actively collecting or has collected.

Procedural Requirements

The FCPIAA, as amended, directs agencies to publish the required inflation adjustments in the **Federal Register** by no later than January 15, 2017, notwithstanding section 553 of title 5, United States Code. Pursuant to this congressional mandate, prior public notice and comment under the APA and a delayed effective date are not required. For this reason, the requirements of the Regulatory Flexibility Act (''RFA'') also do not apply.[7] Further, this rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995 as amended. 44 U.S.C. 3501 *et seq.*

List of Subjects for 16 CFR Part 1

Administrative practice and procedure, Penalties, Trade practices.

Text of Amendments

For the reasons set forth in the preamble, the Federal Trade Commission amends Title 16, chapter I, subchapter A, of the Code of Federal Regulations, as follows:

PART 1—GENERAL PROCEDURES

■ 1. The authority citation for subpart L continues to read as follows:

Authority: 28 U.S.C. 2461 note.

■ 2. Revise § 1.98 to read as follows:

§ 1.98 Adjustment of civil monetary penalty amounts.

This section makes inflation adjustments in the dollar amounts of civil monetary penalties provided by law within the Commission's jurisdiction. The following civil penalty amounts apply to violations occurring after January 24, 2017.

(a) Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1)—$40,654;

(b) Section 11(*l*) of the Clayton Act, 15 U.S.C. 21(*l*)—$21,598;

(c) Section 5(*l*) of the FTC Act, 15 U.S.C. 45(*l*)—$40,654;

(d) Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. 45(m)(1)(A)—$40,654;

(e) Section 5(m)(1)(B) of the FTC Act, 15 U.S.C. 45(m)(1)(B)—$40,654;

(f) Section 10 of the FTC Act, 15 U.S.C. 50—$534;

(g) Section 5 of the Webb-Pomerene (Export Trade) Act, 15 U.S.C. 65—$534;

(h) Section 6(b) of the Wool Products Labeling Act, 15 U.SC. 68d(b)—$534;

(i) Section 3(e) of the Fur Products Labeling Act, 15 U.S.C. 69a(e)—$534;

(j) Section 8(d)(2) of the Fur Products Labeling Act, 15 U.S.C. 69f(d)(2)—$534;

(k) Section 333(a) of the Energy Policy and Conservation Act, 42 U.S.C. 6303(a)—$440;

(l) Sections 525(a) and (b) of the Energy Policy and Conservation Act, 42 U.S.C. 6395(a) and (b), respectively—$21,598 and $40,654, respectively;

(m) Section 621(a)(2) of the Fair Credit Reporting Act, 15 U.S.C. 1681s(a)(2)—$3,817;

(n) Section 1115(a) of the Medicare Prescription Drug Improvement and Modernization Act of 2003, Public Law 108–173, 21 U.S.C. 355 note—$14,373;

(o) Section 814(a) of the Energy Independence and Security Act of 2007, 42 U.S.C. 17304—$1,156,953; and

(p) Civil monetary penalties authorized by reference to the Federal Trade Commission Act under any other provision of law within the jurisdiction of the Commission—refer to the amounts set forth in paragraphs (c) through (f) of this section, as applicable.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2017–01125 Filed 1–23–17; 8:45 am]

BILLING CODE 6750–01–P

[6] 28 U.S.C. 2461 note (6).

[7] A regulatory flexibility analysis under the RFA is required only when an agency must publish a notice of proposed rulemaking for comment. *See* 5 U.S.C. 603.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 250 and 385

[Docket No. RM17–9–000; Order No. 834]

Civil Monetary Penalty Inflation Adjustments

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing a final rule to amend its regulations governing the maximum civil monetary penalties assessable for violations of statutes, rules, and orders within the Commission's jurisdiction. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended most recently by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, requires the Commission to issue this final rule.

DATES: This final rule is effective January 24, 2017.

FOR FURTHER INFORMATION CONTACT: Todd Hettenbach, Attorney, Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8794, *Todd.Hettenbach@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Order No. 834

Final Rule

(Issued January 9, 2017)

1. In this final rule, the Federal Energy Regulatory Commission (Commission) is complying with its statutory obligation to amend the civil monetary penalties provided by law for matters within the agency's jurisdiction.

I. Background

2. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Adjustment Act),[1] which further amended the Federal Civil Penalties Inflation Adjustment Act

[1] Sec. 701, Public Law 114–74, 129 Stat. 584, 599.

of 1990 (1990 Adjustment Act),[2] required the head of each federal agency to issue a rule by July 2016 adjusting for inflation each ''civil monetary penalty'' provided by law within the agency's jurisdiction and to make further inflation adjustments on an annual basis every January 15 thereafter.[3]

II. Discussion

3. The 2015 Adjustment Act defines a civil monetary penalty as any penalty, fine, or other sanction that: (A)(i) Is for a specific monetary amount as provided by federal law or (ii) has a maximum amount provided for by federal law; (B) is assessed or enforced by an agency pursuant to federal law; and (C) is assessed or enforced pursuant to an administrative proceeding or a civil action in the federal courts.[4] This definition applies to the maximum civil penalties that may be imposed under the Federal Power Act (FPA),[5] the Natural Gas Act (NGA),[6] the Natural Gas Policy Act of 1978 (NGPA),[7] and the Interstate Commerce Act (ICA).[8]

4. Under the 2015 Adjustment Act, the first step for such adjustment of a civil monetary penalty for inflation requires determining the percentage by which the U.S. Department of Labor's Consumer Price Index for all-urban consumers (CPI–U) for October of the preceding year exceeds the CPI–U for October of the year before that.[9] The CPI–U for October 2016 exceeded the CPI–U for October 2015 by 1.636 percent.[10]

5. The second step requires multiplying the CPI–U percentage increase by the applicable existing maximum civil monetary penalty.[11] This step results in a base penalty increase amount.

6. The third step requires rounding the base penalty increase amount to the nearest dollar and adding that amount to the base penalty to calculate the new adjusted maximum civil monetary penalty.[12]

7. Under the 2015 Adjustment Act, an agency is directed to use the maximum civil monetary penalty applicable at the time of assessment of a civil penalty, regardless of the date on which the violation occurred.[13]

8. The adjustments that the Commission is required to make pursuant to the 2015 Adjustment Act are reflected in the following table:

Source	Existing maximum civil monetary penalty	New adjusted maximum civil monetary penalty
16 U.S.C. 825o–1(b), Sec. 316A of the Federal Power Act.	$1,193,970 per violation, per day	$1,213,503 per violation, per day.
16 U.S.C. 823b(c), Sec. 31(c) of the Federal Power Act	$21,563 per violation, per day	$21,916 per violation, per day.
16 U.S.C. 825n(a), Sec. 315(a) of the Federal Power Act	$2,750 per violation	$2,795 per violation.
15 U.S.C. 717t-1, Sec. 22 of the Natural Gas Act	$1,193,970 per violation, per day	$1,213,503 per violation, per day.
15 U.S.C. 3414(b)(6)(A)(i), Sec. 504(b)(6)(A)(i) of the Natural Gas Policy Act of 1978.	$1,193,970 per violation, per day	$1,213,503 per violation, per day.
49 App. U.S.C. 6(10) (1988), Sec. 6(10) of the Interstate Commerce Act.	$1,250 per offense and $62.50 per day after the first day.	$1,270 per offense and $64 per day after the first day.
49 App. U.S.C. 16(8) (1988), Sec. 16(8) of the Interstate Commerce Act.	$12,500 per violation, per day	$12,705 per violation, per day.
49 App. U.S.C. 19a(k) (1988), Sec. 19a(k) of the Interstate Commerce Act.	$1,250 per offense, per day	$1,270 per offense, per day.
49 App. U.S.C. 20(7)(a) (1988), Sec. 20(7)(a) of the Interstate Commerce Act.	$1,250 per offense, per day	$1,270 per offense, per day.

III. Administrative Findings

9. Congress directed that agencies issue final rules to adjust their maximum civil monetary penalties notwithstanding the requirements of the Administrative Procedure Act (APA).[14] Because the Commission is required by law to undertake these inflation adjustments notwithstanding the notice and comment requirements that otherwise would apply pursuant to the APA, and because the Commission lacks discretion with respect to the method and amount of the adjustments, prior notice and comment would be impractical, unnecessary, and contrary to the public interest.

10. The citation of authority for part 385 is also revised to make a technical correction.

IV. Regulatory Flexibility Statement

11. The Regulatory Flexibility Act, as amended, requires agencies to certify that rules promulgated under their authority will not have a significant economic impact on a substantial number of small businesses.[15] The requirements of the Regulatory Flexibility Act apply only to rules promulgated following notice and comment.[16] The requirements of the Regulatory Flexibility Act do not apply to this rulemaking because the Commission is issuing this final rule without notice and comment.

V. Paperwork Reduction Act

12. This rule does not require the collection of information. The Commission is therefore not required to submit this rule for review to the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995.[17]

VI. Document Availability

13. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all

[2] Public Law 101–410, 104 Stat. 890 (codified as amended at 28 U.S.C. 2461 note).

[3] 28 U.S.C. 2461 note, at (4). The Commission made its July 2016 adjustment in Docket No. RM16–16–000. *See Civil Monetary Penalty Inflation Adjustments,* Order No. 826, 81 FR 43937 (July 6, 2016), FERC Stats. & Regs. ¶ 31,386 (2016).

[4] *Id.* (3).

[5] 16 U.S.C. 791a *et seq.*

[6] 15 U.S.C. 717 *et seq.*

[7] 15 U.S.C. 3301 *et seq.*

[8] 49 App. U.S.C. 1 *et seq.* (1988).

[9] 28 U.S.C. 2461 note, at (5)(b)(1).

[10] *See, e.g.,* Memorandum from Shaun Donovan, Office of Management and Budget, Implementation of the 2017 Annual Adjustment Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 1 (Dec. 16, 2016).

[11] *Id.* (5)(a).

[12] *Id.*

[13] *Id.* (6).

[14] *Id.* (3)(b)(2).

[15] 5 U.S.C. 601 *et seq.*

[16] 5 U.S.C. 603, 604.

[17] 44 U.S.C. 3507(d).

interested persons an opportunity to view and print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

14. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and downloading. To access this document in eLibrary, type the docket number (excluding the last three digits) in the docket number field.

15. User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659, *public.referenceroom@ferc.gov.*

VII. Effective Date and Congressional Notification

16. For the same reasons the Commission has determined that public notice and comment are unnecessary, impractical, and contrary to the public interest, the Commission finds good cause to adopt an effective date that is less than 30 days after the date of publication in the **Federal Register** pursuant to the Administrative Procedure Act,[18] and therefore, the regulation is effective upon publication in the **Federal Register**.

17. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996. This Final Rule is being submitted to the Senate, House, and Government Accountability Office.

List of Subjects

18 CFR Part 250

Natural Gas and Reporting and recordkeeping requirements.

18 CFR Part 385

Administrative practice and procedure, Electric power, Penalties, Pipelines, Reporting and recordkeeping requirements.

By the Commission.

[18] 5 U.S.C. 553(d)(3).

Issued: January 9, 2017.

Kimberly D. Bose,

Secretary.

In consideration of the foregoing, the Commission amends parts 250 and 385, Chapter I, Title 18, *Code of Federal Regulations* as follows:

PART 250—FORMS

■ 1. The authority citation for part 250 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352; 28 U.S.C. 2461 note.

■ 2. Amend § 250.16 by revising paragraph (e)(1) to read as follows:

§ 250.16 Format of compliance plan transportation services and affiliate transactions.

* * * * *

(e) *Penalty for failure to comply.* (1) Any person who transports gas for others pursuant to Subparts B or G of Part 284 of this chapter and who knowingly violates the requirements of §§ 358.4 and 358.5, § 250.16, or § 284.13 of this chapter will be subject, pursuant to sections 311(c), 501, and 504(b)(6) of the Natural Gas Policy Act of 1978, to a civil penalty, which the Commission may assess, of not more than $1,213,503 for any one violation.

* * * * *

PART 385—RULES OF PRACTICE AND PROCEDURE

■ 3. The authority citation for part 385 is revised to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791a–825v, 2601–2645; 28 U.S.C. 2461; 31 U.S.C 3701, 9701; 42 U.S.C. 7101–7352, 16441, 16451–16463; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988); 28 U.S.C. 2461 note (1990); 28 U.S.C. 2461 note (2015).

■ 4. Revise § 385.1504(a) to read as follows:

§ 385.1504 Maximum civil penalty (Rule 1504).

(a) Except as provided in paragraph (b) of this section, the Commission may assess a civil penalty of up to $21,916 for each day that the violation continues.

* * * * *

■ 5. Revise § 385.1602 to read as follows:

§ 385.1602 Civil penalties, as adjusted (Rule 1602).

The current inflation-adjusted civil monetary penalties provided by law within the jurisdiction of the Commission are:

(a) 15 U.S.C. 3414(b)(6)(A)(i), Natural Gas Policy Act of 1978: $1,213,503.

(b) 16 U.S.C. 823b(c), Federal Power Act: $21,916 per day.

(c) 16 U.S.C. 825n(a), Federal Power Act: $2,795.

(d) 16 U.S.C. 825o–1(b), Federal Power Act: $1,213,503 per day.

(e) 15 U.S.C. 717t–1, Natural Gas Act: $1,213,503 per day.

(f) 49 App. U.S.C. 6(10) (1988), Interstate Commerce Act: $1,270 per offense and $64 per day after the first day.

(g) 49 App. U.S.C. 16(8) (1988), Interstate Commerce Act: $12,705 per day.

(h) 49 App. U.S.C. 19a(k) (1988), Interstate Commerce Act: $1,270 per day.

(i) 49 App. U.S.C. 20(7)(a) (1988), Interstate Commerce Act: $1,270 per day.

[FR Doc. 2017–00567 Filed 1–23–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 515

RIN 3141–AA65

Privacy Act Procedures

AGENCY: National Indian Gaming Commission, Department of the Interior.

ACTION: Final rule.

SUMMARY: The National Indian Gaming Commission (NIGC or the Commission) is establishing this rule in Chapter III of title 25 of the Code of Federal Regulations. This rule describes the procedures and policies adopted by the Commission pursuant to the Privacy Act of 1974. Under the Act, a Federal agency must publish notice, in the **Federal Register**, of any systems of records that it intends to create as well as procedures regarding the collection, maintenance, use, and dissemination of the records within those systems. The Commission previously published notice of the creation of two systems of records, namely the Indian Gaming Individuals Record System and the Management Contract Individuals Record System. The regulations set forth here update the Commission's previously published procedures and serve to streamline how the Commission processes its Privacy Act requests.

DATES: Effective January 24, 2017.

FOR FURTHER INFORMATION CONTACT: Andrew Mendoza, Staff Attorney, at (202) 632–7003 or by fax (202) 632–7066 (these numbers are not toll free).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA),

enacted on October 17, 1988, established the National Indian Gaming Commission. Congress enacted the Privacy Act in 1974 (Public Law 93–579, 5 U.S.C. 552a). The Commission originally adopted Privacy Act procedures on January 22, 1993. Since that time, the Commission has changed the location of its headquarters office, established a new system of records, and streamlined the way it processes Privacy Act requests. On February 26, 2015, the Commission announced its intent to update its Privacy Act procedures through tribal consultation and accepted comments from the regulated community orally at several consultation sessions. The Commission also accepted written comments via the consultation process through February 23, 2016. On August 26, 2016, after reviewing those comments, the Commission published a Notice of Proposed Rulemaking, which invited additional comments from the general public. No additional comments were received during that period.

Although no comments were received during the comment period, the Commission made two substantive changes to the proposed rule. Specifically, the Commission is lengthening the time period for appeals in Section 515.7(b) from 30 working days to 90 calendar days. One of the major reasons for updating the Commission's Privacy Act regulations was to align the procedures for processing Privacy Act requests with the Commission's processes under the Freedom of Information Act (FOIA), 5 U.S.C. 552. On June 30, 2016, President Obama signed the FOIA Improvements Act of 2016 into law. Among the many changes to the FOIA, agencies are now required to provide requesters with not less than 90 days to appeal adverse determinations made under that Act. Since the Commission processes all Privacy Act requests simultaneously under both, the FOIA and Privacy Act, the Commission decided to lengthen the amount of time for a requester to appeal an adverse determination under the Privacy Act to match the timeline established in the FOIA.

Additionally, the Commission corrected an error in Section 515.7(c), which addresses the timeframe in which the Privacy Act Appeals Officer must respond to an appeal. In the proposed rule, the Privacy Act Appeals Officer was provided with 30 working days to respond to an appeal. While this timeframe is within the Commission's current regulations, it differs from the one set out within the Commission's FOIA regulations. Under the FOIA, an agency is required to respond to an appeal of an adverse determination within 20 working days of its receipt. To streamline the Commission's appeals procedures and synchronize the time for responses for requests that must be processed under both statutes, this section should have read 20 working days rather than 30. The provision is being adjusted accordingly.

Executive Order 13175

The National Indian Gaming Commission is committed to fulfilling its tribal consultation obligations—whether directed by statute or administrative action such as Executive Order (EO) 13175 (Consultation and Coordination with Indian Tribal Governments)—by adhering to the consultation framework described in its Consultation Policy published July 15, 2013. Pursuant to the Order, the Commission engaged in extensive consultation on this topic.

One comment received through consultation requested that Section 515.10 be revised to prevent the Commission from charging fees for the first copy of a record or any portion of a record to an individual to whom the record pertains.

The Commission disagrees and decided to keep the fee provisions as initially presented. The Privacy Act allows agencies to establish fees for duplication so long as there is no cost for searching or reviewing the record. The Commission believes that the proposed regulation appropriately places the cost of duplicating records on the requesting individual and not on the Commission or tribes who fund its operations.

The same commenter also recommended that Section 515.11 clearly state the penalties for providing a false statement under 18 U.S.C. 494 and 495.

The Commission disagrees. The proposed regulation identifies the relevant statutes, which lay out the penalties for providing a false statement. If the Commission were to clearly state the penalties associated with those offenses, it would also be required to change its regulations if Congress amended the penalties listed in those statutes. The Commission prefers the approach in the proposed regulations, which eliminates any need to update the provision in the future should the penalties change.

Regulatory Flexibility Act: The Commission certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The factual basis for this certification is as follows: This rule is procedural in nature and will not impose substantive requirements that would be considered impacts within the scope of the Act.

Unfunded Mandates Reform Act

The Commission is an independent regulatory agency, and, as such, is exempt from the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.*

Takings

In accordance with Executive Order 12630, the Commission has determined that this proposed rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Commission has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

Small Business Regulatory Enforcement Fairness Act

The proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The proposed rule will not result in an annual effect on the economy of more than $100 million per year; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises.

Paperwork Reduction Act

The proposed rule does not contain any information collection requirements for which the Office of Management and Budget approval under the Paperwork Reduction Act (44 U.S.C. 3501–3520) would be required.

National Environmental Policy Act

The Commission has determined that the proposed rule does not constitute a major Federal Action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

List of Subjects in 25 CFR Part 515

Administrative practice and procedure, Privacy, Reporting and recordkeeping.

■ For the reasons set forth in the preamble, the Commission revises part 25 CFR part 515 to read as follows:

PART 515—PRIVACY ACT PROCEDURES

Sec.
515.1 Purpose and scope.
515.2 Definitions.
515.3 Request for access to records.
515.4 Responsibility for responding to requests.
515.5 Responses to requests for access to records.
515.6 Request for amendment or correction of records.
515.7 Appeals of initial agency adverse determination.
515.8 Requests for an accounting of record disclosure.
515.9 Notice of court-ordered and emergency disclosures.
515.10 Fees.
515.11 Penalties.
515.12 [Reserved]
515.13 Specific exemptions.

Authority: 5 U.S.C. 552a

§ 515.1 Purpose and scope.

This part contains the regulations the National Indian Gaming Commission (Commission) follows in implementing the Privacy Act of 1974. These regulations should be read together with the Privacy Act, which provides additional information about records maintained on individuals. The regulations in this part apply to all records contained within systems of records maintained by the Commission that are retrieved by an individual's name or personal identifier. They describe the procedures by which individuals may request access to records about themselves, request amendment or correction of those records, and request an accounting of disclosures of those records by the Commission. The Commission shall also process all Privacy Act requests for access to records under the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Commission's FOIA regulations contained in 25 CFR part 517, which gives requesters maximum disclosure.

§ 515.2 Definitions.

For the purposes of this subpart:

(a) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence.

(b) *Maintain* means store, collect, use, or disseminate.

(c) *Record* means any item, collection, or grouping of information about an individual that is maintained by the Commission, including education, financial transactions, medical history, and criminal or employment history, and that contains the individual's name, or identifying number, symbol, or other identifier assigned to the individual, such as social security number, finger or voice print, or photograph.

(d) *System of records* means a group of any records under the control of the Commission from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifier assigned to the individual.

(e) *Routine use* means use of a record for a purpose that is compatible with the purpose for which it was collected.

(f) *Working day* means a Federal workday that does not include Saturdays, Sundays, or Federal holidays.

§ 515.3 Request for access to records.

(a) *How made and addressed.* Any individual may make a request to the Commission for access to records about him or herself. Such requests shall conform to the requirements of this section. The request may be made in person at 90 K Street NE., Suite 200, Washington, DC 20002 during the hours of 9 a.m. to 12 noon and 2 p.m. to 5 p.m. Monday through Friday, in writing at NIGC Attn: Privacy Act Officer, C/O Department of the Interior, 1849 C Street NW., Mail Stop #1621, Washington, DC 20240, or via electronic mail addressed to *PARequests@nigc.gov.*

(b) *Description of records sought.* Each request for access to records must describe the records sought in enough detail to enable Commission personnel to locate the system of records containing them with a reasonable amount of effort. Whenever possible, the request should describe the records sought, the time periods in which the records were compiled, any tribal gaming facility with which they were associated, and the name or identifying number of each system of records in which the records are kept.

(c) *Agreement to pay fees.* Requests shall also include a statement indicating the maximum amount of fees the requester is willing to pay to obtain the requested information. The requester must send acknowledgment to the Privacy Act Officer indicating his/her willingness to pay the fees. Absent such an acknowledgment within the specified time frame, the request will be considered incomplete, no further work shall be done, and the request will be administratively closed.

(d) *Verification of identity.* When making a request for access to records the individual seeking access must provide verification of identity. The requester must provide a full name, current address, and date and place of birth. The request must be signed and must either be notarized or submitted under 28 U.S.C. 1746, which is a law that permits statements to be made under penalty of perjury as a substitute for notarization. In order to assist in the identification and location of requested records, a request may also, at the requester's option, include a social security number.

(e) *Verification of guardianship.* When making a request as a parent or guardian of a minor or as the guardian of someone determined by a court to be incompetent, for access to records about that individual, the request must establish:

(1) The identity of the individual who is the subject of the record by stating the name, current address, date and place of birth, and, at the requester's option, the social security number of the individual;

(2) The requester's own identity, as required in paragraph (d) of this section;

(3) That the requester is the parent or guardian of the individual and proof of such relationship by providing a birth certificate showing parentage or a court order establishing guardianship; and

(4) That the requester is acting on behalf of that individual in making the request.

(f) *Verification in the case of third party information requests.* Any individual who desires to have a record covered by this part disclosed to or mailed to another person may designate such person and authorize such person to act as his or her agent for that specific purpose. The authorization shall be in writing, signed by the individual whose record is requested, and notarized or witnessed as provided in paragraph (d) of this section.

(g) *In-person disclosures.* An individual to whom a record is to be disclosed in person, pursuant to this section, may have a person of his or her own choosing accompany him or her when the record is disclosed. If a requester is accompanied by another individual, the requester shall be required to authorize in writing any discussion of the records in the presence of the other person.

§ 515.4 Responsibility for responding to requests.

(a) *In general.* In determining which records are responsive to a request, the Commission ordinarily will include only records in its possession as of the date it begins its search for records. If any other date is used, the Privacy Act Officer shall inform the requester of that date.

(b) *Authority to grant or deny requests.* The Privacy Act Officer shall

make initial determinations either to grant or deny in whole or in part access to records.

(c) *Consultations and referrals.* When the Commission receives a request for a record in its possession, the Privacy Act Officer shall determine whether another agency of the Federal Government is better able to determine whether the record is exempt from disclosure under the Privacy Act. If the Privacy Act Officer determines that it is best able to process the record in response to the request, then it shall do so. If the Privacy Act Officer determines that it is not best able to process the record, then it shall either:

(1) Respond to the request regarding that record, after consulting with the agency best able to determine whether to disclose it and with any other agency that has a substantial interest in it; or

(2) Refer the responsibility for responding to the request regarding that record to the agency best able to determine whether to disclose it, or to another agency that originated the record. Ordinarily, the agency that originated a record will be presumed to be best able to determine whether to disclose it.

(d) *Notice of referral.* Whenever the Privacy Act Officer refers all or any part of the responsibility for responding to a request to another agency, it ordinarily shall notify the requester of the referral and inform the requester of the name of each agency to which the request has been referred and of the part of the request that has been referred.

§ 515.5 Responses to requests for access to records.

(a) *Acknowledgement of requests.* Upon receipt of a request, the Privacy Act Officer ordinarily shall, within 20 working days, send an acknowledgement letter which shall confirm the requester's agreement to pay fees under § 515.9 and provide an assigned request number.

(b) *Grants of requests for access.* Once the Privacy Act Officer makes a determination to grant a request for access in whole or in part, it shall notify the requester in writing. The notice shall inform the requester of any fee charged under § 515.9 of this part and the Privacy Act Officer shall disclose records to the requester promptly on payment of any applicable fee. If a request is made in person, the Privacy Act Officer will disclose the records to the requester directly, in a manner not unreasonably disruptive of its operations, on payment of any applicable fee and with a written record made of the grant of the request. If a requester is accompanied by another individual, the requester shall be required to authorize in writing any discussion of the records in the presence of the other person.

(c) *Adverse determinations of requests for access.* If the Privacy Act Officer makes any adverse determination denying a request for access in any respect, it shall notify the requester of that determination in writing. The notification letter shall be signed by the official making the determination and include:

(1) The name and title of the person responsible for the denial;

(2) A brief statement of the reason(s) for the denial, including any Privacy Act exemption(s) applied to the denial;

(3) A statement that the denial may be appealed under § 515.7 and a description of the requirements of § 515.7.

§ 515.6 Request for amendment or correction of records.

(a) *How made and addressed.* An individual may make a request for an amendment or correction to a Commission record about that individual by writing directly to the Privacy Act Officer, following the procedures in § 515.3. The request should identify each particular record in question, state the amendment or correction that is sought, and state why the record is not accurate, relevant, timely, or complete. The request may include any documentation that would be helpful to substantiate the reasons for the amendment sought.

(b) *Privacy Act Officer response.* The Privacy Act Officer shall, not later than 10 working days after receipt of a request for an amendment or correction of a record, acknowledge receipt of the request and provide notification of whether the request is granted or denied. If the request is granted in whole or in part, the Privacy Act Officer shall describe the amendment or correction made and shall advise the requester of the right to obtain a copy of the amended or corrected record. If the request is denied in whole or in part, the Privacy Act Officer shall send a letter signed by the denying official stating:

(1) The reason(s) for the denial; and

(2) The procedure for appeal of the denial under paragraph (c) of this section.

(c) *Appeals.* A requester may appeal a denial of a request for amendment or correction in the same manner as a denial of a request for access as described in § 515.7. If the appeal is denied, the requester shall be advised of the right to file a Statement of Disagreement as described in paragraph (d) of this section and of the right under the Privacy Act for judicial review of the decision.

(d) *Statements of Disagreement.* If the appeal under this section is denied in whole or in part, the requester has the right to file a Statement of Disagreement that states the reason(s) for disagreeing with the Privacy Act Officer's denial of the request for amendment or correction. Statements of Disagreement must be concise, must clearly identify each part of any record that is disputed, and should be no longer than one typed page for each fact disputed. The Statement of Disagreement shall be placed in the system of records in which the disputed record is maintained and the record shall be marked to indicate a Statement of Disagreement has been filed.

(e) *Notification of amendment, correction, or disagreement.* Within 30 working days of the amendment or correction of the record, the Privacy Act Officer shall notify all persons, organizations, or agencies to which it previously disclosed the record, and if an accounting of that disclosure was made, that the record has been amended or corrected. If a Statement of Disagreement was filed, the Commission shall append a copy of it to the disputed record whenever the record is disclosed and may also append a concise statement of its reason(s) for denying the request to amend the record.

(f) *Records not subject to amendment.* Section 515.13 lists the records that are exempt from amendment or correction.

§ 515.7 Appeals of initial adverse agency determination.

(a) *Adverse determination.* An initial adverse agency determination of a request may consist of: A determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that the requested record is not a record subject to the Privacy Act; a determination that a record will not be amended; a determination to deny a request for an accounting; a determination on any disputed fee matter; and any associated denial of a request for expedited treatment under the Commission's FOIA regulations.

(b) *Appeals.* If the Privacy Act Officer issues an adverse determination in response to a request, the requester may file a written notice of appeal. The notice shall be accompanied by the original request, the initial adverse determination that is being appealed, and a statement describing why the adverse determination was in error. The appeal shall be addressed to the Privacy

Act Appeals Officer at the locations listed in § 515.3 of this part no later than 90 calendar days after the date of the letter denying the request. Both the appeal letter and envelope should be marked ''Privacy Act Appeal.'' Any Privacy Act appeals submitted via electronic mail should state ''Privacy Act Appeal'' in the subject line.

(c) *Responses to appeals.* The decision on appeal will be made in writing within 20 working days of receipt of the notice of appeal by the Privacy Act Appeals Officer. For good cause shown, however, the Privacy Act Appeals Officer may extend the 30 working day period. If such an extension is taken, the requester shall be promptly notified of such extension and the anticipated date of decision. A decision affirming an adverse determination in whole or in part will include a brief statement of the reason(s) for the determination, including any Privacy Act exemption(s) applied. If the adverse determination is reversed or modified in whole or in part, the requester will be notified in a written decision and the request will be reprocessed in accordance with that appeal decision. The response to the appeal shall also advise of the right to institute a civil action in a Federal district court for judicial review of the decision.

(d) *When appeal is required.* In order to institute a civil action in a federal district court for judicial review of an adverse determination, a requester must first appeal it under this section.

§ 515.8 Requests for an accounting of record disclosure.

(a) *How made and addressed.* Subject to the exceptions listed in paragraph (b) of this section, an individual may make a request for an accounting of the disclosures of any record about that individual that the Commission has made to another person, organization, or agency. The accounting contains the date, nature and purpose of each disclosure, as well as the name and address of the person, organization, or agency to which the disclosure was made. The request for an accounting should identify each particular record in question and should be made in writing to the Commission's Privacy Act Officer, following the procedures in § 515.3.

(b) *Where accountings are not required.* The Commission is not required to provide an accounting where they relate to:

(1) Disclosures for which accountings are not required to be kept, such as those that are made to employees of the Commission who have a need for the record in the performance of their duties and disclosures that are made under section 552 of title 5;

(2) Disclosures made to law enforcement agencies for authorized law enforcement activities in response to written requests from those law enforcement agencies specifying the law enforcement activities for which the disclosures are sought; or

(3) Disclosures made from law enforcement systems of records that have been exempted from accounting requirements.

(c) *Appeals.* A requester may appeal a denial of a request for an accounting in the same manner as a denial of a request for access as described in § 515.7 of this part and the same procedures will be followed.

(d) *Preservation of accountings.* All accountings made under this section will be retained for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made.

§ 515.9 Notice of court-ordered and emergency disclosures.

(a) *Court-ordered disclosures.* When a record pertaining to an individual is required to be disclosed by a court order, the Privacy Act Officer shall make reasonable efforts to provide notice of this to the individual. Notice shall be given within a reasonable time after the Privacy Act Officer's receipt of the order—except that in a case in which the order is not a matter of public record, the notice shall be given only after the order becomes public. This notice shall be mailed to the individual's last known address and shall contain a copy of the order and a description of the information disclosed. Notice shall not be given if disclosure is made from a criminal law enforcement system of records that has been exempted from the notice requirement.

(b) *Emergency disclosures.* Upon disclosing a record pertaining to an individual made under compelling circumstances affecting health or safety, the Privacy Act Officer shall, within a reasonable time, notify that individual of the disclosure. This notice shall be mailed to the individual's last known address and shall state the nature of the information disclosed; the person, organization, or agency to which it was disclosed; the date of disclosure; and the compelling circumstances justifying disclosure.

§ 515.10 Fees.

The Commission shall charge fees for duplication of records under the Privacy Act in the same way in which it charges duplication fees under § 517.9 of this part. No search or review fee may be charged for any record. Additionally, when the Privacy Act Officer makes a copy of a record as a necessary part of reviewing the record or granting access to the record, the Commission shall not charge for the cost of making that copy. Otherwise, the Commission may charge a fee sufficient to cover the cost of duplicating a record.

§ 515.11 Penalties.

Any person who makes a false statement in connection with any request for access to a record, or an amendment thereto, under this part, is subject to the penalties prescribed in 18 U.S.C. 494 and 495.

§ 515.12 [Reserved]

§ 515.13 Specific exemptions.

(a) The following systems of records are exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1) and (f):

(1) Indian Gaming Individuals Records System.

(2) Management Contract Individuals Record System.

(b) The exemptions under paragraph (a) of this section apply only to the extent that information in these systems is subject to exemption under 5 U.S.C. 552a(k)(2). When compliance would not appear to interfere with or adversely affect the overall responsibilities of the Commission, with respect to licensing of key employees and primary management officials for employment in an Indian gaming operation or verifying the suitability of an individual who has a financial interest in, or management responsibility for a management contract, the applicable exemption may be waived by the Commission.

(c) Exemptions from the particular sections are justified for the following reasons:

(1) From 5 U.S.C. 552a(c)(3), because making available the accounting of disclosures to an individual who is the subject of a record could reveal investigative interest. This would permit the individual to take measures to destroy evidence, intimidate potential witnesses, or flee the area to avoid the investigation.

(2) From 5 U.S.C. 552a(d), (e)(1), and (f) concerning individual access to records, when such access could compromise classified information related to national security, interfere with a pending investigation or internal inquiry, constitute an unwarranted invasion of privacy, reveal a sensitive investigative technique, or pose a potential threat to the Commission or its employees or to law enforcement personnel. Additionally, access could

reveal the identity of a source who provided information under an express promise of confidentiality.

(3) From 5 U.S.C. 552a(d)(2), because to require the Commission to amend information thought to be incorrect, irrelevant, or untimely, because of the nature of the information collected and the length of time it is maintained, would create an impossible administrative and investigative burden by continually forcing the Commission to resolve questions of accuracy, relevance, timeliness, and completeness.

(4) From 5 U.S.C. 552a(e)(1) because:

(i) It is not always possible to determine relevance or necessity of specific information in the early stages of an investigation.

(ii) Relevance and necessity are matters of judgment and timing in that what appears relevant and necessary when collected may be deemed unnecessary later. Only after information is assessed can its relevance and necessity be established.

(iii) In any investigation the Commission may receive information concerning violations of law under the jurisdiction of another agency. In the interest of effective law enforcement and under 25 U.S.C. 2716(b), the information could be relevant to an investigation by the Commission.

(iv) In the interviewing of individuals or obtaining evidence in other ways during an investigation, the Commission could obtain information that may or may not appear relevant at any given time; however, the information could be relevant to another investigation by the Commission.

Dated: December 30, 2016.

Jonodev Chaudhuri,

Chairman.

Kathryn Isom-Clause,

Vice-Chair.

Sequoyah Simermeyer,

Commissioner.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9815]

RIN 1545–BM33

Dividend Equivalents From Sources Within the United States

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and temporary regulations.

SUMMARY: This document provides guidance to nonresident alien individuals and foreign corporations that hold certain financial products providing for payments that are contingent upon or determined by reference to U.S. source dividend payments. This document also provides guidance to withholding agents that are responsible for withholding U.S. tax with respect to a dividend equivalent, as well as certain other parties to section 871(m) transactions and their agents.

DATES: *Effective Date:* These regulations are effective on January 19, 2017.

Applicability Dates: For dates of applicability, see §§ 1.871–15(r); 1.871–15T(r)(4); 1.1441–1(f)(5); 1.1441–2(f); 1.1441–7(a)(4); 1.1461–1(i).

FOR FURTHER INFORMATION CONTACT: D. Peter Merkel or Karen Walny at (202) 317–6938 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control numbers 1545–0096 and 1545–1597. The collections of information in these regulations are in § 1.871–15T(p) and are an increase in the total annual burden in the current regulations under §§ 1.1441–1 through 1.1441–9. This information is required to establish whether a payment is treated as a U.S. source dividend for purposes of section 871(m) of the Internal Revenue Code (Code). This information will be used for audit and examination purposes. The IRS intends that these information collection requirements will be satisfied by persons complying with chapter 3 reporting requirements and the requirements of the applicable qualified intermediary (QI) revenue procedure, or alternative certification and documentation requirements set out in these regulations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number.

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

Background

On January 23, 2012, the **Federal Register** published temporary regulations (TD 9572) at 77 FR 3108 (2012 temporary regulations), and a notice of proposed rulemaking by cross-reference to the temporary regulations and notice of public hearing at 77 FR 3202 (2012 proposed regulations, and together with the 2012 temporary regulations, 2012 section 871(m) regulations) under section 871(m) of the Code. The 2012 section 871(m) regulations relate to dividend equivalents from sources within the United States paid to nonresident alien individuals and foreign corporations. Corrections to the 2012 temporary regulations were published on February 6, 2012, and March 8, 2012, in the **Federal Register** at 77 FR 5700 and 77 FR 13969, respectively. A correcting amendment to the 2012 temporary regulations was also published on August 31, 2012, in the **Federal Register** at 77 FR 53141. The Department of the Treasury (Treasury Department) and the IRS received written comments on the 2012 proposed regulations, and a public hearing was held on April 27, 2012.

On December 5, 2013, the **Federal Register** published final regulations and removal of temporary regulations (TD 9648) at 78 FR 73079 (2013 final regulations), which finalized a portion of the 2012 section 871(m) regulations. On the same date, the **Federal Register** published a withdrawal of notice of proposed rulemaking, a notice of proposed rulemaking, and a notice of public hearing at 78 FR 73128 (2013 proposed regulations). In light of comments on the 2012 proposed regulations, the 2013 proposed regulations described a new approach for determining whether a payment made pursuant to a notional principal contract (NPC) or an equity-linked instrument (ELI) is a dividend equivalent based on the delta of the contract. In response to written comments on the 2013 proposed regulations, the Treasury Department and the IRS released Notice 2014–14, 2014–13 IRB 881, on March 24, 2014 (see § 601.601(d)(2)(ii)(*b*)), stating that the Treasury Department and the IRS anticipated limiting the application of the rules with respect to specified ELIs described in the 2013 proposed regulations to ELIs issued on or after 90 days after the date of publication of final regulations.

On September 18, 2015, the **Federal Register** published final regulations and temporary regulations (TD 9734), at 80 FR 56866, which finalized a portion of the 2013 proposed regulations and

introduced new temporary regulations based on comments received with respect to the 2013 proposed regulations (2015 final regulations and 2015 temporary regulations, respectively, and together, the 2015 regulations). On the same date, the **Federal Register** published a notice of proposed rulemaking by cross-reference to temporary regulations and a notice of public hearing at 80 FR 56415 (2015 proposed regulations, and together with the 2015 final regulations, 2015 section 871(m) regulations). A correcting amendment to the 2015 final regulations and the 2015 proposed regulations was published on December 7, 2015, in the **Federal Register** at 80 FR 75946 and 80 FR 75956, respectively.

The Treasury Department and the IRS received written comments on the 2015 proposed regulations, which are available at *www.regulations.gov*. The public hearing scheduled for January 15, 2016, was cancelled because no request to speak was received.

On July 1, 2016, the Treasury Department and the IRS released Notice 2016–42, 2016–29 IRB 67 (see § 601.601(d)(2)(ii)(*b*)) (QI Notice), containing a proposed amended qualified intermediary agreement. The QI Notice included the requirements and obligations applicable to a QI that acts as a qualified derivatives dealer (QDD). The Treasury Department and the IRS received written comments on Notice 2016–42, which to the extent related to section 871(m) and QDDs are discussed in the ''Qualified Derivatives Dealer'' section of this preamble. On December 30, 2016, the Treasury Department and the IRS released Revenue Procedure 2017–15, 2017–3 IRB 437 (2017 QI Agreement), which contains the final QI withholding agreement and the requirements and obligations applicable to QDDs.

On December 2, 2016, the Treasury Department and the IRS released Notice 2016–76, 2016–51 IRB 834, providing guidance for complying with the final and temporary regulations under sections 871(m) and 1441, 1461, and 1473 in 2017 and 2018 and explaining how the IRS intends to administer those regulations in 2017 and 2018.

On March 6, 2014, temporary regulations (TD 9658) revising certain provisions of the final chapters 3 and 61 regulations were published in the **Federal Register** (79 FR 12726), and corrections to those temporary regulations were published in the **Federal Register** (79 FR 37181) on July 1, 2014. Those regulations were issued to coordinate with certain provisions of the 2013 final chapter 4 regulations, as well as temporary regulations (TD 9657) under chapter 4 published in the **Federal Register** (79 FR 12812). A notice of proposed rulemaking cross-referencing the 2014 temporary coordination regulations was published in the **Federal Register** on March 6, 2014 (79 FR 12880). On January 6, 2017, the Treasury Department and IRS published in the **Federal Register** (82 FR 2046) final chapters 3 and 61 regulations, as well as temporary regulations (TD 9808).

This Treasury decision generally adopts the 2015 proposed regulations with the changes discussed in this preamble. This Treasury decision also includes several technical amendments to the 2015 final regulations in response to comments on those regulations, which are discussed in this preamble. Finally, this Treasury decision provides new temporary regulations based on comments received with respect to the 2015 proposed regulations.

Summary of Comments and Explanation of Provisions

I. Technical Corrections to Certain Definitions

A. Broker

Section 1.871–15(p) generally provides that a broker or dealer is responsible for determining whether a potential section 871(m) transaction is a section 871(m) transaction and for reporting to the customer the timing and amount of any dividend equivalent. Section 1.871–15(a)(1) defines the term broker as ''a broker within the meaning provided in section 6045(c).'' Comments explained that many regulated investment companies satisfy the definition of a broker under section 6045(c) and the regulations thereunder because the term broker includes a corporation that regularly redeems its own shares. The comments noted that these regulated investment companies may enter into transactions as a short party with a foreign financial institution who is the long party. In these transactions, the comments asserted, the foreign financial institution (not the regulated investment company) is more capable of determining delta and making other calculations.

The Treasury Department and the IRS agree that an entity should not be treated as a broker for purposes of section 871(m) solely because it redeems its own shares. The rules are intended to assign responsibility for making the determinations related to potential section 871(m) transactions to the party that regularly enters into equity derivatives with customers or holds equity derivatives on behalf of customers. When a regulated investment company is the short party in a transaction with a financial institution, the Treasury Department and the IRS agree that the financial institution is in the better position to determine delta and make other determinations required by section 871(m). Accordingly, the definition of the term broker has been revised in the temporary regulations so that it will not apply to a corporation that would be treated as a broker pursuant to section 6045(c) solely because it regularly redeems its own shares.

B. Dividend Equivalents

Section 1.871–15(c) provides that, subject to certain exceptions, a dividend equivalent includes any payment that references the payment of a dividend from an underlying security pursuant to a securities lending or sale-repurchase transaction, specified NPC, or specified ELI. A dividend is defined in § 1.871–15(a)(3) as ''a dividend as described in section 316.'' Section 1.871–15(c)(2)(ii) reduces a dividend equivalent by any amount treated in accordance with sections 305(b) and (c) as a dividend (a ''section 305(c) dividend'') with respect to the underlying security referenced by the section 871(m) transaction.

A comment suggested that the regulations clarify how this rule applies when a derivative references an underlying security that has a section 305(c) dividend. Another comment noted that § 1.871–15(c)(2)(ii) reduces the dividend equivalent amount by section 305(c) dividends, and that this reduction arguably applies both to the person who holds the underlying security giving rise to the section 305(c) dividend and to a holder of a section 871(m) transaction that references the underlying security that gives rise to the section 305(c) dividend.

To address these comments, these final regulations revise the definition of a dividend to explicitly provide that it applies without regard to whether there is an actual distribution of cash or property. A conforming change is also made to § 1.871–15(c)(2)(ii), which is revised to clarify that only a long party that is treated as receiving a section 305(c) dividend is entitled to reduce its dividend equivalent amount and that a section 305(c) dividend gives rise to a dividend equivalent.

Thus, for example, a long party that owns a convertible note that is a section 871(m) transaction and has a section 305(c) dividend can reduce its dividend equivalent by the section 305(c) dividend. In contrast, a long party that owns a specified NPC that references the same convertible note would receive a dividend equivalent that includes the

section 305(c) dividend and would not be entitled to reduce its dividend equivalent by the section 305(c) dividend on the convertible note because the long party does not own the note, and therefore, is not treated as receiving a section 305(c) dividend for federal income tax purposes.

C. Simple Contract

To be a simple contract as defined in § 1.871–15(a)(14)(i), the number of shares required to calculate the amounts paid or received on any payment determination date must be ascertainable at the time the delta for the transaction is calculated. Several comments noted that transactions may provide for anti-dilution adjustments to the number of shares as a result of certain corporate actions, and that these adjustments could cause contracts that otherwise would be simple contracts subject to the delta test to become complex contracts subject to the more complicated substantial equivalence test. Adjustments that are intended to maintain the status quo of shareholders generally should not preclude a transaction from being treated as a simple contract. Accordingly, a sentence is added to § 1.871–15(a)(14)(i) to provide that an adjustment to the number of shares of the underlying security for a merger, stock split, cash dividend, or similar corporate action that impacts all the holders of the underlying security will not prevent the transaction from being a simple contract.

II. Certain Insurance Contracts

The exceptions for payments made pursuant to annuity, endowment, and life insurance contracts were issued as a temporary rule in § 1.871–15T(c)(2)(iv) of the 2015 temporary regulations. Comments generally agreed with the result in § 1.871–15T(c)(2)(iv)(A) with respect to insurance contracts issued by domestic insurance companies. Several comments requested that § 1.871–15T(c)(2)(iv)(A) be issued as a final regulation without any change. These comments noted that any U.S. source dividend that a foreign insurer receives on U.S. stock it owns with respect to an annuity, endowment, or life insurance contract is already subject to withholding tax.

Another comment recommended changes to make the exception for insurance issued by a foreign company more administrable. That comment suggested that the regulations be extended to any foreign insurance company, without regard to whether the company is predominantly engaged in the business of insurance and would be subject to tax under subchapter L. This comment also recommended that the regulations define the terms ''annuity contract,'' ''insurance contract,'' ''life insurance contract,'' ''endowment contract,'' and ''foreign insurance company'' based on regulations under section 1471. Finally, the comment noted that the requirement that a company be ''predominantly engaged in an insurance business'' is unnecessary in light of the requirement that a corporation ''would be subject to tax under subchapter L if it were a domestic corporation'' because a corporation that would be ''subject to tax under subchapter L if it were a domestic corporation'' necessarily would be ''predominantly engaged in an insurance business.''

Comments also recommended that the temporary rule relating to reinsurance should be finalized. Another comment noted that reinsurance subject to the U.S. federal excise tax under section 4371 is not subject to withholding and expressed concern about the interaction of the excise tax and the application of section 871(m) if the reinsurance exception in the temporary regulations was allowed to expire.

These regulations finalize § 1.871–15T(c)(2)(iv) with one change. The Treasury Department and the IRS agree that a company that is taxable under subchapter L as an insurance company is necessarily predominantly engaged in an insurance business. Accordingly, in finalizing § 1.871–15T(c)(2)(iv)(B), the redundant phrase ''predominantly engaged in an insurance business '' is removed. Although comments suggested other modifications to certain terms and the addition of certain defined terms, these final regulations do not make these additional changes. The Treasury Department and the IRS have determined that the scope of entities and contracts described in the temporary regulations as eligible for the exception is appropriate for section 871(m), and that it is beyond the scope of these regulations to define terms relating to insurance.

III. Determining Delta and the Initial Hedge

Section 1.871–15(g)(2) provides that the delta of a potential section 871(m) transaction is determined only when the contract is issued. For this purpose, an NPC or ELI is issued at the time of the contract's inception, original issuance, or issuance as a result of a deemed exchange pursuant to section 1001. *See* § 1.871–15(a)(6). The same standard is used to determine when a contract is issued for purposes of the substantial equivalence test for complex contracts.

For simple contracts, comments generally suggested changing the time for calculating delta to the earlier of the trade date or the date on which the parties agreed to the material terms or final pricing for the contract. One comment recommended that the date and time when the material terms are finalized is the appropriate date for determining delta because that is the time when the economic terms of the potential section 871(m) transactions are established. Finally, the parties to the contract are generally bound by the terms on the pricing date, not the settlement date. A comment suggested using the trade date if the pricing date is more than 14 days before the issue date because providing too long a period between the pricing and issue date may present an opportunity for abuse.

For listed options, comments suggested a different method for determining the delta of the contract. These comments recommend that the delta for listed options should be based on the closing price from the prior trading day. The comments acknowledged that this approach would be less accurate than the requirement in the final regulations; however, these comments asserted that using the delta calculation from the prior day for listed options would substantially reduce the burden on taxpayers and make the rules more administrable. Comments also noted that the Options Clearing Corporation currently calculates the end-of-day delta for options listed on U.S. options exchanges.

For complex contracts, comments recommended that the substantial equivalence test should be conducted on the date when the short party's hedge is established. According to the comments, the issuer of a complex contract enters into a hedge on the pricing date, not the settlement date. The pricing date therefore reflects the economics of a complex contract more accurately than the settlement date, as long as the two dates are not separated by too much time.

The Treasury Department and the IRS agree with the comments that the date for determining delta and for performing the substantial equivalence test should be revised to be more administrable and to reflect more accurately the economics of the transactions. Accordingly, these regulations provide that the delta of a simple contract is determined on the earlier of the date that the potential section 871(m) transaction is priced and the date when the potential section 871(m) transaction is issued; however, the issue date must be used to determine the delta if the potential section 871(m) transaction is priced

more than 14 calendar days before it is issued. A similar rule also applies to the substantial equivalence test.

In addition, the regulations provide a new rule for determining the delta of an option listed on a regulated exchange. For these options, the delta is determined based on the delta of the option at the close of business on the business day before the date of issuance. For this purpose, the regulations define a regulated exchange. A regulated exchange is any exchange defined in § 1.871–15(l)(3)(vii) or a foreign exchange that (A) is regulated by a government agency in the jurisdiction in which the exchange is located, (B) maintains certain requirements designed to protect investors and to prevent fraud and manipulation, (C) maintains rules to promote active trading of listed options, and (D) had trades for which the notional value exceeded $10 billion per day during the prior calendar year.

The 2015 final regulations provided a simplified delta calculation for certain simple contracts that reference 10 or more underlying securities, provided that the short party uses an exchange-traded security that references substantially all the underlying securities to hedge the NPC or ELI at the time it is issued (the ''hedge security''). The simplified delta calculation allows the short party to calculate the delta of the NPC or ELI by reference to changes in the value of the hedge security. Comments suggested that this rule be extended to cases in which the short party could fully hedge its position by acquiring the exchange-traded security even if it does not in fact hedge in this manner. Because the exchange-traded security must provide a full hedge of the NPC or ELI for this rule to apply, the Treasury Department and the IRS agree that the exchange-traded security will provide an acceptable delta calculation whether or not the short party actually uses that security as its hedge. Accordingly, the regulations are amended to permit the delta with respect to those NPCs and ELIs to be calculated by determining the ratio of the change in the fair market value of the simple contract to a small change in the fair market value of an exchanged-traded security when the exchange-traded security would fully hedge the NPC or ELI.

Some comments noted that third-party data, including delta calculations, may be available for certain potential section 871(m) transactions. These comments requested that the final regulations be amended to explicitly permit withholding agents to rely on this data. Although the final regulations are not amended, the Treasury Department and the IRS note that nothing in the regulations prohibits a taxpayer from obtaining information from a third party. While taxpayers and withholding agents can use third party data to determine whether a potential section 871(m) transaction is a section 871(m) transaction, taxpayers and withholding agents that rely on third-party data remain responsible for the accuracy of that information.

One comment noted that the issuer of a structured note (or an affiliate of the issuer) may act as a market maker for the structured note, and thus may purchase the note in its dealer capacity and then sell the note to the market. According to the comment, if the purchase is treated as a redemption by the issuer of the instrument for tax purposes, the subsequent sale to the market would be treated as a new issue for section 871(m) purposes, in which case the delta for the instrument (or substantial equivalence test) would need to be recomputed at such time. The comment suggested that rules similar to those in section 108 with respect to the purchase of debt instruments by an issuer acting in a dealer capacity could apply to equity derivative structured notes. The Treasury Department and the IRS acknowledge the concern raised by the comment. However, the Treasury Department and the IRS are concerned that an overly broad exception for dealer activity may facilitate transactions that are inconsistent with section 871(m) by allowing dealers to offer instruments that would be subject to section 871(m) so long as the instruments were originally issued with a delta below 0.80. While a dealer that issued such an instrument holds the instrument in inventory, the dealer does not need to hedge the position with an unrelated party. For this reason, market making activity by the issuer of an instrument (or an affiliate of the issuer) presents different policy concerns from market making by an unrelated dealer. The Treasury Department and the IRS invite further comments on the appropriate treatment of structured notes and similar instruments that are acquired by the issuer or an affiliate in its dealer capacity.

IV. Substantial Equivalence Test

Comments to the 2013 proposed regulations generally agreed that the delta test was fair and practical for the majority of equity-linked derivatives. However, comments explained that the delta test would be impractical or impossible to apply to more exotic equity derivatives, such as structured notes in which the long party's return was determined based on an initially indeterminate number of shares of the underlying security. The 2015 section 871(m) regulations address this concern by providing an alternative test—the ''substantial equivalence test''—for contracts with indeterminate deltas. For purposes of applying this test, the regulations distinguish between simple and complex contracts. Generally, a simple contract is a contract that references a single, fixed number of shares and has a single maturity or exercise date. A complex contract is any contract that is not a simple contract. Contracts with indeterminate deltas are classified as complex contracts and are subject to the substantial equivalence test.

Generally, the substantial equivalence test measures the change in value of a complex contract when the price of the underlying security referenced by that contract is hypothetically increased by one standard deviation or decreased by one standard deviation (each, a ''testing price'') and compares that change to the change in value of the shares of the underlying security that would be held to hedge the complex contract when the contract is issued (the ''initial hedge'') at each testing price. The smaller the proportionate difference between the change in value of the complex contract and the change in value of its initial hedge at multiple testing prices, the more equivalence there is between the contract and the referenced underlying security. When this difference is equal to or less than the difference for a simple contract benchmark with a delta of 0.80 and its initial hedge, the complex contract is treated as substantially equivalent to the underlying security. When the steps of the substantial equivalence test cannot be applied to a particular complex contract, a taxpayer must use the principles of the substantial equivalence test to reasonably determine whether the complex contract is a section 871(m) transaction with respect to each underlying security.

The Treasury Department and the IRS requested comments regarding the substantial equivalence test. In particular, comments were requested on whether two testing points were adequate to ensure that the test would capture appropriate transactions and on the administrability of the test. Comments also were requested on the application of the test to complex contracts that reference multiple securities, including path-dependent instruments (that is, an instrument for which the final value depends, in whole or in part, on the price sequence (or

path) of the underlying security before the maturity of the instrument). Comments generally did not recommend material changes to the test. As a result, these final regulations adopt the substantial equivalence test as proposed in the 2015 proposed regulations with minor changes as described in this section.

One comment noted that the substantial equivalence test might be unduly burdensome in certain cases, such as when it is obvious that a particular instrument would satisfy the test and application of the test would have no effect on the amount of withholding. This comment suggested that an issuer of a complex contract be allowed to use an alternative test to determine the withholding tax imposed with respect to a dividend equivalent as long as the alternative test resulted in the same amount of withholding tax as would have been the case if the issuer had used the substantial equivalence test. These final regulations do not adopt this comment. Even in those cases where the result for a potential section 871(m) transaction is intuitive, administration of such an alternative approach would generally require applying the substantial equivalence test to demonstrate that the alternative test results in the same amount of withholding tax as the substantial equivalence test. As issuers of complex contracts become proficient with the substantial equivalence test it is expected that it will be relatively straightforward to determine whether a particular instrument is subject to withholding under section 871(m).

Another comment suggested that the Treasury Department and the IRS consider whether the substantial equivalence test could be manipulated to allow taxpayers to understate the similarity of a complex contract to the underlying security. This comment suggested that more guidance should be offered about the criteria for determining whether a simple contract is ''closely comparable'' to a complex contract for purposes of choosing a simple contract benchmark. The same comment recommended that the regulations specify that the benchmark contract could be a hypothetical instrument, and that the material terms, including the treatment of dividends, should be consistent with the terms of the complex contract (aside from the terms that make the contract complex and that make the delta of the closely comparable benchmark 0.8).

In response to this comment, the final regulations provide that the simple contract benchmark may be an actual or hypothetical simple contract that, at the time the substantial equivalence test is applied to the complex contract, has a delta of 0.8, references the applicable underlying security referenced by the complex contract, and has terms that are consistent with all the material terms of the complex contract, including the maturity date. In addition, to further ensure comparability between the simple contract benchmark and the complex contract, the final regulations provide that the simple contract benchmark must consistently apply reasonable inputs, including a reasonable time period for the contract. For example, the reasonable time period for the contract must be consistently applied in determining the standard deviation and probability, as well as the maturity date and any other terms dependent on that time period.

V. Amount and Timing of a Taxpayer's Liability

Section 1.871–15(j) contains rules for determining the amount of the dividend equivalent. In addition, § 1.871–15(j) requires that the amount of a dividend equivalent be determined on the earlier of the record date of the dividend and the day before the ex-dividend date with respect to the dividend. In many cases, the amount of a dividend equivalent will be determined before a withholding agent will be required to withhold any tax pursuant to newly redesignated § 1.1441–2(e)(7) (formerly § 1.1441–2(e)(8)). Comments requested that a foreign holder's tax liability be deferred until withholding is required, in order to avoid the need for the foreign holder to file a return and pay tax. The comments noted that this approach would be consistent with the general withholding regime under chapter 3 of the Code. With respect to a section 871(m) transaction acquired by a foreign investor after its initial issuance, a comment requested clarification that the foreign investor is only liable for dividends determined on the underlying security during the period that the foreign investor is the beneficial owner of the section 871(m) transaction.

These regulations include several new provisions in response to these comments. First, § 1.871–15(j)(4) is added to provide that a long party generally is liable for tax on a dividend equivalent in the year the dividend equivalent payment is subject to withholding pursuant to § 1.1441–2(e)(7), or in the case of a QDD, when the payment of the applicable dividend on the underlying security is subject to withholding.

Second, the regulations are amended to clarify that the amount of a dividend equivalent subject to tax will not change because the tax is withheld at a later date. Section 1.871–15(j)(2) establishes the time for determining the amount of a dividend equivalent; the amount of the long party's tax liability should not change because the withholding agent does not withhold at the time the tax liability arises. Therefore, changes in facts (such as the tax rate or whether the recipient is a qualified resident of a country with which the U.S. has an income tax treaty) between the time that the amount of a dividend equivalent is determined and the time that withholding occurs, do not affect tax liability. For example, if at the time for determining the dividend equivalent amount, the long party qualifies for a treaty, but in the year the amount is withheld the long party does not, the dividend equivalent would qualify for treaty benefits.

Finally, § 1.871–15(j)(1) expressly provides that the long party is only liable for tax on dividend equivalents that arise while the long party is a party to the transaction. For example, if long party A, a foreign person, enters into a section 871(m) transaction on an underlying stock that pays quarterly dividends, and sells the transaction to B, a foreign person, after four dividends on the underlying stock have been paid, A will be subject to tax on those four dividend equivalents and B will be subject to tax on subsequent dividend equivalents as long as B holds the section 871(m) transaction. Alternatively, if A is a U.S. person, B would still only be subject to tax on the dividend equivalents after it acquires the transaction.

VI. Qualified Index

Section 1.871–15(l) provides a safe harbor for derivatives based on certain qualified indices. Section 1.871–15(l)(1) provides that the purpose of the exception for qualified indices is to provide a safe harbor for potential section 871(m) transactions that reference certain passive indices, and that an index is not a qualified index if treating the index as a qualified index would be contrary to this purpose. Section 1.871–15(l)(4) provides a specific safe harbor for derivatives based on an index in which the U.S. stock components comprise, in the aggregate, 10 percent or less of the weighting of all the component securities in the index. A comment regarding the 10 percent safe harbor indicated that some taxpayers, notwithstanding the purpose test for indices in § 1.871–15(l)(1), may seek to use a customized index to make tax-advantaged investments in specific U.S. stocks. Although the index described by the comment may not be

a qualified index as a result of the purpose rule in § 1.871–15(l)(1), the final regulations are revised to clarify that, in order to meet this 10 percent safe harbor, an index must be widely traded and must not be formed or availed of with a principal purpose of tax avoidance.

Comments to the qualified indices rules in the 2015 final regulations also requested that the Treasury Department and the IRS address how the rules apply to an index in the first year it is created. Accordingly, these final regulations add § 1.871–15(l)(2)(ii) to provide that, for the first year, an index is tested on the first business day it is listed, and the dividend yield calculation is determined using the dividend yield that the index would have had in the immediately preceding year if it had the same components throughout that year that it has on the day it is created.

VII. Combined Transactions

For purposes of determining whether transactions are section 871(m) transactions, the 2015 final regulations treat two or more transactions as a single transaction when a long party (or a related person) enters into multiple transactions that reference the same underlying security, the combined potential section 871(m) transactions replicate the economics of a transaction that would be a section 871(m) transaction, and the transactions were entered into in connection with each other. The 2015 final regulations also provide brokers acting as short parties with two presumptions that may be applied to determine whether to combine potential section 871(m) transactions. First, a broker may presume that transactions are not entered into in connection with each other if the long party holds the transactions in separate accounts. Second, a broker may presume that transactions entered into two or more business days apart are not entered into in connection with each other. A broker, however, cannot rely on the first presumption if it has actual knowledge that the long party created or used separate accounts to avoid section 871(m). In addition, neither presumption applies if the broker has actual knowledge that transactions were entered into in connection with each other. Section 1.1441–1(b)(4)(xxiii) also permits withholding agents to rely on these presumptions.

Comments suggested several changes to the combined transaction rules. Comments noted that it will be burdensome to identify every contract that a customer entered into with respect to the same underlying security within two days of each other. To replace the presumptions, comments recommended that a withholding agent only be required to combine contracts if the withholding agent had actual knowledge that two contracts were priced, marketed, or sold in connection with each other.

The Treasury Department and the IRS disagree that the priced, marketed, or sold standard should replace the combination presumptions. Comments noted a ''not uncommon'' example of an active foreign investor who acquires or sells within a two-day period hundreds of listed options referencing the same underlying security. The Treasury Department and the IRS, however, intended to treat those transactions as combined to the extent that the potential section 871(m) transactions are entered into in connection with each other and satisfy the other requirements of § 1.871–15(n)(1). The priced, marketed, or sold standard provides an inadequate substitute for the combined transaction test and the presumptions because investors can replicate a section 871(m) transaction by entering into multiple potential section 871(m) transactions. For example, an investor could replicate a delta one transaction by entering into a put option and a call option on the same underlying security at the same time, with the same strike price, whether or not the options are priced, marketed, or sold together. For this reason, the priced, marketed, or sold standard provides an inadequate substitute for the presumptions. The comments submitted with respect to the combination rule acknowledge short parties and withholding agents are aware that foreign investors use multiple transactions in a manner that are combined under the final regulations. The ''priced, marketed, or sold'' standard would undermine the enforcement of the combination rules.

Notwithstanding the prior paragraph, Notice 2016–76 provides a simplified standard for withholding agents to determine whether transactions entered into in 2017 are combined transactions. A withholding agent will only be required to combine transactions entered into in 2017 for purposes of determining whether the transactions are section 871(m) transactions when the transactions are over-the-counter transactions that are priced, marketed, or sold in connection with each other. Withholding agents will not be required to combine any transactions that are listed securities that are entered into in 2017.

Another comment noted that the final regulations indicated that transactions would only be combined into simple contracts. This comment recommended that the final regulation be amended if the Treasury Department and the IRS disagreed with this reading of the combination rule. The Treasury Department and the IRS agree that transactions will only be combined into simple transactions pursuant to § 1.871–15(n); therefore, the final regulations are not amended.

Other comments suggested some clarifications to the combination rules to resolve ambiguities. For example, comments requested, among other things, that (1) ordering rules provide that a contract cannot be combined more than once and (2) no combination transaction should have a delta of more than one. The final regulations are not amended to address these issues because the final regulations are intended to provide a general framework for determining when two or more transactions should be combined. The comments received to date show that industry understanding of how the combination rules may be administered continues to develop as financial institutions work to establish systems. As this understanding evolves, the Treasury Department and the IRS may publish subsequent guidance to address the issues raised by these comments. Until such further guidance is issued, taxpayers may adopt any reasonable methodology to combine transactions within the general framework of the final regulations.

VIII. Party Responsible for Determining Delta and Other Information

The 2015 final regulations provide that when one of the parties to a potential section 871(m) transaction is a broker or dealer, that broker or dealer is responsible for determining whether the transaction is a section 871(m) transaction. When both parties to a potential section 871(m) transaction are a broker or dealer or neither party to a potential section 871(m) is a broker or dealer, the short party to the transaction must determine whether the transaction is a section 871(m) transaction.

Comments noted that multiple parties could be responsible for determining whether a transaction is a section 871(m) transaction because the definition of a ''party to the transaction'' includes a long party, a short party, any agent acting on behalf of a long party or short party, and any person acting as an intermediary with respect to a potential section 871(m) transaction. Comments noted that both a short party and one or more agents of the short party may be a broker or dealer; in this case, the 2015 final regulations do not identify which of the responsible parties has the

primary obligation to determine whether the transaction is a section 871(m) transaction.

Comments requested that the regulations clarify which broker has the obligation to determine whether a listed option is a section 871(m) transaction when multiple brokers or dealers are involved. One comment recommended that the long party's broker that has custody of the transaction at the end of the day would be best suited to act as the responsible party. Comments also noted that the short party or the agent of a short party may not have the relevant information necessary to determine when withholding should take place. For example, when a long party has sold an instrument in the secondary market, the short party and its agent may not have any knowledge of that sale. As a result, the long party's broker should be the responsible party.

Other comments indicated that the issuer should be the responsible party when the issuer itself is a broker or a dealer, or when the issuer has an affiliate that is a broker or dealer. In these cases, the issuer or its affiliate is likely to have the information necessary to determine whether the transaction is a section 871(m) transaction. As noted in other comments, an intermediary to a transaction issued by a broker or dealer, such as a clearinghouse, will not have the information necessary to determine whether a potential section 871(m) transaction is a section 871(m) transaction, and is unlikely to know either the time or the amount to withhold.

The Treasury Department and the IRS agree that the final regulations may result in multiple parties to a transaction qualifying as the party responsible for determining whether a potential section 871(m) transaction is a section 871(m) transaction. New temporary regulations resolve this duplication of responsible parties under § 1.871–15(p)(1) in the following circumstances: (1) Both the short party and an agent or intermediary of the short party are a broker or a dealer; (2) the short party is not a broker or dealer and more than one of the agents or intermediaries of the short party is a broker or dealer; (3) the short party and its agents or intermediaries are not brokers or dealers, and more than one agent or intermediary acting on behalf of the long party is a broker or dealer; and (4) potential section 871(m) transactions are traded on an exchange and cleared by a clearing organization.

Specifically, § 1.871–15T(p)(1)(ii) provides that the short party is the responsible party when both the short party and an agent or intermediary acting on behalf of the short party are a broker or dealer. In these circumstances, the Treasury Department and the IRS have determined that the short party should be the responsible party because it will have access to the relevant data regarding that transaction, whereas an agent or intermediary may not have the necessary information. As the responsible party, the short party may contract with a third party to make the determinations on its behalf; however, the short party remains responsible for the accuracy of any calculations by the third party.

In addition, if the short party is not a broker or dealer, but more than one agent or intermediary acting on behalf of the short party is a broker or dealer, § 1.871–15T(p)(1)(ii) provides that the broker or dealer closest to the short party in the payment chain is the responsible party. The Treasury Department and the IRS have determined that the agent or intermediary closest in the chain to the short party will have the best access to any information the short party has that is necessary to determine whether a potential section 871(m) transaction is a section 871(m) transaction and to make other relevant determinations.

Section 1.871–15T(p)(1)(ii) also generally provides that when one or more agents or intermediaries acting on behalf of the long party are brokers or dealers, the agent or intermediary that is closest to the long party in the payment chain is the responsible party when neither the short party nor any agent or intermediary acting on behalf of the short party is a broker or dealer. In this situation, the temporary regulations place the responsibility with the agent or intermediary closest to the long party because this agent or intermediary will know whether or not the long party is subject to tax under section 871 or 881 and when the long party has terminated or otherwise disposed of the transaction.

Similarly, these temporary regulations also provide a rule for determining the responsible party when potential section 871(m) transactions are traded on an exchange and cleared by a clearing organization. When more than one broker or dealer acts as an agent or intermediary between the short party and a foreign investor on an exchange-traded contract, the broker or dealer that has an ongoing customer relationship with the foreign investor is the responsible party. Generally, this intermediary will be the clearing firm.

Finally, these temporary regulations provide that the issuer of a potential section 871(m) transaction will be the responsible party for certain ELIs. Specifically, the issuer is the responsible party for structured notes (including contingent payment debt instruments), warrants, convertible stocks, and convertible debt instruments. Because the issuer of these ELIs ordinarily will have structured the ELI, determined the pricing of the ELI, and hedged the ELI, the issuer ordinarily will be in the best position to act as the responsible party. While the issuer of an ELI may not be a broker or dealer, an issuer of an ELI typically is advised by a broker or dealer.

IX. Qualified Derivatives Dealer

Section 1.871–15T(q) permits a QDD to reduce its liability under section 871 or 881 for a dividend or dividend equivalent to the extent it makes an offsetting dividend equivalent payment in its dealer capacity. Only an eligible entity that has entered into a QI agreement can be a QDD. An eligible entity is defined as: (1) A dealer in securities subject to regulatory supervision as a dealer, (2) a bank subject to regulatory supervision as a bank, or (3) a wholly-owned entity of a bank subject to regulatory supervision as a bank when the wholly-owned entity (a) issues potential section 871(m) transactions to customers and (b) receives dividends or dividend equivalent payments from stock or potential section 871(m) transactions that hedge the potential section 871(m) transactions issued to customers. § 1.1441–1T(e)(6). An entity is only a QDD when acting in its QDD capacity.

A. Income Tax Treaties

In general, section 871(m) and the regulations thereunder apply to a dividend equivalent payment without regard to whether the payor of the dividend equivalent payment is domestic or foreign. Section 1.894–1(c)(2) provides that ''[t]he provisions of an income tax convention relating to dividends paid to or derived by a foreign person apply to the payment of a dividend equivalent described in section 871(m) and the regulations thereunder.'' Consistent with the foregoing, the 2017 QI Agreement provides that a QDD must treat any dividend equivalent as a dividend from sources within the United States for purposes of section 881 and chapters 3 and 4 consistent section 871(m) and the regulations thereunder. The 2017 QI Agreement provides that a QDD may reduce the rate of withholding under chapter 3 based only on a beneficial owner's claim that it is entitled to a reduced rate of withholding for portfolio dividends under the dividends article of an applicable income tax treaty.

B. Eligible Entities

Comments requested that the Treasury Department and the IRS expand the scope of entities that qualify as an eligible entity under § 1.1441–1(e), and therefore can act as a QDD under a QI agreement. One comment requested that the eligibility criteria be expanded to permit a controlled foreign corporation (CFC) of a U.S financial institution to act as a QDD even if the CFC is not a QI. Other comments recommended that the definition of an eligible entity be expanded to include a bank holding company if the entity regularly issues potential section 871(m) transactions to customers and receives dividends or dividend equivalent payments pursuant to potential section 871(m) transactions to hedge the transactions issued to customers. Comments noted that a bank holding company is subject to a wide range of regulatory regimes.

Comments also recommended that the scope of eligible entities be expanded to include subsidiaries of securities dealers and bank holding companies that regularly issue potential section 871(m) transactions to customers and receive dividends or dividend equivalent amounts with respect to hedges of those customer transactions. Comments noted that these entities are part of a regulated financial group.

In response to comments, the 2017 QI Agreement announced the expansion of the definition of eligible entities to include a bank holding company and subsidiaries of a bank holding company. The Treasury Department and the IRS agree that a bank holding company and subsidiaries of a bank holding company should be included in the definition of an eligible entity because these entities are regulated financial institutions.

The 2017 QI Agreement clarified that the eligible entity test is applied at the home office or branch level, and that each home office or branch is a separate QDD. The 2017 QI Agreement also expanded what constitutes an eligible entity to include a foreign branch of a U.S. financial institution that would meet the requirements of an eligible entity if the branch were a separate entity, though such a branch will not be subject to tax on its QDD tax liability because it is otherwise subject to tax on a net income basis under chapter 1. Both of these changes are incorporated in these final regulations. These final regulations also clarify that a subsidiary of a bank or bank holding company could be indirectly wholly-owned by the qualifying bank or bank holding company provided that the subsidiary, acting in its equity derivatives dealer capacity, (1) issues potential section 871(m) transactions to customers, and (2) receives dividends with respect to stock or dividend equivalent payments pursuant to potential section 871(m) transactions that hedge potential section 871(m) transactions that it issues.

These final regulations do not expand the eligible entity definition to specifically include CFCs. The comments generally did not adequately explain why CFCs cannot avail themselves of the QI regime (with the QDD provisions). Permitting CFCs that are not QIs to be QDDs would eliminate the compliance benefits provided in the 2017 QI Agreement and would make it more difficult for the IRS to verify compliance with the QDD rules. However, to provide the IRS with flexibility to administer the QDD regime, an eligible entity is defined to include any other person acceptable to the IRS, which is similar to the allowance provided to the IRS in defining persons eligible to enter into a QI agreement as provided in § 1.1441–1(e)(5)(ii)(D).

A comment also raised a technical issue with who can qualify as a QI, expressing concern that some eligible entities that are not foreign financial institutions may not be able to enter into QI agreements because they are not eligible to become a QI. The 2017 QI Agreement and these final regulations now clarify that an eligible entity (notwithstanding that the entity otherwise would not be eligible to be a QI) can enter into a QI agreement in order to implement the QDD provisions.

C. Section 871(m) Amount and QDD's Tax Liability

Section 1.871–15T(q)(1) of the 2015 temporary regulations provided that a QDD generally would not be liable for tax under section 871 or 881 on a dividend or dividend equivalent payment that the QDD receives in its capacity as a QDD, provided that the QDD complies with its obligations under the qualified intermediary agreement. Section 1.1441–1T(e)(6) of the 2015 temporary regulations provided that a QDD would not be subject to withholding on such dividends or dividend equivalents. Section D of this Part IX describes certain changes to the foregoing rules that the Treasury Department and the IRS determined are appropriate in light of the adoption of the net delta approach described in this Part IX.C.

Section 1.871–15T(q)(1) of the 2015 temporary regulations further provides that, if a QDD receives a dividend or dividend equivalent payment and the offsetting dividend equivalent payment the QDD is contractually obligated to make on the same underlying security is less than the dividend and dividend equivalent amount the QDD received, the QDD would be liable for tax under section 871(a) or 881 for the difference.

The QI Notice described proposed changes to the QI agreement that would implement the QDD tax liability described in § 1.871–15T(q). Under the QI Notice, a QDD's section 871(m) amount for a dividend was the excess of the dividends on underlying securities associated with potential section 871(m) transactions and dividend equivalent payments that it received that reference the same dividend over dividend equivalent payments and any qualifying dividend equivalent offsetting payment that the QDD made or was contractually obligated to make with respect to the same dividend. The QI Notice described a qualifying dividend equivalent offsetting payment as (a) any payment made or contractually obligated to be made to a United States person that would be a dividend equivalent payment if made to a person who was not a United States person and (b) any payment made to a foreign person that would be a dividend equivalent payment if the payment were not treated as income effectively connected with the conduct of a U.S. trade or business.

In addition, the QI Notice proposed rules regarding how a QDD would calculate its QDD tax liability. Specifically, under the QI Notice, the QDD tax liability was the sum of a QDD's liability under sections 871(a) and 881 for (a) its section 871(m) amount; (b) its dividends that are not on underlying securities associated with potential section 871(m) transactions and its dividend equivalent payments received as a QDD in its non-dealer capacity; and (c) any other payments, such as interest, received as a QDD with respect to potential section 871(m) transactions or underlying securities that are not dividend or dividend equivalent payments.

Comments requested that a QDD be permitted to elect to calculate its section 871(m) amount either by using (1) the method described in the QI Notice or (2) its net delta exposure to an underlying security. According to comments, the net delta exposure is a calculation, measured in shares of stock, that aggregates all the shares of an underlying security and all equity derivative transactions referring to the same underlying security that the QDD has entered into in a dealer capacity (whether customer transactions or hedging transactions). Comments explained that net delta accurately measures a QDD's residual exposure to

an underlying security. Comments noted that financial institutions use net delta exposure for business and non-tax regulatory purposes.

Comments also requested that the Treasury Department and the IRS expand the offsetting dividend equivalent payment to include all customer transactions, such as potential section 871(m) transactions with a delta below 0.8, grandfathered transactions, and transactions that reference a qualified index.

In response to comments relating to the QI Notice, Notice 2016–76 announced that the regulations would be revised to require a QDD to calculate its section 871(m) amount based on the net delta approach. The Treasury Department and the IRS agree that the net delta approach provides an administrable and accurate method for a QDD to determine its residual exposure to underlying securities. The Treasury Department and the IRS, however, do not agree with comments indicating that QDDs should be permitted to elect to use the net delta exposure method or the rule described in the QI Notice. It would be burdensome to the IRS to administer a system that permits a QDD to use multiple methods to calculate its section 871(m) amount. The Treasury Department and the IRS, however, will consider comments that explain in more detail why a choice of methods for determining the section 871(m) amount is in the best interests of both taxpayers and the government.

These final regulations further explain how a QDD's section 871(m) amount is computed. The amount is determined separately for each dividend on an underlying security. For example, if a QDD enters into section 871(m) transactions that reference stock A (which pays a $5 dividend per share), hedges the transactions by acquiring actual shares of stock, and has a net delta exposure to one share of stock, the QDD will have a tax liability pursuant to sections 871(a) and 881 with respect to a $5 dividend based on its net delta exposure to one share of stock A. Amounts with respect to other dividends on the same stock or another stock are not taken into account.

Because these final regulations adopt the net delta exposure method for calculating the section 871(m) amount, the concepts of offsetting dividend equivalent payments and qualifying dividend equivalent offsetting payments have been eliminated from these final regulations.

These final regulations revise the calculation of a QDD's tax liability on the section 871(m) amount to correspond with the changes regarding the determination of the section 871(m) amount discussed in this section and the changes to withholding on payments to a QDD that are discussed in the following section of this preamble. Specifically, a QDD's tax liability on its section 871(m) amount is, for each dividend on each underlying security, the amount by which its tax liability under section 881 for its section 871(m) amount exceeds the amount of tax paid by the QDD under section 881 (including amounts withheld on payments to the QDD) on dividend payments received by the QDD in its capacity as an equity derivatives dealer. The QDD also is liable for tax under section 881 for dividend equivalent payments received by a QDD in its non-equity derivatives dealer capacity and for any other payments (including dividends) it receives as a QDD to the extent the full liability was not satisfied by withholding.

D. Withholding on Dividends Paid to a QDD

In general, under the law in effect prior to 2017, an eligible entity that would qualify as a QDD under these final regulations generally was subject to tax under section 881 and to withholding tax under chapters 3 and 4 on actual dividends in the same manner as any other foreign recipient. As described in the preceding section, the 2015 temporary regulations provided that a QDD would no longer be subject to tax or to withholding on actual dividends received in its capacity as a QDD. The Treasury Department and the IRS are concerned that this exemption in the 2015 temporary regulations, when combined with the net delta exposure method, could result in U.S. source dividends escaping U.S. tax completely in certain circumstances. For example, if a QDD holds physical shares of an underlying security that it uses to hedge a delta 0.5 option, both the dividend and the option would not be subject to tax under section 871 or section 881. In response to this concern, Notice 2016–76 announced that the Treasury Department and the IRS intended to revise §§ 1.871–15T(q)(1) and 1.1441–1(b)(4)(xxii) to provide that a QDD will remain liable for tax under section 881(a)(1) and subject to withholding under chapters 3 and 4 on dividends on physical shares and deemed dividends received. These final regulations revise §§ 1.871–15T(q)(1) and 1.1441–1(b)(4)(xxii) accordingly. However, as announced in the 2017 QI Agreement, in order to allow taxpayers time to implement the net delta approach, these regulations continue to provide that dividends on physical shares and deemed dividends received by a QDD in its QDD capacity in 2017 will not be subject to tax under section 881(a)(1) or subject to withholding under chapters 3 and 4. A QDD will be subject to withholding on dividends (including deemed dividends) received on or after January 1, 2018.

The Treasury Department and the IRS will consider comments recommending approaches for alleviating any overwithholding (and preventing any underwithholding) that might occur on dealer transactions with customers and on positions that hedge customer transactions when withholding on dividends (including deemed dividends) paid to QDDs resumes in 2018.

The QI Notice provided that a withholding agent (other than a withholding agent that itself was acting as a QDD) would not be required to withhold or report on payments made to a QDD with respect to potential section 871(m) transactions and underlying securities, other than reporting for dividends and substitute dividends. A comment requested that a withholding agent should only be exempt from withholding and reporting on dividends and dividend equivalents paid to a QDD. In response to this comment, the 2017 QI Agreement provides that all payments (other than dividend equivalent payments) made to a QDD with respect to underlying securities will be subject to withholding and reporting if the payments would be subject to withholding and reporting to a non-QDD. Consistent with the 2017 QI Agreement, the final regulations provide that all payments (other than dividend equivalent payments) made to a QDD with respect to underlying securities will be subject to withholding and reporting if those payments would be subject to withholding and reporting when received by a foreign person.

E. Dealer Versus Proprietary Capacity

The 2015 temporary regulations only permitted a taxpayer to act as a QDD with respect to certain payments received in its dealer capacity. Comments requested that a taxpayer be permitted to act as a QDD for payments received in its proprietary capacity for administrative reasons. The QI Notice and the 2017 QI Agreement reflect this change to the scope of QDD payments. The change in QDD scope does not impact the limitation on amounts entitled to be offset, which remain limited to dealer activity.

Consistent with the 2015 regulations, the QI Notice and the 2017 QI Agreement provide that, for purposes of determining the QDD tax liability,

payments received by a QDD acting as a proprietary trader are treated as payments received in its non-dealer capacity, while transactions properly reflected in a QDD's dealer book are presumed to be held by a dealer in its dealer capacity. For purposes of determining the QDD tax liability, dealer activity is limited to its activity as an equity derivatives dealer. One comment requested that the regulations clarify and qualify the distinction between receiving a payment in a dealer versus in a proprietary trader capacity and the impact of the distinction on the ability of an entity to act as a QDD. The Treasury Department and the IRS have determined that the regulations adequately delineate between dealer and proprietary transactions in § 1.871–15(q)(2).

F. Timing of Withholding

Generally, newly redesignated § 1.1441–2(e)(7) (formerly § 1.1441–2(e)(8)) provides that a withholding agent must withhold on a dividend equivalent on the later of the date on which the amount of the dividend equivalent is determined and the date that a payment occurs. A payment generally occurs when money or other property is paid to or by the long party, or the long party sells, exchanges, transfers, or otherwise disposes of a section 871(m) transaction. Notwithstanding this general rule applicable to withholding agents, the QI Notice announced that a QDD must withhold with respect to a dividend equivalent payment on the dividend payment date for the applicable dividend on the underlying security as determined in § 1.1441–2(e)(4).

Comments noted that this change would require a QDD to pay tax prior to the date that other withholding agents would have been required to withhold. In addition, comments expressed concern that this rule would result in cashless withholding for many transactions. Comments also noted that withholding agents have been building withholding systems according to the general rule provided in the final section 871(m) regulations. Comments recommended that the final section 871(m) regulations be amended to permit a QDD to elect to withhold on the payment of the dividend equivalent as provided in newly redesignated § 1.1441–2(e)(7) or on the dividend payment date as determined in § 1.1441–2(e)(4).

The Treasury Department and the IRS have determined that a QDD should continue to be required to withhold on the dividend payment date as determined in § 1.1441–2(e)(4), because the time that a QDD withholds on customer transactions should match the time period for which it determines its own tax liability with respect to the section 871(m) amount. This is because the withholding tax that may apply to customer transactions is the justification for relieving the QDD from tax on its section 871(m) amount. In addition, this rule simplifies the reconciliation statement, makes it easier for reviewers and the IRS to verify that a QDD has complied with the requirements of the 2017 QI Agreement, and avoids a number of other issues that would arise under the requested approach, including statute of limitation issues. With respect to the concerns expressed regarding the need to build systems, the Treasury Department and the IRS note that this timing rule is consistent with the rule that was proposed in the QI Notice, released July 1, 2016. Moreover, as described in Notice 2016–76, during 2017, the IRS will take into account the extent to which a QDD has made a good faith effort to comply with the QDD provisions in the QI agreement when enforcing those provisions.

G. Qualified Securities Lenders (QSL) and Credit Forward

Notice 2010–46, 2010–24 I.R.B. 757 (see § 601.601(d)(2)(ii)(*b*)), (QSL Notice) outlined a proposed credit forward system that allowed a withholding agent to limit the aggregate U.S. gross-basis tax in a series of securities lending transactions to the amount of U.S. gross-basis tax applicable to the foreign taxpayer receiving a substitute or actual dividend in the series of transactions who bears the highest rate of U.S. gross-basis tax. The preamble to the 2015 regulations indicated that the credit forward system remained under consideration, but noted that, during the transition period provided in Notice 2010–46, the IRS has experienced difficulty verifying that prior withholding has occurred. Comments were requested on the need for the regime and how it could be implemented.

Comments requested that the credit forward system be retained. One comment requested that the credit forward system be retained when QDD status was not available. In contrast, another comment suggested that the stringency resulting from tightening the eligibility requirements for QDDs to QIs that are subject to reporting and compliance requirements would improve the ability to verify that prior withholding occurred.

As discussed in Part IX.B of this preamble the Treasury Department and the IRS have concluded that it is not appropriate to permit credits or offsets for any entity that does not qualify as an eligible entity. In reaching this conclusion, the Treasury Department and the IRS agree with the comment that indicated that the QDD rules provide a more administrable method of determining that withholding properly occurred. If the entity is acting as an intermediary instead of acting as a principal, it may choose to be a QI that is not a QDD. The second comment did not explain why the existing QDD regime is insufficient.

In addition to comments regarding the credit forward system, a comment requested that QSL status be preserved as a standalone rule for securities lending transactions that are part of a separate line of business from other potential section 871(m) transactions. Another comment recommended reverting to the eligibility requirements for a QSL in the QSL Notice by extending QDD status to custodian QIs that are subject to regulatory supervision by a governmental authority in the jurisdiction in which the entity was created, as long as the entity agrees to assume primary withholding and reporting responsibility with respect to dividend equivalent payments and complies with all QDD certification requirements.

While the Treasury Department and the IRS understand that the QSL regime was administratively more convenient for taxpayers than the QI regime, it created administrability problems, particularly with respect to verification, for the IRS. That regime is being replaced by incorporating the QDD rules into the existing QI framework, including the specific rules for pooled reporting on Form 1042–S, and the QI requirements for compliance review and certification. With respect to banks, custodians, and clearing organizations that do not issue potential section 871(m) transactions to customers, the Treasury Department and the IRS are concerned that reverting to the eligibility requirements for a QSL in the QSL Notice would permit an entity to act as a QDD that does not act as a financial intermediary in a chain of section 871(m) transactions.

As part of the transition relief announced in Notice 2016–76, the Treasury Department and the IRS announced that taxpayers may continue to rely on the QSL Notice during 2017. The QSL Notice will be obsoleted as of January 1, 2018.

X. Rules for Withholding on Dividend Equivalents

Newly designated § 1.1441–2(e)(7) provides that a withholding agent is not

obligated to withhold on a dividend equivalent until the later of when a payment is made with respect to a section 871(m) transaction and when the amount of a dividend equivalent is determined. For purposes of § 1.1441–2(e)(7), a payment with respect to a section 871(m) transaction occurs when the long party receives or makes a payment, when there is a final settlement of the section 871(m) transaction, or when the long party sells or otherwise disposes of the section 871(m) transaction. The 2015 final regulations adopted this approach in response to taxpayer comments.

A. Transactions Transferred to a Different Account

The 2015 final regulations provide that a payment occurs when the long party sells or disposes of a section 871(m) transaction; however, when a long party transfers a section 871(m) transaction from one broker or custodian to another broker or custodian, the 2015 final regulations do not treat that transfer as a payment. A comment noted that it is common for investors to change relationships with brokers and custodians who hold their securities, which may result in section 871(m) transactions being transferred from one broker or custodian to another. The comment asserted that it is inappropriate and burdensome for a withholding agent to be responsible for dividend equivalent amount calculations relating to dividends that occurred before the date that the new broker or custodian holds the section 871(m) transaction on behalf of a long party. The comment recommended that the Treasury Department and the IRS amend the 2015 final regulations to provide that a transfer of a section 871(m) transaction from one broker or custodian to another, without a change in beneficial ownership, constitutes a payment for purposes of § 1.1441–2(e)(7).

The Treasury Department and the IRS agree that requiring a broker or custodian to withhold on dividend equivalent payments that occurred before holding a section 871(m) transaction on behalf of a customer would be burdensome to the withholding agent. As a result, § 1.1441–2(e)(7) is revised to provide that a payment of a dividend equivalent occurs when a section 871(m) transaction is transferred to an account not maintained by the withholding agent or upon a termination of the account relationship.

B. Option To Withhold on Dividend Payment Date

While § 1.1441–2(e)(7) generally defers withholding on a section 871(m) transaction until there is a payment made pursuant to the transaction, comments noted that § 1.1441–2(e)(7) will require cashless withholding in certain circumstances. To implement the 2015 final regulations, comments noted that market participants would be required to develop or amend collateral and indemnity arrangements with customers. Some comments recommended amending the 2015 final regulations to allow withholding agents to treat a dividend equivalent as paid and subject to withholding on the dividend payment date for the underlying security referenced by the section 871(m) transaction. Comments indicated that some withholding agents believe that it will be easier to implement withholding on the dividend payment date for the underlying security because their systems are already designed to track the time and amount of actual dividends. Many withholding agents, however, have contractual agreements with customers that prohibit withholding earlier than a date permitted by regulations.

The Treasury Department and the IRS appreciate that some withholding agents would rather not develop new systems to track dividend equivalents over multiple years, while other financial institutions prefer the time for withholding provided by § 1.1441–2(e)(7). To accommodate both approaches, the Treasury Department and the IRS are amending the regulations to allow withholding agents the flexibility to withhold either based on the ''later of'' rule, as determined under § 1.1441–2(e)(7), or on the dividend payment date for the underlying security. This change will allow withholding agents that prefer to withhold on the dividend payment date to do so, without eliminating the ''later of'' rule in § 1.1441–2(e)(7) that generally ties withholding to a cash payment. As discussed in Part IX.F of this preamble, if a withholding agent acts as a QDD, it will be required to use the dividend payment date.

A withholding agent that chooses to withhold on the dividend payment date for the underlying security referenced by the section 871(m) transaction must apply the election consistently to all section 871(m) transactions of the same type. In other words, a withholding agent that chooses to withhold on the dividend payment date for securities lending transactions must do so for all securities lending transactions, but may choose to withhold on NPCs under the rule in § 1.1441–2(e)(7). When a withholding agent withholds on the dividend payment date under this alternate method, the withholding agent must notify each payee in writing before the time for determining the long party's first dividend equivalent payment. A withholding agent that withholds on the dividend payment date for the underlying security also must attach a statement to its Form 1042 for the year of the change notifying the IRS of the change and when it applies.

XI. Applicability Date

The current regulations provide that § 1.871–15(d)(2) and (e) apply to any payment made on or after January 1, 2017, with respect to any transaction issued on or after January 1, 2017. Several comments requested that implementation of these provisions be delayed until at least January 1, 2018. One comment requested that implementation be delayed until at least one year after the date guidance resolving all issues raised by the comment is issued. The primary reasons comments provided for the requests to delay implementation were the need for additional guidance, the need for additional time to make systems operational, and the recent release of additional QDD guidance in the QI Notice and in Notice 2016–76. Comments also requested a delay in the combination rule generally. Another comment agreed with the request for a delayed effective date for the combination rule, unless the rule was revised to require withholding agents only to combine transactions that the withholding agent has actual knowledge are priced, marketed, or sold in connection with each other. A comment also requested a transition period until December 31, 2018, for enforcement and administration of QDD obligations.

The 2013 proposed regulations provided that the proposed sections would apply to payments made on or after the date the regulations were finalized. However, when the regulations were finalized in 2015, the Treasury Department and the IRS provided that the regulations generally would only apply to transactions issued on or after January 1, 2017, to ensure adequate time to develop systems needed to implement the regulations.

Both the 2015 regulations and the amendments to those regulations that are included in these regulations, many of which were previously announced in the QI Notice, Notice 2016–76, and the 2017 QI Agreement, make the withholding required under section 871(m) easier to implement and more

administrable. In light of these revisions, the Treasury Department and the IRS have determined that it is not necessary or appropriate to uniformly extend the applicability date for all section 871(m) transactions. In particular, taxpayers have had ample time to develop systems to implement withholding on section 871(m) transactions that are delta one transactions. The Treasury Department and the IRS have determined, however, that taxpayers and withholding agents need additional time to implement the section 871(m) regulations for section 871(m) transactions other than delta one transactions. Accordingly, these regulations postpone the implementation of the section 871(m) regulations with respect to non-delta one transactions until January 1, 2018.

In addition, in response to comments, Notice 2016–76 announced transition relief for combined transactions by providing a simplified rule for withholding agents to determine whether transactions entered into in 2017 are combined transactions. Also in response to comments, Notice 2016–76 delayed the application of section 871(m) for certain exchange-traded notes. Notice 2016–76 also announced that calendar years 2017 and 2018 would be phase-in years. In enforcing and administering section 871(m) (1) with respect to delta-one transactions in 2017, and (2) with respect to non-delta-one transactions in 2018, the IRS will take into account the extent to which the taxpayer or withholding agent made a good faith effort to comply with the section 871(m) regulations. Similarly, Notice 2016–76 and the 2017 QI Agreement provide that calendar year 2017 will be a phase-in year for QDDs. As discussed in Part XI.D, the 2017 QI Agreement and these regulations provide that a QDD will not be subject to withholding on actual or deemed dividends in 2017. Finally, the 2017 QI Agreement and these final regulations do not impose tax on a QDD's section 871(m) amount for tax years beginning before January 1, 2018.

Effect on Other Documents

Notice 2010–46 (2010–24 I.R.B. 757) is obsolete as of January 1, 2018.

Special Analyses

Certain IRS regulations, including these, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that few, if any, small entities will be affected by these regulations. The regulations primarily will affect multinational financial institutions, which tend to be larger businesses, and foreign persons. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are D. Peter Merkel and Karen Walny of the Office of Associate Chief Counsel (International). Other personnel from the Treasury Department and the IRS also participated in the development of these regulations.

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 is amended by removing the sectional authority for § 1.871–15 and adding in its place a sectional authority for §§ 1.871–15 and 1.871–15T to read in part as follows:

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

§§ 1.871–15 and 1.871–15T also issued under 26 U.S.C. 871(m). * * *

■ **Par. 2.** Section 1.871–15 is amended by:

■ 1. Revising paragraph (a)(1).
■ 2. Revising paragraph (a)(14)(i).
■ 3. Adding a new second sentence to paragraph (a)(14)(ii)(B).
■ 4. Revising paragraph (c)(2)(ii).
■ 5. Revising paragraph (c)(2)(iv).
■ 6. Revising paragraphs (g)(2) through (g)(3), redesignating paragraph (g)(4) as (g)(5), and adding new paragraph (g)(4).
■ 7. Revising paragraph (h).
■ 8. Revising paragraphs (i)(3)(ii) and (i)(3)(iii).
■ 9. Adding introductory text to paragraph (j)(1).
■ 10. Adding paragraph (j)(4).
■ 11. Revising paragraph (l)(2).
■ 12. Revising paragraph (l)(4).
■ 13. Redesignating paragraphs (n)(3)(i) and (n)(3)(ii) as (n)(3)(ii) and (n)(3)(iii), respectively.
■ 14. Adding new paragraph (n)(3)(i).
■ 15. Revising paragraph (p)(1).
■ 16. Adding paragraphs (p)(4)(iii) and (p)(5).
■ 17. Revising paragraph (q).
■ 18. Revising paragraphs (r)(3) and (r)(4).
■ 19. Adding paragraph (r)(5).

The additions and revisions read as follows:

§ 1.871–15 Treatment of dividend equivalents.

(a) * * * (1) *Broker.* [Reserved]. For further guidance, see § 1.871–15T(a)(1).

* * * * *

(14) * * * (i) *Simple contract.* A *simple contract* is an NPC or ELI for which, with respect to each underlying security, all amounts to be paid or received on maturity, exercise, or any other payment determination date are calculated by reference to a single, fixed number of shares (as determined in paragraph (j)(3) of this section) of the underlying security, provided that the number of shares can be ascertained at the calculation time for the contract, and there is a single maturity or exercise date with respect to which all amounts (other than any upfront payment or any periodic payments) are required to be calculated with respect to the underlying security. For purposes of this section, a contract that provides an adjustment to the number of shares of the underlying security for a merger, stock split, cash dividend, or similar corporate action that affects all holders of the underlying securities proportionately will not cease to be treated as referencing a single, fixed number of shares solely as a result of that provision. A contract has a single exercise date even though it may be exercised by the holder at any time on or before the stated expiration of the contract. An NPC or ELI that includes a term that discontinuously increases or decreases the amount paid or received (such as a digital option), or that accelerates or extends the maturity is not a simple contract. A simple contract that is an NPC is a *simple NPC.* A simple contract that is an ELI is a *simple ELI.*

* * * * *

(ii) * * * (B)

Example. * * * Pursuant to paragraph (j)(3) of the section, the ELI references 200 shares when Stock X appreciates, but only 100 shares when Stock X depreciates. * * *

(c) * * *

(2) * * * (ii) *Section 305 coordination.* A dividend equivalent received by a long party, who is a shareholder as defined in § 1.305–1(d) of an instrument that gives rise to a dividend pursuant to sections 305(b)

and (c) (including a debt instrument that is convertible into shares of stock and stock that is convertible into shares of another class of stock) that is also a section 871(m) transaction, is reduced by any amount treated as a dividend by sections 305(b) and (c) to the long party. For other section 871(m) transactions that reference an underlying security that is an instrument treated as paying a dividend pursuant to sections 305(b) and (c) and for which the long party is not a shareholder as defined in § 1.305–1(d), the dividend equivalent received by the long party with respect to the section 871(m) transaction includes (and is not reduced by) any amount treated as a dividend pursuant to sections 305(b) and (c).

* * * * *

(iv) *Payments made pursuant to annuity, endowment, and life insurance contracts*—(A) *Insurance contracts issued by domestic insurance companies.* A payment made pursuant to a contract that is an annuity, endowment, or life insurance contract issued by a domestic corporation (including its foreign or U.S. possession branch) that is a life insurance company described in section 816(a) does not include a dividend equivalent if the payment is subject to tax under section 871(a) or section 881.

(B) *Insurance contracts issued by foreign insurance companies.* A payment does not include a dividend equivalent if it is made pursuant to a contract that is an annuity, endowment, or life insurance contract issued by a foreign corporation that would be subject to tax under subchapter L if it were a domestic corporation.

(C) *Insurance contracts held by foreign insurance companies.* A payment made pursuant to a policy of insurance (including a policy of reinsurance) does not include a dividend equivalent if it is made to a foreign corporation that would be subject to tax under subchapter L if it were a domestic corporation.

* * * * *

(g) * * *

(2) *Time for determining delta*—(i) *In general.* Except as provided in paragraph (g)(4) of this section, the delta of a potential section 871(m) transaction is determined at the calculation time for the potential section 871(m) transaction.

(ii) *Calculation time.* The calculation time for a potential section 871(m) transaction is the earlier of when the potential section 871(m) transaction is priced and when the potential section 871(m) transaction is issued. Notwithstanding the preceding sentence, if the pricing time is more than 14 calendar days before the potential section 871(m) transaction is issued, the calculation time is when the potential section 871(m) transaction is issued.

(iii) *Pricing time.* A potential section 871(m) transaction is priced when all material economic terms for the transaction have been agreed upon, including the price at which the transaction is sold.

(3) *Simplified delta calculation for certain simple contracts that reference multiple underlying securities.* If an NPC or ELI references 10 or more underlying securities and an exchange-traded security (for example, an exchange-traded fund) is available that would fully hedge the NPC or ELI at the calculation time, the delta of the NPC or ELI may be calculated by determining the ratio of the change in the fair market value of the simple contract to a small change in the fair market value of the exchange-traded security. A delta determined under this paragraph (g)(3) must be used as the delta for each underlying security for purposes of calculating the amount of a dividend equivalent as provided in paragraph (j)(1)(ii) of this section.

(4) *Delta calculation for listed options*—(i) *In general.* The delta of an option contract that is listed on a regulated exchange described in paragraph (g)(4)(ii) of this section is the delta of that option at the close of business on the business day before the date of issuance. On the date an option contract is listed for the first time, the delta is the delta of that option at the close of business on the date of issuance. Notwithstanding the preceding two sentences, the delta of a listed option that is also a customized option is determined under the rules of paragraphs (g)(2) and (g)(3) of this section.

(ii) *Regulated exchange.* For purposes of paragraph (g)(4)(i) of this section, a regulated exchange is any exchange that is either:

(A) Described in paragraph (l)(3)(vii) of this section; or

(B) [Reserved]. For further guidance, see § 1.871–15T(g)(4)(ii)(B).

* * * * *

(h) *Substantial equivalence test*—(1) *In general.* The substantial equivalence test described in this paragraph (h) applies to determine whether a complex contract is a section 871(m) transaction. The substantial equivalence test assesses whether a complex contract substantially replicates the economic performance of the underlying security by comparing, at various testing prices for the underlying security, the differences between the expected changes in value of that complex contract and its initial hedge with the differences between the expected changes in value of a simple contract benchmark (as described in paragraph (h)(2) of this section) and its initial hedge. If the complex contract contains more than one reference to a single underlying security, all references to that underlying security are taken into account for purposes of applying the substantial equivalence test with respect to that underlying security. With respect to an equity derivative that is embedded in a debt instrument or other derivative, the substantial equivalence test is applied to the complex contract without taking into account changes in the market value of the debt instrument or other derivative that are not directly related to the equity element of the instrument. The complex contract is a section 871(m) transaction with respect to an underlying security if, for that underlying security, the expected change in value of the complex contract and its initial hedge is equal to or less than the expected change in value of the simple contract benchmark and its initial hedge when the substantial equivalence test described in this paragraph (h) is calculated at the calculation time for the complex contract. To the extent that the steps of the substantial equivalence test set out in this paragraph (h) cannot be applied to a particular complex contract, a taxpayer must use the principles of the substantial equivalence test to reasonably determine whether the complex contract is a section 871(m) transaction with respect to each underlying security. For purposes of this section, the test must be applied and the inputs must be determined in a commercially reasonable manner. The term of the simple contract benchmark must be, and the inputs must use, a reasonable time period, consistently applied (for example, in determining the standard deviation and probability). If a taxpayer calculates any relevant input for non-tax business purposes, that input ordinarily is the input used for purposes of this section.

(2) *Simple contract benchmark.* The simple contract benchmark is an actual or hypothetical simple contract that, at the calculation time for the complex contract, has a delta of 0.8, references the applicable underlying security referenced by the complex contract, and has terms that are consistent with all the material terms of the complex contract, including the maturity date. If an actual simple contract does not exist, the taxpayer must create a hypothetical

simple contract. Depending on the complex contract, the simple contract benchmark might be, for example, a call option, a put option, or a collar.

(3) *Substantial equivalence.* A complex contract is a section 871(m) transaction with respect to an underlying security if the complex contract calculation described in paragraph (h)(4) of this section results in an amount that is equal to or less than the amount of the benchmark calculation described in paragraph (h)(5) of this section.

(4) *Complex contract calculation*—(i) *In general.* The complex contract calculation for each underlying security referenced by a potential section 871(m) transaction that is a complex contract is computed by:

(A) Determining the change in value (as described in paragraph (h)(4)(ii) of this section) of the complex contract with respect to the underlying security at each testing price (as described in paragraph (h)(4)(iii) of this section);

(B) Determining the change in value of the initial hedge for the complex contract at each testing price;

(C) Determining the absolute value of the difference between the change in value of the complex contract determined in paragraph (h)(4)(i)(A) of this section and the change in value of the initial hedge determined in paragraph (h)(4)(i)(B) of this section at each testing price;

(D) Determining the probability (as described in paragraph (h)(4)(iv) of this section) associated with each testing price;

(E) Multiplying the absolute value for each testing price determined in paragraph (h)(4)(i)(C) of this section by the corresponding probability for that testing price determined in paragraph (h)(4)(i)(D) of this section;

(F) Adding the product of each calculation determined in paragraph (h)(4)(i)(E) of this section; and

(G) Dividing the sum determined in paragraph (h)(4)(i)(F) of this section by the initial hedge for the complex contract.

(ii) *Determining the change in value.* The change in value of a complex contract is the difference between the value of the complex contract with respect to the underlying security at the calculation time for the complex contract and the value of the complex contract with respect to the underlying security if the price of the underlying security were equal to the testing price at the calculation time for the complex contract. The change in value of the initial hedge of a complex contract with respect to the underlying security is the difference between the value of the initial hedge at the calculation time for the complex contract and the value of the initial hedge if the price of the underlying security were equal to the testing price at the calculation time for the complex contract.

(iii) *Testing price.* The testing prices must include the prices of the underlying security if the price of the underlying security at the calculation time for the complex contract were alternatively increased by one standard deviation and decreased by one standard deviation, each of which is a separate testing price. In circumstances where using only two testing prices is reasonably likely to provide an inaccurate measure of substantial equivalence, a taxpayer must use additional testing prices as necessary to determine whether a complex contract satisfies the substantial equivalence test. If additional testing prices are used for the substantial equivalence test, the probabilities as described in paragraph (h)(4)(iv) of this section must be adjusted accordingly.

(iv) *Probability.* For purposes of paragraphs (h)(4)(i)(D) and (E) of this section, the probability of an increase by one standard deviation is the measure of the likelihood that the price of the underlying security will increase by any amount from its price at the calculation time for the complex contract. For purposes of paragraphs (h)(4)(i)(D) and (E) of this section, the probability of a decrease by one standard deviation is the measure of the likelihood that the price of the underlying security will decrease by any amount from its price at the calculation time for the complex contract.

(5) *Benchmark calculation.* The benchmark calculation with respect to each underlying security referenced by the potential section 871(m) transaction is determined by using the computation methodology described in paragraph (h)(4) of this section with respect to a simple contract benchmark for the underlying security.

(6) *Substantial equivalence calculation for certain complex contracts that reference multiple underlying securities.* If a complex contract references 10 or more underlying securities and an exchange-traded security (for example, an exchange-traded fund) is available that would fully hedge the complex contract at its calculation time, the substantial equivalence calculations for the complex contract may be calculated by treating the exchange-traded security as the underlying security. When the exchange-traded security is used for the substantial equivalence calculation pursuant to this paragraph (h)(6), the initial hedge is the number of shares of the exchange-traded security for purposes of calculating the amount of a dividend equivalent as provided in paragraph (j)(1)(iii) of this section.

(7) *Example.* The following example illustrates the rules of paragraph (h) of this section. For purposes of this example, Stock X is common stock of domestic corporation X. FI is the financial institution that structures the transaction described in the example, and is the short party to the transaction. Investor is a nonresident alien individual.

Example. Complex contract that is not substantially equivalent. (i) FI issues an investment contract (the Contract) that has a stated maturity of one year, and Investor purchases the Contract from FI at issuance for $10,000. At maturity, the Contract entitles Investor to a return of $10,000 (i) plus 200 percent of any appreciation in Stock X above $100 per share, capped at $110, on 100 shares or (ii) minus 100 percent of any depreciation in Stock X below $90 on 100 shares. At the calculation time for the Contract, the price of Stock X is $100 per share. Thus, for example, Investor will receive $11,000 if the price of Stock X is $105 per share at maturity of the Contract, but Investor will receive $9,000 if the price of Stock X is $80 per share when the Contract matures. At issuance, FI acquires 64 shares of Stock X to fully hedge the Contract issued to Investor. The calculation time for this example is the issuance.

(ii) The Contract references an underlying security and is not an NPC, so it is classified as an ELI under paragraph (a)(4) of this section. At the calculation time for the Contract, the Contract does not provide for an amount paid at maturity that is calculated by reference to a single, fixed number of shares of Stock X. When the Contract matures, the amount paid is effectively calculated based on either 200 shares of Stock X (if the price of Stock X has appreciated up to $110) or 100 shares of Stock X (if the price of Stock X has declined below $90). Consequently, the Contract is a complex contract described in paragraph (a)(14) of this section.

(iii) Because it is a complex ELI, FI applies the substantial equivalence test described in paragraph (h) of this section to determine whether the Contract is a specified ELI. FI determines that the price of Stock X would be $120 if the price of Stock X were increased by one standard deviation, and $79 if the price of Stock X were decreased by one standard deviation. Based on these results, FI next determines the change in value of the Contract to be $2000 at the testing price that represents an increase by one standard deviation ($12,000 testing price minus $10,000 issue price) and a negative $1,100 at the testing price that represents a decrease by one standard deviation ($10,000 issue price minus $8,900 testing price). FI performs the same calculations for the 64 shares of Stock X that constitute the initial hedge, determining that the change in value of the initial hedge is $1,280 at the testing price that represents an increase by one standard

deviation ($6,400 at issuance compared to $7,680 at the testing price) and negative $1,344 at the testing price that represents a decrease by one standard deviation ($6,400 at issuance compared to $5,056 at the testing price).

(iv) FI then determines the absolute value of the difference between the change in value of the initial hedge and the Contract at the testing price that represents an increase by one standard deviation and a decrease by one standard deviation. Increased by one standard deviation, the absolute value of the difference is $720 ($2,000-$1,280); decreased by one standard deviation, the absolute value of the difference is $244 (negative $1,100 minus negative $1,344). FI determines that there is a 52% chance that the price of Stock X will have increased in value when the Contract matures and a 48% chance that the price of Stock X will have decreased in value at that time. FI multiplies the absolute value of the difference between the change in value of the initial hedge and the Contract at the testing price that represents an increase by one standard deviation by 52%, which equals $374.40. FI multiplies the absolute value of the difference between the change in value of the initial hedge and the Contract at the testing price that represents a decrease by one standard deviation by 48%, which equals $117.12. FI adds these two numbers and divides by the number of shares that constitute the initial hedge to determine that the transaction calculation is 7.68 ((374.40 plus 117.12) divided by 64).

(v) FI then performs the same calculation with respect to the simple contract benchmark, which is a one-year call option that references one share of Stock X, settles on the same date as the Contract, and has a delta of 0.8. The one-year call option has a strike price of $79 and has a cost (the purchase premium) of $22. The initial hedge for the one-year call option is 0.8 shares of Stock X.

(vi) FI first determines that the change in value of the simple contract benchmark is $19.05 if the testing price is increased by one standard deviation ($22.00 at issuance to $41.05 at the testing price) and negative $20.95 if the testing price is decreased by one standard deviation ($22.00 at issuance to $1.05 at the testing price). Second, FI determines that the change in value of the initial hedge is $16.00 at the testing price that represents an increase by one standard deviation ($80 at issuance to $96 at the testing price) and negative $16.80 at the testing price that represents a decrease by one standard deviation ($80.00 at issuance to $63.20 at the testing price).

(vii) FI determines the absolute value of the difference between the change in value of the initial hedge and the one-year call option at the testing price that represents an increase by one standard deviation is $3.05 ($16.00 minus $19.05). FI next determines the absolute value of the difference between the change in value of the initial hedge and the option at the testing price that represents a decrease by one standard deviation is $4.15 (negative $16.80 minus negative $20.95). FI multiplies the absolute value of the difference between the change in value of the initial hedge and the option at the testing price that represents an increase by one standard deviation by 52%, which equals $1.586. FI multiplies the absolute value of the difference between the change in value of the initial hedge and the option at the testing price that represents a decrease by one standard deviation by 48%, which equals $1.992. FI adds these two numbers and divides by the number of shares that constitute the initial hedge to determine that the benchmark calculation is 4.473 ((1.586 plus 1.992) divided by .8).

(viii) FI concludes that the Contract is not a section 871(m) transaction because the transaction calculation of 7.68 exceeds the benchmark calculation of 4.473.

(i) * * *

(3) * * * (ii) *Publicly available dividend amount.* For purposes of paragraph (i)(3)(i) of this section, if a section 871(m) transaction references the same underlying securities as a security (for example, stock in an exchange-traded fund) or index for which there is a publicly available quarterly dividend amount, the publicly available dividend amount may be used to determine the per-share dividend amount for the section 871(m) transaction with any adjustment for special dividends.

(iii) *Dividend amount for a section 871(m) transaction using the simplified delta calculation.* When the delta of a section 871(m) transaction is determined under paragraph (g)(3) of this section, the per-share dividend amount for that section 871(m) transaction must be determined using the dividend amount for the exchange-traded security that would fully hedge the section 871(m) transaction (whether or not the exchange-traded security is actually acquired).

* * * * *

(j) * * * (1) *Calculation of the amount of a dividend equivalent.* The long party is liable for tax on any dividend equivalents required to be determined pursuant to paragraph (j)(2) of this section only with respect to dividend equivalents that arise while the long party is a party to the transaction. The amount of any dividend equivalent is determined as follows:

* * * * *

(4) *Taxable year of a dividend equivalent.* A long party is liable for tax on a dividend equivalent in the year the dividend equivalent is subject to withholding pursuant to § 1.1441–2(e)(7). Notwithstanding the preceding sentence, a long party that is a qualified derivatives dealer is liable for tax on a dividend equivalent when the applicable dividend on the underlying security would be subject to withholding pursuant to § 1.1441–2(e)(4). The amount of the long party's tax liability, however, is determined by reference to the amount that would have been due at the time the dividend equivalent amount is determined pursuant to paragraph (j)(2) of this section based on the beneficial owners at that time (for example, based on the tax rate at that time, whether the long party qualified for a treaty benefit at that time, and in the case of a partnership, based on the partners at that time).

* * * * *

(l) * * *

(2) *Qualified index not treated as an underlying security*—(i) *In general.* For purposes of this section, a qualified index is treated as a single security that is not an underlying security. The determination of whether an index referenced in a potential section 871(m) transaction is a qualified index is made at the calculation time for the transaction based on whether the index is a qualified index on the first business day of the calendar year containing the calculation time.

(ii) *Rule for the first year of an index.* In the case of an index that was not in existence on the first business day of the calendar year containing the calculation time for the transaction, paragraph (l)(2) of this section is applied by testing the index on the first business day it is created, and the dividend yield calculation required by paragraph (l)(3)(vi) of this section is determined by using the dividend yield that the index would have had in the immediately preceding year if it had the same components throughout that year that it has on the day it is created.

* * * * *

(4) *Safe harbor for certain indices that reference assets other than underlying securities.* Notwithstanding paragraph (l)(3) of this section, an index is a qualified index if the index is widely traded, the referenced component underlying securities in the aggregate comprise 10 percent or less of the weighting of the component securities in the index, and the index was not formed or availed of with a principal purpose of avoiding U.S. withholding tax.

* * * * *

(n) * * *

(3) *Short party presumptions regarding combined transactions*—(i) *In general.* If a short party relies on the presumption provided in paragraph (n)(3)(ii) of this section or in paragraph (n)(3)(iii) of this section, the short party is not required to treat those potential section 871(m) transactions as part of a

single transaction pursuant to paragraph (n)(1) of this section.

* * * * *

(p) * * * (1) *Responsible party*—(i) *In general.* If a broker or dealer is a party to a potential section 871(m) transaction with a counterparty or customer that is not a broker or dealer, the broker or dealer is required to determine whether the potential section 871(m) transaction is a section 871(m) transaction. If both parties to a potential section 871(m) transaction are brokers or dealers, or neither party to a potential section 871(m) transaction is a broker or dealer, the short party must determine whether the potential section 871(m) transaction is a section 871(m) transaction.

(ii) [Reserved]. For further guidance, see § 1.871–15T(p)(1)(ii).

(iii) [Reserved]. For further guidance, see § 1.871–15T(p)(1)(iii).

(iv) [Reserved]. For further guidance, see § 1.871–15T(p)(1)(iv).

(v) *Obligations of the responsible party.* The party to the transaction that is required to determine whether a transaction is a section 871(m) transaction must also determine and report to the counterparty or customer the timing and amount of any dividend equivalent (as described in paragraphs (i) and (j) of this section). Except as otherwise provided in paragraph (n)(3) of this section, the party required to make the determinations described in this paragraph is required to exercise reasonable diligence to determine whether a transaction is a section 871(m) transaction, the amount of any dividend equivalents, and any other information necessary to apply the rules of this section. The information must be provided in the manner prescribed in paragraphs (p)(2) and (p)(3) of this section. The determinations required by paragraph (p) of this section are binding on the parties to the potential section 871(m) transaction and on any person who is a withholding agent with respect to the potential section 871(m) transaction unless the person knows or has reason to know that the information received is incorrect. The determinations are not binding on the Commissioner.

* * * * *

(4) * * *

(iii) *Recordkeeping required for certain options.* With respect to any option to which paragraph (g)(4) of this section applies, contemporaneous documentation is not required to be retained provided that there is a pre-existing documented methodology that is sufficient to permit the delta for the transaction to be verified at a later time.

(5) [Reserved]. For further guidance, see § 1.871–15T(p)(5).

(q) *Dividend and dividend equivalent payments to a qualified derivatives dealer*—(1) *In general.* Except as otherwise provided in this paragraph (q), a qualified derivatives dealer described in § 1.1441–1(e)(6) that receives a payment (within the meaning of paragraph (i) of this section) of a dividend equivalent in its equity derivatives dealer capacity will not be liable for tax under section 881 on that dividend equivalent, provided that the qualified derivatives dealer complies with its obligations under the qualified intermediary agreement described in §§ 1.1441–1(e)(5) and 1.1441–1(e)(6). A qualified derivatives dealer is liable for tax under section 881(a)(1) on its section 871(m) amount for each dividend on each underlying security. This tax liability is reduced (but not below zero) by the amount of tax paid by the qualified derivatives dealer under section 881(a)(1) on dividends it receives with respect to that underlying security on that same dividend in its capacity as an equity derivatives dealer. In addition, a qualified derivatives dealer is liable for tax under section 881(a)(1) for all dividend equivalents it receives that are not received in its equity derivatives dealer capacity. A qualified derivatives dealer also is liable for tax under section 881(a)(1) for all dividends it receives, other than dividends received in 2017 in its equity derivatives dealer capacity. This paragraph does not apply for a qualified derivatives dealer that is a foreign branch of a United States financial institution (within the meaning of § 1.1471–5(e)).

(2) *Transactions on the books of an equity derivatives dealer.* Transactions properly reflected in a qualified derivatives dealer's equity derivatives dealer book are presumed to be held by the dealer in its equity derivatives dealer capacity for purposes of determining the qualified derivatives dealer's tax liability. For purposes of determining whether a dealer is acting in its equity derivatives dealer capacity, only the dealer's activities as an equity derivatives dealer are taken into account. Accordingly, for purposes of this paragraph (q), a dividend or dividend equivalent is treated as received by a qualified derivatives dealer acting in its non-equity derivatives dealer capacity if the dividend or dividend equivalent is received by a qualified derivatives dealer acting as a proprietary trader.

(3) *Section 871(m) amount.* For each dividend on each underlying security, the section 871(m) amount is the product of:

(i) The qualified derivatives dealer's net delta exposure to the underlying security for the applicable dividend, multiplied by;

(ii) The applicable dividend amount per share.

(4) *Net delta exposure.* The net delta exposure to an underlying security is the amount (measured in number of shares) by which (A) the aggregate number of shares of an underlying security that the qualified derivatives dealer has exposure to as a result of positions in the underlying security (including as a result of owning the underlying security) with values that move in the same direction as the underlying security (the long positions) exceeds (B) the aggregate number of shares of an underlying security that the qualified derivatives dealer has exposure to as a result of positions in the underlying security with values that move in the opposite direction from the underlying security (the short positions). The net delta exposure calculation only includes long positions and short positions that the qualified derivatives dealer holds in its equity derivatives dealer capacity (as described in paragraph (q)(2) of this section). Any long positions or short positions that are treated as effectively connected with the qualified derivatives dealer's conduct of a trade or business in the United States for U.S. federal income tax purposes are excluded from the net delta exposure computation. The net delta exposure to an underlying security is determined at the end of the day on the date provided in § 1.871–15(j)(2) for the applicable dividend. For purposes of this calculation, net delta must be determined in a commercially reasonable manner. If a qualified derivatives dealer calculates net delta for non-tax business purposes, the net delta ordinary will be the delta used for that purpose, subject to the modifications required by this definition. Each qualified derivatives dealer must determine its net delta exposure separately only taking into account transactions that are recognized and are attributable to that qualified derivatives dealer for U.S. federal income tax purposes.

(5) *Examples.* The following examples illustrate the rules of this paragraph (q):

Example 1. Forward contract entered into by a foreign equity derivatives dealer. (i) *Facts.* FB is a foreign bank that is a qualified intermediary that acts as a qualified derivatives dealer. On April 1, Year 1, FB enters into a cash settled forward contract initiated by a foreign customer (Customer) that entitles Customer to receive from FB all of the appreciation and dividends on 100 shares of Stock X, and obligates Customer to

pay FB any depreciation on 100 shares of Stock X, at the end of three years. FB hedges the forward contract by entering into a total return swap contract with a domestic broker (U.S. Broker) and maintains the swap contract as a hedge for the duration of the forward contract. The swap contract entitles FB to receive an amount equal to all of the dividends on 100 shares of Stock X and obligates FB to pay an amount referenced to a floating interest rate each quarter, and also entitles FB to receive from or pay to U.S. Broker, as the case may be, the difference between the value of 100 shares of Stock X at the inception of the swap and the value of 100 shares of Stock X at the end of 3 years. Stock X pays a quarterly dividend of $0.25 per share. At the end of the day on the date provided in paragraph (j)(2) of this section for the dividend, FB owns the forward contract and total return swap; FB does not own any shares of Stock X or any other transactions that reference Stock X. FB provides valid documentation to U.S. Broker that FB will receive payments under the swap contract in its capacity as a qualified derivatives dealer, and FB contemporaneously enters both the swap contract with U.S. Broker and the forward contract with Customer on its equity derivatives dealer books.

(ii) *Application of rules.* At the end of the day on the date provided in paragraph (j)(2) of this section for the dividend, FB is a long party on a delta one contract (the total return swap) and a short party on a delta one contract (the forward contract with Customer). Pursuant to § 1.1441–1(b)(4)(xxii), U.S. Broker is not obligated to withhold on the dividend equivalent payments to FB on the swap contract that are referenced to Stock X dividends because U.S. Broker has received valid documentation that it may rely upon to treat the payment as made to FB acting as a qualified derivatives dealer. Pursuant to paragraph (q)(1) of this section, FB is not liable for tax under sections 871(m) and 881 on the payments it receives from U.S. Broker referenced to Stock X dividends because FB's net delta exposure with respect to 100 shares of Stock X is zero at the end of the day on the date provided in paragraph (j)(2) of this section for the dividend. The net delta exposure is zero because the taxpayer has 100 shares of Stock X long position exposure as a result of the total return swap that is reduced by 100 shares of Stock X short position exposure as a result of the forward contract. FB is required to withhold on dividend equivalent payments to Customer on the forward contract in accordance with § 1.1441–2(e)(7).

Example 2. At-the-money option contract entered into by a foreign equity derivatives dealer. (i) *Facts.* The facts are the same as Example 1, but Customer purchases from FB an at-the-money call option on 100 shares of Stock X with a term of one year. The call option has a delta of 0.5, and FB hedges the call option by entering into a total return swap that references 50 shares of Stock X with U.S. Broker. At the end of the day on the date provided in paragraph (j)(2) of this section for the dividend, the call option has a delta of 0.6, FB hedges the call option with a total return swap that references 60 shares of Stock X with U.S. Broker, and FB has no shares of Stock X or other transactions that reference Stock X.

(ii) *Application of rules.* At the end of the day on the date provided in paragraph (j)(2) of this section for the dividend, FB is a long party on 60 shares of Stock X through the total return swap and a short party on an option. Because the option has a delta of less than 0.8 at the calculation time, it is not a section 871(m) transaction. Therefore, there will be no dividend equivalent payments made by FB to Customer that are subject to withholding. Pursuant to § 1.1441–1(b)(4)(xxii), U.S. Broker is not obligated to withhold on the dividend equivalents with respect to Stock X paid to FB because U.S. Broker has received valid documentation that it may rely upon to treat the dividend equivalents as paid to FB acting as a qualified derivatives dealer. The net delta exposure is zero at the end of the day on the date provided in paragraph (j)(2) of this section for the dividend because FB has a long position of 60 shares as a result of the total return swap, which is reduced by FB's short position of 60 shares as a result of the option.

Example 3. In-the-money option contract entered into by a foreign equity derivatives dealer. (i) *Facts.* The facts are the same as Example 2, but Customer purchases from FB an in-the-money call option on 100 shares of Stock X with a term of one year. The call option has a delta of 0.8 and FB hedges the call option by purchasing 80 shares of Stock X, which are held in an account with U.S. Broker, who also acts as paying agent. The price of Stock X declines substantially and the option lapses unexercised. At the end of the day on the date provided in paragraph (j)(2) of this section for the dividend, the call option has a delta of 0.48 and FB has reduced its hedge to 50 shares of Stock X with U.S. Broker. In addition, on that date, FB owns no other shares of Stock X or any other transactions that reference Stock X in its equity derivatives dealer capacity.

(ii) *Application of rules.* At the end of the day on the date provided in paragraph (j)(2) of this section for the dividend, FB is a long party on 50 shares of Stock X and a short party on an option. Because the option has a delta of 0.8 at the calculation time, it is a section 871(m) transaction. Therefore, FB is required to withhold on dividend equivalent payments to Customer on the option contract in accordance with § 1.1441–2(e)(7). U.S. Broker is required to withhold on the Stock X dividends paid to FB. Assuming that FB is a qualified resident of a country that provides withholding on dividends at a 15 percent rate, U.S. Broker is required withhold on the dividends with respect to the 50 shares of stock held by FB. FB's net delta exposure is two shares of Stock X at the end of the day on the date provided in paragraph (j)(2) of this section because FB has a long position of 50 shares, reduced by FB's short position of 48 shares as a result of the option. FB's section 881 tax on the $0.50 (two shares multiplied by a dividend of $0.25 per share) is reduced (but not below zero) by the section 881 tax amount paid by qualified derivatives dealer on the 50 shares. Therefore, FB's section 871(m) amount is zero.

(r) * * *

(3) *Effective/applicability date for paragraphs (d)(2) and (e).* Paragraphs (d)(2) and (e) of this section apply to any payment made on or after January 1, 2017, with respect to any transaction with a delta of one issued on or after January 1, 2017. Paragraphs (d)(2) and (e) of this section apply to any payment made on or after January 1, 2018, with respect to any other transaction issued on or after January 1, 2018. Notwithstanding the prior sentence, paragraphs (d)(2) and (e) of this section will apply to any payments made on or after January 1, 2020, with respect to the exchange-traded notes issued on or after January 1, 2017, that are identified in a separate notice, and not payments made before January 1, 2020, with respect to those notes. Notwithstanding the first sentence of this paragraph (r)(3), paragraphs (d)(2) and (e) of this section do not apply to payments made in 2017 to a qualified derivatives dealer in its equity derivatives dealer capacity to hedge transactions that have a delta of less than one.

(4) *Effective/applicability date for paragraphs (c)(2)(iv), (h), and (q) of this section.* Paragraphs (c)(2)(iv), (h), and (q) of this section apply to payments made on or after January 1, 2017.

(5) *Effective/applicability date for paragraphs (g)(4)(ii)(B), (p)(1)(ii) through (iv), and (p)(5) of this section.* [Reserved]. For further guidance, see § 1.871–15T(r)(5).

§ 1.871–15 [Amended]

■ **Par. 3.** 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
§ 1.871–15(a)(3)	section 316	section 316 (even if there is no actual distribution of cash or property).
§ 1.871–15(a)(5)	the time the NPC or ELI is issued,	the calculation time for the NPC or ELI,.
§ 1.871–15(a)(14)(ii)(B), newly designated third sentence.	issuance	the calculation time.

Section	Remove	Add
§ 1.871–15(a)(15), first sentence	a payment with respect to	
§ 1.871–15(c)(1) introductory text	paragraph (2)	paragraph (c)(2) of this section.
§ 1.871–15(c)(1)(i)	references the payment of a dividend	references a dividend.
§ 1.871–15(c)(1)(ii)	references the payment of a dividend	references a dividend.
§ 1.871–15(c)(1)(iii)	references the payment of a dividend	references a dividend.
§ 1.871–15(c)(2)(i), first sentence and second sentence.	section 871	section 871(a).
§ 1.871–15(d)(2)(i)	when the NPC is issued	at the calculation time for the NPC.
§ 1.871–15(d)(2)(ii)	when the NPC is issued	at the calculation time for the NPC.
§ 1.871–15(e)(1)	when the ELI is issued	at the calculation time for the ELI.
§ 1.871–15(e)(2)	when the ELI is issued	at the calculation time for the ELI.
§ 1.871–15(i)(1)	references the payment of a dividend	references a dividend.
§ 1.871–15(i)(2)(i)	estimated payment of dividends	estimated dividend.
§ 1.871–15(i)(2)(ii)	estimated dividend payment	estimated dividend.
§ 1.871–15(i)(2)(iii), first sentence and second sentence.	the time the transaction is issued	the calculation time.
§ 1.871–15(i)(2)(iii), last sentence	to pay a dividend	to have a dividend.
§ 1.871–15(j)(1)(i)	each underlying security	each dividend on an underlying security.
§ 1.871–15(j)(1)(ii) introductory text	each underlying security	each dividend on an underlying security.
§ 1.871–15(j)(1)(iii) introductory text	each underlying security	each dividend on an underlying security.
§ 1.871–15(l)(1), first sentence	The purpose of this section	The purpose of this paragraph (l).
§ 1.871–15(l)(1), second sentence	described in this paragraph	described in this paragraph (l).
§ 1.871–15(l)(7)	references a security (for example, stock in an exchange-traded fund).	references an exchange-traded fund.
§ 1.871–15(m)(2)(ii), first sentence	at the time the potential 871(m) transaction referencing that partnership interest is issued.	at the calculation time for the potential section 871(m) transaction referencing that partnership interest.
§ 1.871–15(m)(2)(ii), first sentence	paragraph (m)(2)(i)	paragraph (m)(2)(i) of this section.
§ 1.871–15(n)(4)(iii), heading and first sentence	less than	fewer than.
§ 1.871–15(p)(4)(ii)	10 business days of the date the potential section 871(m) transaction is issued.	10 business days of the date containing the calculation time for the potential section 871(m) transaction.
§ 1.871–15(r)(4), heading	paragraphs (c)(2)(iv), (h), and (q)	paragraphs (g)(4)(ii)(B), (p)(1)(ii) through (iv), and (p)(5).

■ **Par. 4.** Revise § 1.871–15T to read as follows:

§ 1.871–15T Treatment of dividend equivalents (temporary).

(a) [Reserved]. For further guidance, see § 1.871–15(a).

(1) *Broker.* A *broker* is a broker within the meaning provided in section 6045(c), except that the term does not include any corporation that is a broker solely because it regularly redeems its own shares.

(a)(2) through (g)(4)(ii)(A) [Reserved]. For further guidance, see § 1.871–15(a)(2) through (g)(4)(ii)(A).

(B) A foreign securities exchange that:

(*1*) Is regulated or supervised by a governmental authority of the country in which the market is located;

(*2*) Has trading volume, listing, financial disclosure, surveillance, and other requirements designed to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open, fair and orderly market, and to protect investors, and the laws of the country in which the exchange is located and the rules of the exchange ensure that those requirements are actually enforced;

(*3*) Has rules that effectively promote active trading of listed options on the exchange; and

(*4*) Has an average daily trading volume on the exchange exceeding $10 billion during the immediately preceding calendar year. If an exchange in a foreign country has more than one tier or market level on which listed options may be separately listed or traded, each tier or market level is treated as a separate exchange.

(g)(5) through (p)(1)(i) [Reserved]. For further guidance, see § 1.871–15(g)(5) through (p)(1)(i).

(ii) *Transactions with multiple brokers.* For a potential section 871(m) transaction in which both the short party and an agent or intermediary acting on behalf of the short party are a broker or dealer, the short party must determine whether the potential section 871(m) transaction is a section 871(m) transaction. For a potential section 871(m) transaction in which the short party is not a broker or dealer and more than one agent or intermediary acting on behalf of the short party is a broker or dealer, the broker or dealer that is a party to the transaction and closest to the short party in the payment chain must determine whether the potential section 871(m) transaction is a section 871(m) transaction. For a potential section 871(m) transaction in which neither the short party nor any agent or intermediary acting on behalf of the short party is a broker or dealer, and the long party and an agent or intermediary acting on behalf of the long party are a broker or dealer, or more than one agent or intermediary acting on behalf of the long party is a broker or dealer, the broker or dealer that is a party to the transaction and closest to the long party in the payment chain must determine whether the potential section 871(m) transaction is a section 871(m) transaction.

(iii) *Responsible party for transactions traded on an exchange and cleared by a clearing organization.* Except as provided in paragraph (p)(1)(iv) of this section, for a potential section 871(m) transaction that is traded on an exchange and cleared by a clearing organization, and for which more than one broker-dealer acts as an agent or intermediary between the short party and a foreign payee, the broker or dealer that has an ongoing customer relationship with the foreign payee with respect to that transaction (generally the clearing firm) must determine whether the potential section 871(m) transaction is a section 871(m) transaction.

(iv) *Responsible party for certain structured notes, warrants, and convertible instruments.* When a potential section 871(m) transaction is a structured note, warrant, convertible stock, or convertible debt, the issuer is the party responsible for determining whether a potential section 871(m) transaction is a section 871(m) transaction.

(p)(1)(v) through (p)(4) [Reserved]. For further guidance, see § 1.871–15(p)(1)(v) through (p)(4).

(5) *Example.* The following example illustrates the rules of paragraph (p) of this section:

Example 1. CO is a domestic clearing organization and is not a broker as defined in § 1.871–15(a)(1). CO serves as a central counterparty clearing and settlement service provider for derivatives exchanges in the United States. EB and CB are brokers organized in the United States and members of CO. FC, a foreign corporation, instructs EB to execute the purchase of a call option that is a specified ELI (as described in § 1.871–15(e)). EB effects the trade for FC on the exchange and then, as instructed by FC, transfers the option to CB to be cleared with CO. The exchange matches FC's order with an order for a written call option with the same terms and then sends the matched trade to CO, which clears the trade. CB and the clearing member representing the person who sold the call option settle the trade with CO. Upon receiving the matched trade, the option contracts are novated and CO becomes the counterparty to CB and the counterparty to the clearing member representing the person who sold the call option. Both EB and CB are broker-dealers acting on behalf of FC for a potential section 871(m) transaction. Under paragraph (p)(1)(iii) of this section, however, only CB is required to make the determinations described in § 1.871–15(p).

(q) through (r)(4) [Reserved]. For further guidance, see § 1.871–15(r)(1) through (4).

(5) Effective/applicability date. This section applies to payments made on or after on January 19, 2017.

(s) *Expiration date.* This section expires January 17, 2020.

■ **Par. 5.** Section 1.1441–1 is amended by:

■ 1. Revising paragraphs (b)(4)(xxii), (e)(3)(ii)(E), (e)(5),and (e)(6).

■ 2. Adding a new sentence to the end of paragraph (e)(2)(i).

■ 3. Adding new paragraph (f)(5).

The additions and revisions read as follows:

§ 1.1441–1 Requirement for the deduction and withholding of tax on payments to foreign persons.

* * * * *

(b) * * *

(4) * * *

(xxii) Certain payments to qualified derivatives dealers (as described in paragraph (e)(6) of this section). For purposes of this withholding exemption, the qualified derivatives dealer must furnish to the withholding agent the documentation described in paragraph (e)(3)(ii) of this section. A withholding agent that makes a payment to a qualified intermediary that is acting as a qualified derivatives dealer is not required to withhold on the following payments if the withholding agent can reliably associate the payment with a valid qualified intermediary withholding certificate as described in paragraph (e)(3)(ii) of this section, including the certification described in paragraph (e)(3)(ii)(E):

(A) A payment with respect to a potential section 871(m) transaction that is not an underlying security;

(B) A payment of a dividend equivalent; or

(C) A payment of a dividend in 2017.

* * * * *

(e) * * *

(2) * * *

(i) * * * For purposes of a qualified intermediary acting as a qualified derivatives dealer, a qualified intermediary withholding certificate, as described in paragraph (e)(3)(ii) of this section is a beneficial owner withholding certificate for purposes of treaty claims for dividends.

* * * * *

(3) * * *

(ii) * * *

(E) In the case of any payment with respect to a potential section 871(m) transaction (including any dividend equivalent payment within the meaning of § 1.871–15(i)) or underlying security (as defined in § 1.871–15(a)(15)) received by a qualified intermediary acting as a qualified derivatives dealer, a certification that the home office or branch receiving the payment, as applicable, meets the requirements to act as a qualified derivatives dealer as further described in paragraph (e)(6) of this section and that the qualified derivatives dealer assumes primary withholding and reporting responsibilities under chapters 3, 4, and 61, and section 3406 with respect to any payments it makes with respect to potential section 871(m) transactions;

* * * * *

(5) *Qualified intermediaries*—(i) *In general.* A qualified intermediary, as defined in paragraph (e)(5)(ii) of this section, may furnish a qualified intermediary withholding certificate to a withholding agent. The withholding certificate provides certifications on behalf of other persons for the purpose of claiming and verifying reduced rates of withholding under section 1441 or 1442 and for the purpose of reporting and withholding under other provisions of the Code, such as the provisions under chapter 61 and section 3406 (and the regulations under those provisions), or for the qualified derivative dealer (if applicable). Furnishing such a certificate is in lieu of transmitting to a withholding agent withholding certificates or other appropriate documentation for the persons for whom the qualified intermediary receives the payment, including interest holders in a qualified intermediary that is fiscally transparent under the regulations under section 894. Although the qualified intermediary is required to obtain withholding certificates or other appropriate documentation from beneficial owners, payees, or interest holders pursuant to its agreement with the IRS, it is generally not required to attach such documentation to the intermediary withholding certificate. Notwithstanding the preceding sentence, a qualified intermediary must provide a withholding agent with the Forms W–9, or disclose the names, addresses, and taxpayer identifying numbers, if known, of those U.S. non-exempt recipients for whom the qualified intermediary receives reportable amounts (within the meaning of paragraph (e)(3)(vi) of this section) to the extent required in the qualified intermediary's agreement with the IRS. When a qualified intermediary is acting as a qualified derivatives dealer, the withholding certificate entitles a withholding agent to make payments with respect to potential section 871(m) transactions that are not underlying securities and dividend equivalent payments on underlying securities to the qualified derivatives dealer free of withholding. A withholding agent is required to withhold on all other U.S. source FDAP payments made to a qualified derivatives dealer as required by applicable law. Paragraph (e)(6) of this section contains detailed rules prescribing the circumstances in which a qualified intermediary can act as a qualified derivatives dealer. A person may claim qualified intermediary status before an agreement is executed with the IRS if it has applied for such status and the IRS authorizes such status on an interim basis under such procedures as the IRS may prescribe.

(ii) [Reserved]. For additional guidance, see § 1.1441–1T(e)(5)(ii).

(A) Through (C) [Reserved]. For additional guidance, see § 1.1441–1T(e)(5)(ii)(A)–(C).

(D) A foreign person that is a home office or has a branch that is an eligible entity as described in paragraph (e)(6)(ii) of this section, without regard

to the requirement that the person be a qualified intermediary; or

(E) [Reserved]. For additional guidance, see § 1.1441–1T(e)(5)(ii)(E).

(iii) [Reserved]. For additional guidance, see § 1.1441–1T(e)(5)(iii).

(iv) [Reserved]. For additional guidance, see § 1.1441–1T(e)(5)(iv).

(v) [Reserved]. For additional guidance, see § 1.1441–1T(e)(5)(v).

(A) [Reserved]. For additional guidance, see § 1.1441–1T(e)(5)(v)(A).

(B) [Reserved]. For additional guidance, see § 1.1441–1T(e)(5)(v)(B).

(*1*)–(*3*) [Reserved]. For additional guidance, see § 1.1441–1T(e)(5)(v)(B)(*1*)–(*3*).

(*4*) If a qualified intermediary is acting as a qualified derivatives dealer, designate the accounts:

(*i*) For which the qualified derivatives dealer is receiving payments with respect to potential section 871(m) transactions or underlying securities as a qualified derivatives dealer;

(*ii*) For which the qualified derivatives dealer is receiving payments with respect to potential section 871(m) transactions (and that are not underlying securities) for which withholding is not required;

(*iii*) For which qualified derivatives dealer is receiving payments with respect to underlying securities for which withholding is required; and

(*iv*) If applicable, identifying the home office or branch that is treated as the owner for U.S. income tax purposes; and

(6) *Qualified derivatives dealers*—(i) *In general.* To act as a qualified derivatives dealer under a qualified intermediary withholding agreement, the home office or branch that is a qualified intermediary must be an eligible entity as described in paragraph (e)(6)(ii) of this section and, in accordance with the qualified intermediary agreement, must—

(A) Furnish to a withholding agent a qualified intermediary withholding certificate (described in paragraph (e)(3)(ii) of this section) that indicates that the home office or branch receiving the payment is a qualified derivatives dealer with respect to the payments associated with the withholding certificate;

(B) Agree to assume the primary withholding and reporting responsibilities, including the documentation provisions under chapters 3, 4, and 61, and section 3406, the regulations under those provisions, and other withholding provisions of the Internal Revenue Code, for payments made as a qualified derivatives dealer with respect to potential section 871(m) transactions. For this purpose, a qualified derivatives dealer is required to obtain a withholding certificate or other appropriate documentation from each counterparty to whom the qualified derivatives dealer makes a reportable payment (including a dividend equivalent payment within the meaning of § 1.871–15(i)). The qualified derivatives dealer is also required to determine whether any payment it makes with respect to a potential section 871(m) transaction is, in whole or in part, a dividend equivalent;

(C) Agree to remain liable for tax under section 881, if any, on any payment with respect to a potential section 871(m) transaction (including a dividend equivalent payment within the meaning of § 1.871–15(i)) and underlying securities (including dividends) it receives as a qualified derivatives dealer, or in the case of dividend equivalents received in the equity derivatives dealer capacity, the taxes required pursuant to § 1.871–15(q);

(D) Comply with the compliance review procedures applicable to a qualified intermediary that acts as a qualified derivatives dealer under the qualified intermediary withholding agreement, which will specify the time and manner in which a qualified derivatives dealer must:

(*1*) Certify to the IRS that it has complied with the obligations to act as a qualified derivatives dealer (including its performance of a periodic review applicable to a qualified derivatives dealer);

(*2*) Report to the IRS any amounts subject to reporting on Forms 1042–S (including dividend equivalent payments that it made);

(*3*) Report to the IRS on the appropriate U.S. tax return, its tax liabilities, including its tax liability pursuant to § 1.871–15(q)(1) and any other taxes on payments with respect to potential section 871(m) transactions or underlying securities as defined in § 1.871–15(a)(15) it receives; and

(*4*) Respond to inquiries from the IRS about obligations it has assumed as a qualified derivatives dealer in a timely manner;

(E) Agree to act as a qualified derivatives dealer for all payments made as a principal with respect to potential section 871(m) transactions and all payments received as a principal with respect to potential section 871(m) transactions and underlying securities as defined in § 1.871–15(a)(15) (including dividend equivalent payments within the meaning of § 1.871–15(i)), excluding any payments made or received by the qualified derivatives dealer to the extent the payment is treated as effectively connected with the conduct of a trade or business within the United States within the meaning of section 864, and not act as a qualified derivatives dealer for any other payments. For purposes of this paragraph (E), any securities lending or sale-repurchase transaction that the qualified intermediary enters into that is a section 871(m) transaction is treated as entered into as a principal unless the qualified intermediary determines that it is acting as an intermediary with respect to that transaction; and

(F) Each home office or branch must qualify and be approved for qualified derivatives dealer status and must represent itself as a QDD on its Form W–8IMY and separately identify the home office or branch as the recipient on a withholding statement (if necessary). The home office means a foreign person, excluding any branches of the foreign person, that applies for qualified derivatives dealer status. Each home office or branch that obtains qualified derivatives dealer status must be treated as a separate qualified derivatives dealer.

(ii) *Definition of eligible entity.* An eligible entity is a home office or branch that is a qualified intermediary and that, treating the home office or branch as a separate entity, is—

(A) An equity derivatives dealer subject to regulatory supervision as a dealer by a governmental authority in the jurisdiction in which it was organized or operates;

(B) A bank or bank holding company subject to regulatory supervision as a bank or bank holding company (as applicable) by a governmental authority in the jurisdiction in which it was organized, or operates or an entity that is wholly-owned (directly or indirectly) by a bank or bank holding company subject to regulatory supervision as a bank or bank holding company (as applicable) by a governmental authority in the jurisdiction in which the bank or bank holding company (as applicable) was organized or operates and that in its equity derivatives dealer capacity—

(*1*) Issues potential section 871(m) transactions to customers; and

(*2*) Receives dividends with respect to stock or dividend equivalent payments pursuant to potential section 871(m) transactions that hedge potential section 871(m) transactions that it issued;

(C) A foreign branch of a U.S. financial institution, if the foreign branch would meet the requirements of paragraph (A) or (B) of this section if it were a separate entity; or

(D) Any person otherwise acceptable to the IRS.

* * * * *

(f) * * *

(5) *Effective/applicability date.* Paragraphs (e)(5)(ii)(D) and (e)(5)(v)(B)(*4*) of this section apply to payments made on or after on January 19, 2017.

■ **Par. 6.** Section 1.1441–1T is amended by:

■ 1. Redesignating paragraph (e)(5)(ii)(D) as paragraph (e)(5)(ii)(E), redesignating paragraph (e)(5)(v)(B)(*4*) as paragraph (e)(5)(v)(B)(*5*) and adding new paragraphs (e)(5)(ii)(D) and (e)(5)(v)(B)(*4*).

■ 2. Revising paragraphs (e)(3)(ii)(E), (e)(5)(i), (e)(5)(v)(B)(*4*), and (e)(6).

■ 3. Removing the language ''Except for paragraphs (e)(3)(ii)(E) and (e)(6), this section'' from the first sentence of paragraph (f)(3) and adding in its place ''This section'', and removing the third sentence in paragraph (f)(3), and

■ 4. Removing the language ''Except for paragraphs (e)(3)(ii)(E) and (e)(6), the applicability'' from the first sentence of paragraph (g) and adding in its place ''The Applicability'' and removing the second sentence in paragraph (g).

§ 1.1441–1T Requirement for the deduction and withholding of tax on payments to foreign persons (temporary).

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(E) [Reserved]. For additional guidance, see § 1.1441–1(e)(3)(ii)(E).

* * * * *

(5) *Qualified Intermediaries*—(i) [Reserved]. For additional guidance, see § 1.1441–1(e)(5)(i).

(ii) * * *

(D) [Reserved]. For additional guidance, see § 1.1441–1(e)(5)(ii)(D).

* * * * *

(v) * * *

(B) * * *

(*4*) [Reserved]. For additional guidance, see § 1.1441–1(e)(5)(v)(B)(*4*).

* * * * *

(6) [Reserved]. For additional guidance, see § 1.1441–1(e)(6).

* * * * *

■ **Par. 7.** Section 1.1441–2 is amended by:

■ 1. Revising paragraphs (e)(7)(i) and (e)(7)(ii).

■ 2. Removing ''paragraph (e)(8)(ii)(A)'' from paragraph (e)(7)(iii) and adding in ''paragraph (e)(7)(ii)(A)'' in its place.

■ 3. Adding paragraphs (e)(7)(iv) through (ix).

■ 4. Revising the last sentence of paragraph (f)(1) and adding a new last sentence.

The revisions and additions read as follows:

§ 1.1441–2 Amounts subject to withholding.

* * * * *

(e) * * *

(7) *Payments of dividend equivalents*—(i) *In general.* Subject to paragraphs (e)(7)(iv), (vi), and (vii) of this section, a payment of a dividend equivalent is not considered to be made until the later of when—

(A) The amount of a dividend equivalent is determined as provided in § 1.871–15(j)(2), and

(B) A payment occurs with respect to the section 871(m) transaction after the amount of a dividend equivalent is determined as provided in § 1.871–15(j)(2).

(ii) *Payment.* For purposes of paragraph (e)(7) of this section, a payment occurs with respect to a section 871(m) transaction when—

(A) Money or other property is paid to or by the long party, unless the section 871(m) transaction is described in § 1.871–15(i)(3), in which case a payment is treated as being made at the end of the applicable calendar quarter;

(B) The long party sells, exchanges, transfers, or otherwise disposes of the section 871(m) transaction (including by settlement, offset, termination, expiration, lapse, or maturity); or

(C) The section 871(m) transaction is transferred to an account that is not maintained by the withholding agent or the long party terminates the account relationship with the withholding agent.

* * * * *

(iv) *Option to withhold on dividend payment date.* A withholding agent may withhold on the payment date described in paragraph (e)(4) of this section for the applicable dividend on the underlying security (the dividend payment date) if it withholds on that date for all section 871(m) transactions of the same type (securities lending or sale-repurchase transaction, NPC, or ELI) and satisfies the requirements to paragraph (e)(7)(v) of this section.

(v) *Changes to time of withholding.* This paragraph describes how a withholding agent changes the time that it withholds on a dividend equivalent payment to a time described in paragraph (e)(7)(i) or (iv) of this section and these requirements must be satisfied for a withholding agent to change the time it withholds. A withholding agent must apply the change consistently to all transactions of the same type entered into on or after the change. For transactions of the same type entered into before the change, a withholding agent must withhold under the original approach throughout the term of the transaction. When a withholding agent changes the time that it will withhold, the withholding agent must notify each payee in writing that it will withhold using the approach described in paragraph (e)(7)(i) or (iv) of this section, as applicable, before the time for determining the payee's first dividend equivalent payment (as determined under § 1.871–15(j)(2)). With respect to transactions held by an intermediary or foreign flow-through entity, a withholding agent is treated as providing notice to each payee holding that transaction through the entity when it notifies the intermediary or foreign flow-through entity of the time it will withhold, as described in the preceding sentence, provided that the intermediary or foreign flow-through entity agrees to provide the same notice to each payee. The withholding agent must attach a statement to its relevant income tax return (filed by the due date, including extensions) for the year of the change notifying the IRS of the change and when it applies, identifying the types of section 871(m) transaction to which the change applies, and certifying that has notified its payees. For purposes of this paragraph, a withholding agent will be considered to have entered into a transaction on the first date the withholding agent becomes responsible for withholding on the transaction (based on the rule in paragraph (e)(7)(ix) of this section).

(vi) *Withholding by qualified derivatives dealers.* A withholding agent that is acting as a qualified derivatives dealer must withhold with respect to a dividend equivalent payment on the payment date described in paragraph (e)(4) of this section for the applicable dividend on the underlying security and must notify each payee in writing that it will withhold on the dividend payment date before the time for determining the payee's first dividend equivalent payment (as determined under § 1.871–15(j)(2)).

(vii) *Withholding with respect to derivatives that reference partnerships.* To the extent that a withholding agent is required to withhold with respect to a partnership interest described in § 1.871–15(m), the liability for withholding arises on March 15 of the year following the year in which the payment of a dividend equivalent (determined under § 1.871–15(i)) occurs.

(viii) *Notification to holders of withholding timing.* If a withholding agent is required to notify a payee of when it will withhold under paragraph (e)(7)(v) of this section, it may use the reporting methods prescribed in § 1.871–15(p)(3)(i).

(ix) *Withholding agent responsibility.* A withholding agent is only responsible for dividend equivalent amounts determined (as provided in § 1.871–15(j)(2)) during the period the withholding agent is a withholding agent for the section 871(m) transaction.

* * * * *

(f) * * * (1) Except as otherwise provided in this paragraph, paragraph (e)(7) of this section applies to payments made on or after September 18, 2015. Paragraphs (e)(7)(ii)(D) and (e)(7)(iv) through (viii) of this section apply to payments made on or after January 19, 2017.

■ **Par. 8.** Section 1.1441–7 is amended by:

■ 1. Revising *Example 7* in paragraph (a)(3).

■ 2. Adding *Example 8* and *9* to paragraph (a)(3).

■ 3. Adding a sentence to the end of paragraph (a)(4).

The additions read as follows:

§ 1.1441–7 General provisions relating to withholding agents.

(a) * * *

(3) * * *

Example 7. CO is a domestic clearing organization. CO serves as a central counterparty clearing and settlement service provider for derivatives exchanges in the United States. CB is a broker organized in Country X, a foreign country, and a clearing member of CO. CB is a nonqualified intermediary, as defined in § 1.1441–1(c)(14). FC is a foreign corporation that has an account with CB. FC instructs CB to purchase a call option that is a specified ELI (as described in § 1.871–15(e)). CB effects the trade for FC on the exchange. The exchange matches FC's order with an order for a written call option with the same terms. The exchange then sends the matched trade to CO, which clears the trade. CB and the clearing member representing the person who sold the call option settle the trade with CO. Upon receiving the matched trade, the option contracts are novated and CO becomes the counterparty to CB and the counterparty to the clearing member representing the person who sold the call option. To the extent that there is a dividend equivalent with respect to the call option, both CO and CB are withholding agents as described in paragraph (a)(1) of this section. As a withholding agent, CO and CB must each determine whether it is obligated to withhold under chapter 3 of the Internal Revenue Code and the regulations thereunder.

Example 8. FCO is a foreign clearing organization. FCO serves as a central counterparty clearing and settlement service provider for derivatives exchanges in Country A, a foreign country. CB is a broker organized in Country A, and a clearing member of FCO. CB is a nonqualified intermediary, as defined in § 1.1441–1(c)(14). FC is a foreign corporation that has an account with CB. FC instructs CB to purchase a call option that is a section 871(m) transaction. CB effects the trade for FC on the exchange. The exchange matches FC's order with an order for a written call option with the same terms. The exchange then sends the matched trade to FCO, which clears the trade. CB and the clearing member representing the call option seller settle the trade with FCO. Upon receiving the matched trade, the option contracts are novated and FCO becomes the counterparty to CB and the counterparty to the clearing member representing the call option seller. To the extent that there is a dividend equivalent with respect to the call option, both FCO and CB are withholding agents as described in paragraph (a)(1) of this section.

Example 9. The facts are the same as Example 8, except that CB is a qualified intermediary, as defined in § 1.1441–1(c)(15), that has assumed the primary obligation to withhold, deposit, and report amounts under chapters 3 and 4 of Internal Revenue Code. CB provides a written statement to FCO representing that it has assumed primary withholding responsibility for any dividend equivalent payment with respect to the call option. FCO, therefore, is not required withhold on a dividend equivalent payment to CB.

(4) * * * *Example 8* and *Example 9* of paragraph (a)(3) of this section apply to payments made on or after January 19, 2017.

* * * * *

§ 1.1461–1 [Amended]

■ **Par. 9.** 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
§ 1.1461–1(c)(2)(i) introductory text, fourth sentence.	a withholding agent withheld an amount	a withholding agent withheld (including under § 1.1441–2(e)(7)) an amount.
§ 1.1461–1(c)(2)(i)(M)	references the payment of a dividend	references a dividend.
§ 1.1461–1(c)(2)(ii)(J)	or (xxiii);	or (xxiii). This exception does not apply to withholding agents that are qualified derivatives dealers;

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: January 11, 2017.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2017–01163 Filed 1–19–17; 4:15 pm]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9790]

RIN 1545–BN40

Treatment of Certain Interests in Corporations as Stock or Indebtedness; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final and temporary regulations (T.D. 9790) that were published in the **Federal Register** on Friday, October 21, 2016 (81 FR 72858). The regulations relate to the determination of whether an interest in a corporation is treated as stock or indebtedness for all purposes of the Internal Revenue Code.

DATES: These corrections are effective on January 23, 2017, and applicable October 21, 2016.

FOR FURTHER INFORMATION CONTACT: Austin M. Diamond-Jones, (202) 317–5363, or Joshua G. Rabon, (202) 317–6938 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of this correction are under sections 385 and 752 of the Internal Revenue Code.

Need for Correction

As published, the final and temporary regulations contain errors which may prove to be misleading and need to be clarified.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.385–1 is amended by revising the fifth sentence of paragraph (c)(4)(vii) *Example 2* (i) to read as follows:

§ 1.385–1 General provisions.

* * * * *

(c) * * *

(4) * * *

(vii) * * *

Example 2. * * *

(i) * * * In addition to other assets representing 85% of the value of its total assets, S2 owns all of the stock of S3, which has elected to be treated as a taxable REIT subsidiary of S2 under section 856(l)(1). * * *

* * * * *

■ **Par. 3.** Section 1.385–2 is amended by:

■ 1. Revising paragraph (a)(3)(ii)(C)(*3*).

■ 2. Revising the third sentence of paragraph (a)(5)(i).

■ 3. Revising the first sentence of paragraph (a)(5)(ii).

■ 4. Revising the third sentence of paragraph (b)(1).

■ 5. Revising the third sentence of paragraph (c)(2)(ii).

■ 6. Revising the second sentence of paragraph (c)(2)(iii)(A).

■ 7. Revising the third sentence of paragraph (c)(2)(iii)(E).

■ 8. Revising the paragraph (c)(3)(i)(A) subject heading.

■ 9. Revising the first sentence of paragraph (c)(3)(i)(A)(*3*)(*i*).

■ 10. Revising the third sentence of paragraph (c)(4)(ii)(A).

■ 11. Revising the second sentence of paragraph (c)(4)(ii)(B)(*1*).

■ 12. Adding a subject heading to paragraph (c)(4)(ii)(B)(*2*)(*i*).

■ 13. Revising the paragraph (c)(4)(ii)(E) subject heading.

■ 14. Revising paragraph (c)(4)(ii)(E)(*3*).

■ 15. Revising paragraph (d)(2)(i)(A).

■ 16. Revising the second sentence of paragraph (e)(3)(ii).

■ 17. Revising the paragraph (h)(4) *Example* introductory text.

■ 18. Revising the second sentence of paragraph (h)(4)(ii)(A).

■ 19. Revising the first sentence of paragraph (h)(4)(ii)(C).

The addition and revisions read as follows:

§ 1.385–2 Treatment of certain interests between members of an expanded group.

(a) * * *

(3) * * *

(ii) * * *

(C) * * *

(*3*) *Overlapping assets and revenue.* If there are multiple applicable financial statements that reflect the assets, portion of the assets, or revenue of the same expanded group member, any duplication (by stock, consolidation, or otherwise) of that expanded group member's assets or revenue may be disregarded for purposes of paragraph (a)(3)(ii) of this section such that the total assets or annual total revenue of that expanded group member is only reflected once.

* * * * *

(5) * * *

(i) * * * An issuer is also considered to have characterized an EGI as indebtedness if the issuer claims any federal income tax benefit with respect to an EGI resulting from characterizing the EGI as indebtedness for federal tax purposes, such as by claiming an interest deduction under section 163 with respect to interest paid or accrued on the EGI on a federal income tax return (or, if the issuer is a member of a consolidated group, the issuer or the common parent of the consolidated group claims a federal income tax benefit by claiming such an interest deduction), or if the issuer reports the EGI as indebtedness or amounts paid or accrued on the EGI as interest on an applicable financial statement. * * *

(ii) * * * The consistency rule in paragraph (a)(5)(i) of this section and section 385(c)(1) does not apply with respect to an EGI to the extent that the EGI is treated as stock under this section or § 1.385–3, or it has been determined that the EGI is treated as stock under applicable federal tax principles. * * *

(b) * * *

(1) * * * If the documentation and information described in paragraph (c) of this section are not prepared and maintained with respect to an EGI in accordance with this section, and no exception listed in paragraph (b)(2) of this section applies, the EGI is treated as stock for all federal tax purposes. * * *

* * * * *

(c) * * *

(2) * * *

(ii) * * * The rights of a creditor must include rights that superior to the rights of shareholders (other than holders of interests treated as stock solely by reason of § 1.385–3 and holders of interests with creditor's rights under commercial law treated as stock under this section) to receive assets of the issuer in case of dissolution. * * *

(iii) * * *

(A) * * * Documentation with respect to an EGI that is nonrecourse under its terms must include information on any cash and property that secures the EGI, including—

* * * * *

(E) * * * Documentation required under paragraph (c)(2) of this section may be prepared by employees of expanded group members, by agents of expanded group members, or by third parties.

(3) * * *

(i) * * *

(A) *Revolving credit, omnibus, umbrella, master, cash pool, and similar agreements—*

(*3*) * * *

(*i*) * * * If an EGI is issued under an agreement described in paragraph (c)(3)(i)(A) of this section, written documentation must be prepared with respect to the analysis date and written documentation with a new analysis date must be prepared at least annually to satisfy the requirements in paragraph (c)(2)(iii) of this section for EGIs issued under such an agreement on or after the most recent analysis date. * * *

* * * * *

(4) * * *

(ii) * * *

(A) * * * In the case of an applicable interest that becomes an EGI subsequent to issuance, including an intercompany obligation, as defined in § 1.1502–13(g)(2)(ii), that ceases to be an intercompany obligation, the relevant date is the date on which the applicable interest becomes an EGI.

(B) * * *

(*1*) * * * In the case of an applicable interest that becomes an EGI subsequent to issuance, the relevant date is the date on which the applicable interest becomes an EGI and any relevant date after the date that the applicable interest becomes an EGI.

(*2*) * * *

(*i*) *In general.* * * *

* * * * *

(E) *Revolving credit, omnibus, umbrella, master, cash pool, and similar agreements—*

* * * * *

(*3*) *Relevant dates for EGIs documented under an overall*

arrangement. A relevant date of an EGI under paragraphs (c)(4)(ii)(A) through (C) of this section is also a relevant date for each EGI documented under an overall arrangement described in paragraph (c)(3) of this section.

* * * * *

(d) * * *

(2) * * *

(i) * * *

(A) Any interest that is issued or deemed issued in the legal form of a debt instrument (including a draw or separate amount borrowed under an overall arrangement described in paragraph (c)(3) of this section regardless of whether a separate legal document is issued in connection with the draw or separate amount borrowed), which therefore does not include, for example, a sale-repurchase agreement treated as indebtedness under federal tax principles; or

* * * * *

(e) * * *

(3) * * *

(ii) * * * For purposes of determining whether an EGI originally treated as indebtedness ceases to be treated as indebtedness by reason of this section, the rules of this section apply before the rules of § 1.1001–3. * * *

* * * * *

(h) * * *

(4) * * *

Example. Application of paragraphs (c)(2)(iii) and (c)(4) of this section to an EGI. * * *

(ii) * * *

(A) * * * Because FP is traded on an established financial market within the meaning of § 1.1092(d)–1(b) and USS1 is a covered member, EGI A, EGI B, and EGI C are subject to the rules of this section.

* * * * *

(C) The credit analysis was prepared with an analysis date of Date B of Year 1. * * *

* * * * *

■ **Par. 4.** Section 1.385–3 is amended by:

■ 1. Revising paragraph (b)(3)(iii)(E)(*2*).

■ 2. Revising the paragraph (b)(5) subject heading.

■ 3. Revising the first sentence of paragraph (c)(3)(i)(C)(*1*).

■ 4. Revising the paragraph (c)(3)(i)(C)(*3*) subject heading.

■ 5. Revising paragraph (c)(3)(i)(C)(*3*)(*i*).

■ 6. Adding subject headings to paragraphs (g)(3)(ii) introductory text, (g)(3)(iii) introductory text, and (g)(3)(iv) introductory text.

■ 7. Revising paragraph (g)(3)(iv)(B)(*1*).

■ 8. Adding a subject heading to paragraph (g)(3)(v).

■ 10. Revising paragraphs (g)(24)(ii)(B) and (C)

The additions and revisions read as follows:

§ 1.385–3 Transactions in which debt proceeds are distributed or that have a similar effect.

* * * * *

(b) * * *

(3) * * *

(iii) * * *

(E) * * *

(*2*) *Effect of certain modifications.* Notwithstanding paragraph (b)(3)(iii)(E)(1) of this section, if a covered debt instrument is treated as exchanged for a modified covered debt instrument pursuant to § 1.1001–3(b) and the modification, or one of the modifications, that results in the deemed exchange includes the substitution of an obligor on the covered debt instrument, the addition or deletion of a co-obligor on the covered debt instrument, or the material deferral of scheduled payments due under the covered debt instrument, then the modified covered debt instrument is treated as issued on the date of the deemed exchange for purposes of paragraph (b)(3)(iii)(A) of this section.

* * * * *

(5) *Coordination between general rule and funding rule.* * * *

* * * * *

(c) * * *

(3) * * *

(i) * * *

(C) * * *

(*1*) * * * The term expanded group earnings means, with respect to a covered member and an expanded group period of the covered member, the earnings and profits accumulated by the covered member during the expanded group period, computed as of the close of the taxable year of the covered member, without diminution by reason of any distributions or acquisitions by the covered member described in paragraphs (b)(2) and (b)(3)(i) of this section. * * *

* * * * *

(*3*) *Look-through rule for dividends*—(*i*) *In general.* For purposes of paragraph (c)(3)(i)(C)(*1*) of this section, a dividend from a member of the same expanded group (*distributing member*) is not taken into account for purposes of calculating a covered member's expanded group earnings, except to the extent the dividend is attributable to earnings and profits accumulated by the distributing member in a taxable year ending after April 4, 2016, during its expanded group period (*qualified earnings and profits*). For purposes of the preceding sentence, a dividend received from a member (*intermediate distributing member*) is not taken into account for purposes of calculating the qualified earnings and profits of a distributing member (or another intermediate distributing member), except to the extent the dividend is attributable to qualified earnings and profits of the intermediate distributing member. A dividend from a distributing member or an intermediate distributing member is considered to be attributable to qualified earnings and profits to the extent thereof. If the distributing member or the intermediate distributing member is not a covered member, the expanded group period of the member is determined under the principles of paragraph (c)(3)(i)(E) of this section. If a controlled partnership receives a dividend from a distributing member and a portion of the dividend is allocated (including through one or more partnerships) to a covered member, then, for purposes of this paragraph (c)(3)(i)(C)(*3*), the covered member is treated as receiving the dividend from the distributing member.

* * * * *

(g) * * *

(3) * * *

(ii) *Qualified dealer debt instrument.* * * *

(iii) *Excluded statutory or regulatory debt instrument.* * * *

(iv) *Excepted regulated financial company.* * * *

(B) * * *

(*1*) *General rule.* For purposes of paragraph (g)(3)(iv) of this section, except as otherwise provided in paragraph (g)(3)(iv)(B)(*2*) of this section, the term regulated financial group means any expanded group of which a covered member that is a regulated financial company within the meaning of paragraphs (g)(3)(iv)(A)(*1*) through (*10*) of this section would be the expanded group parent if no person owned, directly or indirectly (as defined in § 1.385–1(c)(4)(iii)), the regulated financial company. A domestic eligible entity (within the meaning of § 301.7701–5(a) of this chapter) treated as a partnership or disregarded as an entity separate from its owner is, for purposes of this paragraph (g)(3)(iv)(B), also treated as a covered member.

* * * * *

(v) *Regulated insurance company.* * * *

(24) * * *

(ii) * * *

(B) A distribution or acquisition by either the seller or a successor seller to or from either the acquirer, the seller, or a successor seller is not treated as described in paragraph (b)(3) of this section for purposes of applying

paragraph (b)(3) of this section to a covered debt instrument of the acquirer. For purposes of the preceding sentence, the term successor seller means a member of the expanded group that receives property (other than expanded group stock) in a distribution or acquisition from the seller or another successor seller and is controlled by the acquirer as determined under the principles of paragraph (c)(2)(i) of this section. A successor seller is treated as a successor to the acquirer to the extent of the value of the property received in a distribution or acquisition described in the preceding sentence and, for purposes of applying this paragraph (g)(24)(ii)(B).

(C) To the extent that a covered debt instrument of the acquirer is treated as funding a distribution or acquisition by the seller or successor seller described in paragraphs (b)(3)(i)(A) through (C) of this section, or would be treated but for the exceptions described in paragraphs (c)(3)(i) and (ii) of this section, the value of the expanded group stock described in paragraph (g)(24)(ii)(A) of this section is reduced by an amount equal to the distribution or acquisition for purposes of any further application of paragraph (g)(24)(ii)(A) of this section with respect to the acquirer and seller.

* * * * *

■ **Par. 5.** Section 1.385–3T is amended by:

■ 1. Revising the third sentence of paragraph (b)(3)(vii)(A)(*1*)(*iii*).

■ 2. Revising the fifth sentence and adding a new sixth sentence to paragraph (h) *Example 13*(i).

■ 3. Revising the third sentence of paragraph (h) *Example 13*(ii)(D).

■ 4. Revising the third sentence of paragraph (h) *Example 14*(ii)(D).

■ 5. Revising paragraph (h) *Example 15*(i).

■ 6. Revising the fifth sentence of paragraph (h) *Example 18*(ii)(A).

■ 7. Revising paragraph (l).

The revisions read as follows:

§ 1.385–3T Certain distributions of debt instruments and similar transactions (temporary).

* * * * *

(b) * * *

(3) * * *

(vii) * * *

(A) * * *

(*1*) * * *

(*iii*) * * * Additionally, the amount owed by any issuer shall be reduced by the amount of the issuer's deposits with a qualified cash pool header, but only to the extent of amounts borrowed from the same qualified cash pool header that satisfy the requirements of paragraph (b)(3)(vii)(A)(*2*) (if the covered debt instrument was issued in a prior taxable year) or (b)(3)(vii)(A)(*1*)(*ii*) of this section.

* * * * *

(h) * * *

Example 13. * * *

(i) * * * On Date A in Year 1, FP lends $200x to PRS in exchange for PRS Note with stated principal amount of $200x, which is payable at maturity. PRS Note also provides for annual payments of interest that are qualified stated interest. * * *

(ii) * * *

(D) * * * Similarly, FP is deemed to transfer a portion of PRS Note with a principal amount equal to $90x (the adjusted issue price of the specified portion with respect to USS2) to USS2 in exchange for deemed partner stock in USS2 with a fair market value of $90x. * * *

Example 14. * * *

(ii) * * *

(D) * * * Similarly, FP is deemed to transfer a portion of PRS Note with a principal amount equal to $90x (the adjusted issue price of the specified portion with respect to USS2) to USS2 in exchange for stock of USS2 with a fair market value of $90x. * * *

Example 15. * * *

(i) *Facts.* The facts are the same as in *Example 13* of this paragraph (h)(3), except that USS2 does not distribute $90x to FP until Date C in Year 2, which is less than 36 months after Date A in Year 1. On Date C in Year 2, DS's, USS2's, and USP's issuance percentages under paragraph (g)(16) of this section are unchanged at 45%, 45%, and 10%, respectively.

* * * * *

Example 18. * * *

(ii) * * *

(A) * * * DS's distribution to USS1 is a disregarded distribution because it is a distribution between members of a consolidated group that is disregarded under the one-corporation rule described in § 1.385–4T(b)(1). * * *

* * * * *

(l) *Expiration date.* This section expires on October 13, 2019.

■ **Par. 6.** Section 1.385–4T is amended by:

■ 1. Revising the first sentence of paragraph (b)(2).

■ 2. Revising the first sentence of paragraph (b)(3)(i).

■ 3. Revising paragraphs (b)(3)(ii) and (iii).

■ 4. Revising paragraph (b)(4)(ii)(A)(*1*).

■ 5. Revising paragraph (b)(5)(i).

■ 6. Revising the first sentence of paragraph (b)(6).

■ 7. Revising the first sentence of paragraph (c)(1)(i).

■ 8. Revising the first sentence of paragraph (d)(3).

■ 9. Revising the first sentence of paragraph (d)(4) introductory text.

■ 10. Revising paragraphs (d)(4)(i) and (ii).

■ 11. Revising paragraph (e)(3).

■ 12. Revising paragraph (e)(5).

■ 13. Revising the second sentence of paragraph (f)(3) *Example 1*(ii).

■ 14. Revising the seventh sentence of paragraph (f)(3) *Example 4*(ii).

■ 15. Revising the sixth sentence of paragraph (f)(3) *Example 5*(ii).

■ 16. Revising paragraph (h).

The revisions read as follows:

§ 1.385–4T Treatment of consolidated groups.

* * * * *

(b) * * *

(2) * * * The one-corporation rule described in paragraph (b)(1) of this section does not apply in determining the members of an expanded group. * * *

(3) * * *

(i) * * * If a covered debt instrument treated as issued by a consolidated group under the one-corporation rule described in paragraph (b)(1) of this section is treated as stock under §§ 1.385–3 or 1.385–3T, the covered debt instrument is treated as stock in the member of the consolidated group that would be the issuer of such debt instrument without regard to this section. * * *

(ii) *Application of the covered debt instrument exclusions.* For purposes of determining whether a debt instrument issued by a member of a consolidated group is a covered debt instrument, each test described in § 1.385–3(g)(3) is applied on a separate member basis without regard to the one-corporation rule described in paragraph (b)(1) of this section.

(iii) *Qualified short-term debt instrument.* The determination of whether a member of a consolidated group has issued a qualified short-term debt instrument for purposes of § 1.385–3(b)(3)(vii) is made on a separate member basis without regard to the one-corporation rule described in paragraph (b)(1) of this section.

(4) * * *

(ii) * * *

(A) * * *

(*1*) A qualified contribution to any member of a consolidated group that remains a member of the consolidated group immediately after the qualified contribution from a person other than a member of the same consolidated group is treated as made to the one corporation described in paragraph (b)(1) of this section;

* * * * *

(5) * * *

(i) First, determine the characterization of the transaction under federal tax law without regard to the one-corporation rule described in paragraph (b)(1) of this section.

* * * * *

(6) * * * For purposes of this section and §§ 1.385–3 and 1.385–3T, and notwithstanding the one-corporation rule described in paragraph (b)(1) of this section, a partnership that is wholly owned by members of a consolidated group is treated as a partnership. * * *

* * * * *

(c) * * *

(1) * * *

(i) * * * For purposes of this section and §§ 1.385–3 and 1.385–3T, when a debt instrument ceases to be a consolidated group debt instrument as a result of a transaction in which the member of the consolidated group that issued the instrument (the *issuer*) or the member of the consolidated group holding the instrument (the *holder*) ceases to be a member of the same consolidated group but both the issuer and the holder continue to be members of the same expanded group, the issuer is treated as issuing a new debt instrument to the holder in exchange for property immediately after the debt instrument ceases to be a consolidated group debt instrument. * * *

* * * * *

(d) * * *

(3) * * * If a departing member has issued a covered debt instrument (determined without regard to the one-corporation rule described in paragraph (b)(1) of this section) that is not a consolidated group debt instrument and that is not treated as stock immediately before the departing member ceases to be a consolidated group member, then the departing member (and not the consolidated group) is treated as issuing the covered debt instrument on the date and in the manner the covered debt instrument was issued. * * *

(4) * * * This paragraph (d)(4) applies when a departing member ceases to be a consolidated group member in a transaction other than a distribution to which section 355 (or so much of section 356 as relates to section 355) applies, and the consolidated group has made a regarded distribution or acquisition. * * *

(i) If the departing member made the regarded distribution or acquisition (determined without regard to the one-corporation rule described in paragraph (b)(1) of this section), the departing member (and not the consolidated group) is treated as having made the regarded distribution or acquisition.

(ii) If the departing member did not make the regarded distribution or acquisition (determined without regard to the one-corporation rule described in paragraph (b)(1) of this section), then the consolidated group (and not the departing member) continues to be treated as having made the regarded distribution or acquisition.

(e) * * *

(3) *Disregarded distribution or acquisition.* The term *disregarded distribution or acquisition* means a distribution or acquisition described in § 1.385–3(b)(2) or (b)(3)(i) between members of a consolidated group that is disregarded under the one-corporation rule described in paragraph (b)(1) of this section.

* * * * *

(5) *Regarded distribution or acquisition.* The term *regarded distribution or acquisition* means a distribution or acquisition described in § 1.385–3(b)(2) or (b)(3)(i) that is not disregarded under the one-corporation rule described in paragraph (b)(1) of this section.

(f) * * *

(3) * * *

Example 1. * * *

(ii) * * * Pursuant to paragraph (b)(5)(i) of this section, the transaction is first analyzed without regard to the one-corporation rule described in paragraph (b)(1) of this section, and therefore UST is treated as issuing a covered debt instrument in exchange for expanded group stock. * * *

* * * * *

Example 4. * * *

(ii) * * * Under paragraph (c)(1)(i) of this section, for purposes of § 1.385–3, DS1 is treated as issuing a new debt instrument to USS1 in exchange for property immediately after DS1 Note ceases to be a consolidated group debt instrument. * * *

Example 5. * * *

(ii) * * * Under paragraph (c)(1)(i) of this section, for purposes of § 1.385–3, DS1 is treated as issuing a new debt instrument to USS1 in exchange for property immediately after DS1 Note ceases to be a consolidated group debt instrument. * * *

* * * * *

(h) *Expiration date.* This section expires on October 13, 2019.

■ **Par. 7.** Section 1.752–2T is amended by revising paragraph (m)(2) to read as follows:

§ 1.752–2T Partner's share of recourse liabilities (temporary).

* * * * *

(m) * * *

(2) Paragraphs (c)(3) and (l)(4) of this section expire on October 13, 2019.

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, Procedure and Administration.

[FR Doc. 2017–00498 Filed 1–23–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9790]

RIN 1545–BN40

Treatment of Certain Interests in Corporations as Stock or Indebtedness; Correction.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations; correction.

SUMMARY: This document contains corrections to the final and temporary regulations (T.D. 9790) that were published in the **Federal Register** on Friday, October 21, 2016 (81 FR 72858). The regulations relate to the determination of whether an interest in a corporation is treated as stock or indebtedness for all purposes of the Internal Revenue Code.

DATES: These corrections are effective on January 23, 2017, and applicable October 21, 2016.

FOR FURTHER INFORMATION CONTACT: Austin M. Diamond-Jones, (202) 317–5363, or Joshua G. Rabon, (202) 317–6938 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of this correction are under sections 385 and 752 of the Internal Revenue Code.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and need to be clarified.

Correction of Publication

Accordingly, the final and temporary regulations (TD 9790) that are the subject of FR Doc. 2016–25105 are corrected as follows:

1. On page 72877, in the preamble, second column, the fourth sentence of the second full paragraph, ''The Treasury Department and the IRS have considered this comment and determined that it would be appropriate to disregard subordination if the recharacterization occurred as a result of § 1.385–3 and the final regulations reflect that decision'' is corrected to read ''The Treasury Department and the IRS have considered this comment and determined that it would be appropriate to disregard subordination if the recharacterization occurred as a result of § 1.385–3 or if a recharacterized EGI

provides creditor's rights under commercial law and the final regulations reflect that decision''.

2. On page 72906, second column, the last paragraph, ''The Treasury Department and the IRS have determined that the proposed regulations already properly provided for this result. As a result of an issuance described in the subsidiary stock issuance exception, the issuer (S2) becomes a successor to the transferor (S1) to the extent of the value of the expanded group stock acquired from the issuer, but only with respect to a debt instrument of the issuer issued during the per se period determined with respect to the issuance. If the issuer (S2) engages in another transaction described in the subsidiary stock issuance exception as a transferor, the acquisition of the stock of the expanded group member (the second issuer) would also not constitute an acquisition of expanded group stock by reason of the exception. Therefore, under a second application of the subsidiary stock issuance exception, the acquisition of the stock of S3 by the issuer (S2), a successor to the transferor (S1), is not treated as described in the second prong of the funding rule and thus cannot be treated as funded by a covered debt instrument issued by the transferor (S1). After the second issuance, the second issuer (S3) is a successor to both the first transferor (S1) and the first issuer (S2), which remains a successor to the first transferor (S1). The final and temporary regulations change the terminology, but do not change the result of the proposed regulations in this regard.'' is corrected to read, ''The Treasury Department and the IRS have determined that the proposed regulations already properly provided for this result in the situation where S2 controls S3 within the meaning of § 1.385–3(c)(2)(i)(B). However, the final regulations further clarify the application of the subsidiary stock acquisition exception in other tiered transfer situations, for instance where S2 subsequently engages in a transaction with an expanded group member controlled by S1, but not controlled by S2. See § 1.385–3(g)(24)(ii)(B).''.

3. On page 72916, second column, the second sentence of the first full paragraph from the bottom, ''The comments cited leases treated as loans under section 467; receivables and payables resulting from correlative adjustments under section 482; production payments under section 636; coupon stripping transactions under section 1286; and debt (or instruments treated as debt) described in section 856(m)(2), 860G(a)(1), or 1361(c)(5)'' is corrected to read ''The comments cited leases treated as loans under section 467; receivables and payables resulting from conforming adjustments under section 482; production payments under section 636; coupon stripping transactions under section 1286; and debt (or instruments treated as debt) described in section 856(m)(2), 860G(a)(1), or 1361(c)(5)''.

4. On page 72916, third column, the first complete sentence of the incomplete paragraph at the top, ''The final and temporary regulations also provide an exception for debt instruments deemed to arise as a result of transfer pricing adjustments under section 482'' is corrected to read ''The final and temporary regulations also provide an exception for debt instruments that arise due to conforming adjustments under § 1.482–1(g)(3)''.

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, Procedure and Administration.

[FR Doc. 2017–00497 Filed 1–23–17; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[DA 16–1453]

Annual Adjustment of Civil Monetary Penalties To Reflect Inflation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Inflation Adjustment Act) requires the Federal Communications Commission to amend its forfeiture penalty rules to reflect annual adjustments for inflation in order to improve their effectiveness and maintain their deterrent effect. The 2015 Inflation Adjustment Act provides that the new penalty levels shall apply to penalties assessed after the effective date of the increase, including when the penalties whose associated violation predate the increase.

DATES: Effective January 24, 2017.

FOR FURTHER INFORMATION CONTACT: Celia Lewis, Enforcement Bureau, 202–418–7456, or Gregory Haledjian, Enforcement Bureau, 202–418–7440.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, DA 16–1453, adopted and released on December 30, 2016. The document is available for download at *http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db1230/DA–16–1453A1.pdf.* The complete text of this document is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554.

On November 2, 2015, President Obama signed into law the Bipartisan Budget Act of 2015, which included, as Section 701 thereto, the 2015 Inflation Adjustment Act, which amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410), to improve the effectiveness of civil monetary penalties and maintain their deterrent effect. Under the act, agencies are required to make annual inflationary adjustments by January 15 each year, beginning in 2017. The adjustments are calculated pursuant to Office of Management and Budget (OMB) guidance. OMB issued guidance on December 16, 2016, and this Order follows that guidance. We therefore update the civil monetary penalties set forth in the Commission's rules, to reflect an annual inflation adjustment that derives from OMB's cost-of-living multiplier of 1.01636. The cost-of-living adjustment is ''the percentage (if any)'' by which the ''(A) Consumer Price Index for the month of October preceding the date of the adjustment, exceeds (B) the Consumer Price Index for the month of October 1 year before the month of October referred to in subparagraph (A).''

This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It does not contain any new or modified 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).

The Enforcement Bureau will coordinate with the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center to report this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Penalties.

Federal Communications Commission.

Lisa S. Gelb,

Chief of Staff, Enforcement Bureau.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.,* 47 U.S.C. 151, 154(i) and (j), 155, 157, 160, 201, 225, 227, 303, 309, 301, 332, 1403, 1404, 1451, 1452, and 1455.

■ 2. Section 1.80 is amended by revising the table in Section III of the note to paragraph (b)(8) and revising paragraph (b)(9) to read as follows:

§ 1.80 Forfeiture proceedings.

* * * * *

(b) * * *

(8) * * *

Note to paragraph (b)(8) * * *

Section III. Non-Section 503 Forfeitures That Are Affected by the Downward Adjustment Factors

* * * * *

Violation	Statutory amount ($)
Sec. 202(c) Common Carrier Discrimination	$11,548, $577/day.
Sec. 203(e) Common Carrier Tariffs	$11,548, $577/day.
Sec. 205(b) Common Carrier Prescriptions	$23,095.
Sec. 214(d) Common Carrier Line Extensions	$2,309/day.
Sec. 219(b) Common Carrier Reports	$2,309/day.
Sec. 220(d) Common Carrier Records & Accounts	$11,548/day.
Sec. 223(b) Dial-a-Porn	$119,668/day.
Sec. 227(e) Caller Identification	$11,052/violation. $33,156/day for each day of continuing violation, up to $1,105,241 for any single act or failure to act.
Sec. 364(a) Forfeitures (Ships)	$9,623/day (owner).
Sec. 364(b) Forfeitures (Ships)	$1,925 (vessel master).
Sec. 386(a) Forfeitures (Ships)	$9,623/day (owner).
Sec. 386(b) Forfeitures (Ships)	$1,925 (vessel master).
Sec. 634 Cable EEO	$853/day.

(9) *Inflation adjustments to the maximum forfeiture amount.* (i) Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74 (129 Stat. 599–600), which amends the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, Public Law 101–410 (104 Stat. 890; 28 U.S.C. 2461 note), the statutory maximum amount of a forfeiture penalty assessed under this section shall be adjusted annually for inflation by order published no later than January 15 each year. Annual inflation adjustments will be based on the percentage (if any) by which the CPI–U for October preceding the date of the adjustment exceeds the prior year's CPI–U for October. The Office of Management and Budget (OMB) will issue adjustment rate guidance no later than December 15 each year to adjust for inflation in the CPI–U as of the most recent October.

(ii) The application of the annual inflation adjustment required by the foregoing Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 results in the following adjusted statutory maximum forfeitures authorized by the Communications Act:

U.S. Code citation	Maximum penalty after 2017 inflation adjustment
47 U.S.C. 202(c)	$11,548
	577
47 U.S.C. 203(e)	11,548
	577
47 U.S.C. 205(b)	23,095
47 U.S.C. 214(d)	2,309
47 U.S.C. 219(b)	2,309
47 U.S.C. 220(d)	11,548
47 U.S.C. 223(b)	119,668
47 U.S.C. 227(e)	11,052
	33,156
	1,105,241
47 U.S.C. 362(a)	9,623
47 U.S.C. 362(b)	1,925
47 U.S.C. 386(a)	9,623
47 U.S.C. 386(b)	1,925
47 U.S.C. 503(b)(2)(A)	48,114
	481,147
47 U.S.C. 503(b)(2)(B)	192,459
	1,924,589
47 U.S.C. 503(b)(2)(C)	389,305
	3,593,585
47 U.S.C. 503(b)(2)(D)	19,246
	144,344
47 U.S.C. 503(b)(2)(F)	110,524
	1,105,241
47 U.S.C. 507(a)	1,906
47 U.S.C. 507(b)	279
47 U.S.C. 554	853

* * * * *

[FR Doc. 2017–00365 Filed 1–23–17; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 82, No. 14
Tuesday, January 24, 2017

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 THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 30

[Docket ID OCC–2016–0016]

RIN 1557–AE06

FEDERAL RESERVE SYSTEM

12 CFR Chapter II

[Docket No. R–1550]

RIN 7100–AE 61

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 364

RIN 3064–AE45

Enhanced Cyber Risk Management Standards

AGENCY: The Board of Governors of the Federal Reserve System; the Office of the Comptroller of the Currency; and the Federal Deposit Insurance Corporation.

ACTION: Joint advance notice of proposed rulemaking; re-opening of comment period.

SUMMARY: On October 26, 2016, the Board of Governors of the Federal Reserve System (Board), the Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) published in the **Federal Register** an advance notice of proposed rulemaking (ANPR) regarding enhanced cyber risk management standards (enhanced standards) for large and interconnected entities under their supervision and those entities' service providers. The ANPR addresses five categories of cyber standards: Cyber risk governance; cyber risk management; internal dependency management; external dependency management; and incident response, cyber resilience, and situational awareness. Due to the range and complexity of the issues addressed in the ANPR, the public comment period has been extended until February 17, 2017. This action will allow interested persons additional time to analyze the proposal and prepare their comments.

DATES: The comment period for the advance notice of proposed rulemaking published on October 26, 2016, (81 FR 74315) regarding enhanced cyber risk management standards is extended from January 17, 2017, to February 17, 2017.

ADDRESSES: You may submit comments by any of the methods identified in the ANPR.[1] Please submit your comments using only one method.

FOR FURTHER INFORMATION CONTACT:

Board: Anna Lee Hewko, Associate Director, (202) 530–6260; or Matthew Hayduk, Manager, (202) 973–6190; or Julia Philipp, Senior Supervisory Financial Analyst, (202) 452–3940; or Christopher Olson, Senior Supervisory Financial Analyst, (202) 912–4609, Division of Banking Supervision and Regulation; or Benjamin W. McDonough, Special Counsel, (202) 452–2036; or Claudia Von Pervieux, Counsel, (202) 452–2552; or Michelle Kidd, Counsel, (202) 736–5554, Legal Division; for persons who are deaf or hard of hearing, TTY (202) 263–4869.

OCC: Bethany Dugan, Deputy Comptroller for Operational Risk, (202) 649–6949; or Kevin Greenfield, Director, Bank Information Technology, (202) 649–6954; or Eric Gott, Risk Team Lead for Governance and Operational Risk, Large Bank Supervision, (202) 649–7181; or Patrick Kelly, Bank Examiner, Critical Infrastructure Protection, (202) 649–5519; or Carl Kaminski, Special Counsel, Beth Knickerbocker, Counsel, or Rima Kundnani, Attorney, Legislative and Regulatory Activities Division, (202) 649–5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

FDIC: Donald Saxinger, Senior Examination Specialist, IT Supervision Branch, Division of Risk Management Supervision, (703) 254–0214; or John Dorsey, Counsel, Supervision & Legislation Branch, Legal Division, (202) 898–3807.

SUPPLEMENTARY INFORMATION: On October 26, 2016, the agencies published in the **Federal Register** an advance notice of proposed rulemaking regarding enhanced cyber risk management standards (enhanced standards) for large and interconnected entities under their supervision and those entities' service providers.[2] The ANPR stated that the public comment period would close on January 17, 2017.[3]

The agencies received a number of requests to extend the comment period for the ANPR. Due to the range and complexity of the issues addressed in the ANPR, the agencies believe it is appropriate to extend the public comment period until February 17, 2017. This action will allow interested persons additional time to analyze the proposal and prepare their comments.

Dated: January 13, 2017.

Thomas J. Curry,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, January 10, 2017.

Robert deV. Frierson,

Secretary of the Board.

Dated: January 13, 2017.

Federal Deposit Insurance Corporation by,

Valerie Best,

Assistant Executive Secretary.

[FR Doc. 2017–01539 Filed 1–23–17; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

[1] *See* 81 FR 74315 (October 26, 2016).

[2] *Id.*

[3] *Id.*

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–135122–16]

RIN 1545–BN76

Dividend Equivalents From Sources Within the United States

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains proposed regulations relating to certain financial products providing for payments that are contingent upon or determined by reference to U.S. source dividend payments.

DATES: Written or electronic comments must be received by April 24, 2017.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–135122–16), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–135122–16), Courier's desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20044, or sent electronically, via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–135122–16). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, D. Peter Merkel or Karen Walny at (202) 317–6938; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing Regina Johnson at (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Final and temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** contain amendments to the Income Tax Regulations (26 CFR part 1), which provide rules relating to dividend equivalents for purposes of section 871(m). The temporary regulations provide guidance relating to when the delta of an option that is listed on a foreign regulated exchange may be calculated based on the delta of that option at the close of business on the business day prior to the date of issuance. The temporary regulations also provide guidance identifying which party to a potential section 871(m) transaction is responsible for determining whether a transaction is a section 871(m) transaction when multiple brokers or dealers are involved in the transaction. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the final and temporary regulations explains the temporary regulations and these proposed regulations. The regulations affect nonresident alien individuals, foreign corporations, and withholding agents, as well as certain other parties to section 871(m) transactions and their agents.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. Because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f), these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Request for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the ''Addresses'' heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at *www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are D. Peter Merkel and Karen Walny of the Office of 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

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

§ 1.871–15 also issued under 26 U.S.C. 871(m). * * *

■ **Par. 2.** Section 1.871–15 is amended by revising paragraph (a)(1), paragraph (g)(4)(ii)(B), paragraphs (p)(1)(ii) through (p)(1)(iv), and paragraph (p)(5) to read as follows:

§ 1.871–15 Treatment of dividend equivalents.

(a) * * *

(1) [The text of the proposed amendments to § 1.871–15(a)(1) is the same as the text of § 1.871–15T(a)(1) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(g) * * *

(4) * * *

(ii) * * *

(B) [The text of the proposed amendments to § 1.871–15(g)(4)(ii)(B) is the same as the text of § 1.871–15T(g)(4)(ii)(B) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(p) * * *

(1) * * *

(ii) [The text of the proposed amendments to § 1.871–15(p)(1)(ii) is the same as the text of § 1.871–15T(p)(1)(ii) published elsewhere in this issue of the **Federal Register**.

(iii) [The text of the proposed amendments to § 1.871–15(p)(1)(iii) is the same as the text of § 1.871–15T(p)(1)(iii) published elsewhere in this issue of the **Federal Register**.]

(iv) [The text of the proposed amendments to § 1.871–15(p)(1)(iv) is the same as the text of § 1.871–15T(p)(1)(iv) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(5) [The text of the proposed amendments to § 1.871–15(p)(5) is the same as the text of § 1.871–15T(p)(5) published elsewhere in this issue of the **Federal Register**.]

* * * * *

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2017–01161 Filed 1–19–17; 4:15 pm]

BILLING CODE 4830–01–P

Notices

Federal Register

Vol. 82, No. 14

Tuesday, January 24, 2017

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

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of intent; correction.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, is correcting the notice stating it intends to grant to Huvepharma, Inc. of Peachtree City, Georgia, an exclusive license to U.S. Patent Application Serial No. 15/108,725, ''MUTATED SALMONELLA ENTERIACA'', filed on June 28, 2016.

Correction

In the **Federal Register** of January 13, 2017 in FR Doc. 9, on page 4279, of the summary section, 3rd and fourth line should read as follows: ''MUTATED SALMONELLA ENTERICA'', filed on June 28, 2016.

Yvette Anderson,

Federal Register Liaison Officer for ARS, ERS, and NASS.

[FR Doc. 2017–01385 Filed 1–23–17; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Visioning of United States, (U.S.) Agricultural Systems for Sustainable Production Stakeholder Listening Session Meeting

AGENCY: Office of the Chief Scientist of the United States Department of Agriculture, OCS, USDA.

ACTION: Notice of a meeting.

SUMMARY: The OCS, USDA announces a Visioning of U.S. Agriculture Systems for Sustainable Production Listening Session for those interested in the long-term health and viability of U.S. Agriculture and for concurrently improving the economic, environmental, security, and health benefits to the U.S. through agriculture over the next 50 years.

DATES: Listening session: The listening session will be on Thursday, March 2, 2017 will begin at 8:30 a.m. and is scheduled to end by 5:00 p.m.

Registration: You must register by February 27, 2017, to attend in person and to provide oral comments during the listening session. The number of attendees and oral commenters is limited due to time and space constraints (see below) on a first come, first served basis. All interested, regardless of attending, are welcome to submit written comments.

Comments: Written comments are due by March 9, 2017. Written comments must be submitted electronically to the Contact Person identified in this notice.

ADDRESSES: The meeting will take place at the Jamie L. Whitten Building, 12th Street and Jefferson Drive SW., Washington, DC 20250. All participants are required to enter through the Jefferson Drive entrance to the building. This is the entrance facing the National mall.

FOR FURTHER INFORMATION CONTACT: Seth Murray, Senior Advisor, Office of the Chief Scientist; telephone: (202) 692–0204; fax: (202) 260–8786; or email: *seth.murray@osec.usda.gov* .

SUPPLEMENTARY INFORMATION: The OCS was established in 2011 [FR Doc. 2011–4128] within the Research, Education and Economics (REE) mission area of USDA, to identify the authorities of the Under Secretary for REE (Chief Scientist of the Department) and the Director of the OCS with respect to scientific integrity within USDA and the coordination of agricultural research, education, and extension programs and activities. The Chief Scientist provides leadership and coordination for four agencies of the mission area—the Agricultural Research Service; Economic Research Service; National Institute of Food and Agriculture; and the National Agricultural Statistics Service.

Agricultural Systems include row crops, horticultural crops, rangeland, livestock, aquaculture, forest, urban agriculture, and alternative agricultural production systems for food, fiber and fuel in addition to the water, landscape and ecosystem services they depend on and affect.

New technologies and scientific discoveries are creating possibilities for novel agricultural systems that could better meet holistic societal needs beyond existing systems. Researching, designing and implementing these systems requires coordination across extremely diverse stakeholders, recognition of regional differences, and a longer timeline than incremental improvements to existing systems. The listening session will elicit stakeholder input from industry and state representatives, federal representatives from within USDA and other agencies, national organizations and institutions, local producers, and other groups interested in issues facilitating opportunities in the long-term for sustainable agricultural production. Short term (less than seven years) and incremental solutions are outside the scope of this particular listening session.

On Thursday, March 2, 2017 the listening session will be held from 8:30 a.m.–5:00 p.m. in room 107A of the Jamie L. Whitten building. A consultant may be assisting with coordinating and facilitating the session. The morning session will include brief introductions to relevant USDA agencies, other Federal agencies and invited subject matter experts, relevant to long-term support and visioning of agricultural systems. After this, approximately 10 minute presentations will be given by stakeholders that discuss strengths, weaknesses, opportunities and/or threats of future agricultural production systems. Following lunch, stakeholder presentations will continue. In the afternoon, a summary and discussion session will take place in which participants will be asked to discuss their reactions to the information presented earlier in the day as well as respond to a set of questions presented by the organizers aimed at getting feedback for the strengths, weaknesses, opportunities and threats in current and future agricultural systems towards sustainable production. An updated schedule will be available online at least one month before the session from *https://www.usda.gov/ocs,* or by emailing *seth.murray@osec.usda.gov.*

All stakeholders are welcome to apply for a 10-minute presentation slot, however, due to time constraints, a

limited number will be selected. Selections will be made to maintain a diversity of topics (*e.g.* animal, aquaculture, grain, fruit, landscape, plant, soil, etc.) and geographies but on a first come, first served basis. To apply for a slot, please email the Contact Person, Dr. Seth Murray, listed above with a one to two sentence topic description. All presentations may be oral and/or in PowerPoint, however, a written transcript of the talk should be submitted no later than one week after the event.

All parties interested in attending this event must RSVP no later than February 27, 2017 to the Contact Person, Dr. Seth Murray, listed previously. Due to size constraints in the meeting room, only the first 70 responders will be accepted.

Written comments by attendees or other interested stakeholders will be welcomed before and up to one week following the listening session (March 9, 2017). All statements will become a part of the official record of the OCS and will be kept on file in that office.

Done at Washington, DC, this 17th day of January 2017.

Ann Bartuska,

Acting Under Secretary, Research, Education, and Economics.

[FR Doc. 2017–01506 Filed 1–23–17; 8:45 am]

BILLING CODE 3410–03–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Wisconsin Advisory Committee for a Meeting To Begin Discussion of a Draft Report Resulting From the Committee's Study of Hate Crime in the State

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Wisconsin Advisory Committee (Committee) will hold a meeting on Monday, February 06, 2017, at 12:00 p.m. CST for the purpose of discussing testimony received regarding hate crime in the state, in preparation to issue a civil rights report to the Commission on the topic. This meeting is a *reschedule* of the Committee's January 13, 2017 meeting which was postponed.

DATES: The meeting will be held on Monday, February 06, 2017, at 12:00 p.m. CST.

ADDRESSES: Public call information: Dial: 888–256–9128, Conference ID: 3777259.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 888–256–9128, conference ID: 3777259. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Midwestern Regional Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Wisconsin Advisory Committee link (*http://www.facadatabase.gov/committee/meetings.aspx?cid=282*). Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Midwestern Regional Office at the above email or street address.

Agenda

Welcome and Introductions
Discussion of civil rights report: Hate Crime in Wisconsin
Public Comment
Future Plans and Actions
Adjournment

Dated: January 18, 2016.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2017–01522 Filed 1–23–17; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meetings of the West Virginia Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of monthly planning meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the West Virginia Advisory Committee (Committee) to the Commission will convene by conference call on Friday, February 3, 2017, at 12:00 p.m. (EST) on. The purpose of meetings are to continue discussing topics for civil rights project.

DATES: Friday, February 3, 2017. Time: 12:00 p.m. (EST).

ADDRESSES: Public call-in information: Conference call-in number: 1–888–601–3861 and password: 636552.

FOR FURTHER INFORMATION CONTACT: Ivy L. Davis, at *ero@usccr.gov* or by phone at 202–376–7533

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–888–601–3861 and password: 636552. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–977–8339 and providing the operator with the toll-free conference

call-in number: 1–888–601–3861 and password: 636552.

Members of the public are invited to submit written comments; the comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to *Evelyn Bohor at ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *http://facadatabase.gov/committee/meetings.aspx?cid=281;* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone numbers, email or street address.

Agenda

I. Welcome and Introductions
—Rollcall
Planning Meeting
—Discuss Civil Rights Topics for Civil Rights Project
II. Other Business
III. Open Comment
IV. Adjournment

Dated: January 18, 2017.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2017–01519 Filed 1–23–17; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Illinois Advisory Committee for a Meeting To Finalize Preparations for a Public Hearing on Civil Rights and Voter Participation in the State

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Illinois Advisory Committee (Committee) will hold a meeting on Monday, March 06, 2017, at 12:00 p.m. CST for the purpose of finalizing preparations to host a public hearing on civil rights and voter participation in the state.

DATES: The meeting will be held on Monday, March 06, 2017, at 12:00 p.m. CST

ADDRESSES: Public call information: Dial: 888–428–9473, Conference ID: 2751216

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 888–428–9473, conference ID: 2751216. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Midwestern Regional Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Illinois Advisory Committee link (*http://www.facadatabase.gov/committee/meetings.aspx?cid=246*). Select ''meeting details'' and then ''documents'' to download. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Midwestern Regional Office at the above email or street address.

Agenda

Welcome and Roll Call
Discussion of Project Preparation:
Voting Rights in Illinois
Public Comment
Future Plans and Actions
Adjournment

Dated: January 18, 2017.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2017–01521 Filed 1–23–17; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Illinois Advisory Committee for a Meeting To Finalize Preparations for a Public Hearing on Civil Rights and Voter Participation in the State

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Illinois Advisory Committee (Committee) will hold a meeting on Wednesday, February 08, 2017, at 12:00 p.m. CST for the purpose of finalizing preparations to host a public hearing on civil rights and voter participation in the state.

DATES: The meeting will be held on Wednesday, February 08, 2017, at 12:00 p.m. CST.

ADDRESSES: Public call information: Dial: 888–428–9473, Conference ID: 2751216.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 888–428–9473, conference ID: 2751216. Any interested member of the public may call this number and listen to the meeting. An

open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Midwestern Regional Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Illinois Advisory Committee link (*http://www.facadatabase.gov/committee/meetings.aspx?cid=246*). Select ''meeting details'' and then ''documents'' to download. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Midwestern Regional Office at the above email or street address.

Agenda

Welcome and Roll Call
Discussion of Project Preparation:
Voting Rights in Illinois
Public Comment
Future Plans and Actions
Adjournment

Dated: January 18, 2017.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2017–01520 Filed 1–23–17; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request; Voluntary Self-Disclosure of Violations of the Export Administration Regulations

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security.

Title: Voluntary Self-Disclosure of Violations of the Export Administration Regulations.

Form Number(s): N/A.

OMB Control Number: 0694–0058.

Type of Review: Regular submission.

Estimated Total Annual Burden Hours: 3,880.

Estimated Number of Respondents: 388.

Estimated Time per Response: 10 hours.

Needs and Uses: This collection of information is needed to detect violations of the Export Administration Act and Regulations, and determine if an investigation or prosecution is necessary and to reach a settlement with violators.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at reginfo.gov *http://www.reginfo.gov/public/*. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov*.

Sheleen Dumas,

PRA Departmental Lead, Office of the Chief Information Officer.

[FR Doc. 2017–01498 Filed 1–23–17; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[1/13/2017 through 1/17/2017]

Firm name	Firm address	Date accepted for investigation	Product(s)
Belden Tools, Inc., d/b/a Belden Universal.	2500 Braga Drive; Broadview, IL 60155.	1/13/2017	The firm manufactures machined metal mechanical power transmission components and universal joints.
Sharn Enterprises, Inc	22749 Citation Road; Frankfort, IL 60423.	1/17/2017	The firm manufactures custom store fixtures and display equipment.
Northstar Attachments, LLC ...	Post Office Box 1937; Yakima, WA 98907.	1/17/2017	The firm manufactures hay rakes, bucket forks, pallet forks, and implements.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Miriam Kearse,

Lead Program Analyst.

[FR Doc. 2017–01472 Filed 1–23–17; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF178

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Herring Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, February 7, 2017 at 10 a.m.

ADDRESSES: The meeting will be held at the Sheraton Harborside, 250 Market Street, Portsmouth, NH 03801; telephone: (603) 431–2300.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Herring Committee will continue development of measures related to localized depletion and potential user conflicts in Amendment 8 to the Atlantic Herring Fishery Management Plan. The Committee will also address other business as necessary.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request

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

Dated: January 18, 2017.

Tracey L. Thompson,

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

[FR Doc. 2017–01563 Filed 1–23–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF176

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) will convene a work session via webinar for the Scientific and Statistical Committee's (SSC) Economics Subcommittee, which is open to the public.

DATES: The webinar meeting will be held Thursday, February 9, 2017, from 9 a.m. until 5 p.m. (Pacific Daylight Time) or when business for the day has been completed.

ADDRESSES: To attend the webinar, visit: *http://www.gotomeeting.com/online/webinar/join-webinar.* Enter the Webinar ID, which is 480–960–155, and your name and email address (required). After logging into the webinar, dial this TOLL number 1+ (562) 247–8321 (not a toll-free number), then enter the Attendee phone audio access code: 943–128–623, then enter your audio phone pin (shown after joining the webinar). **Note:** We have disabled Mic/Speakers as on option and require all participants to use a telephone or cell phone to participate. You may send an email to Mr. Kris Kleinschmidt at *kris.kleinschmidt@noaa.gov* or contact him at 503–820–2280, extension 425 for technical assistance. A public listening station will be available at the Pacific Council office.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Mr. Brett Wiedoff, Staff Officer, Pacific Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The primary purpose of the work session is to discuss a methodology for examining socioeconomic impacts of the Pacific Council's policies for the modification of essential fish habitat designations and rockfish conservation areas under Amendment 28 to the Pacific Coast Groundfish Fishery Management Plan.

Although nonemergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent of the SSC subcommittee to take final action to address the emergency.

Technical Information and System Requirements

PC-based attendees: Windows® 7, Vista, or XP operating system required. Mac®-based attendees: Mac OS® X 10.5 or newer required. Mobile attendees: iPhone®, iPad®, Android™ phone or Android tablet required (use GoToMeeting Webinar Apps).

Special Accommodations

The public listening station is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (503) 820–2280 at least 10 days prior to the meeting date.

Dated: January 17, 2017.

Tracey L. Thompson,

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

[FR Doc. 2017–01478 Filed 1–23–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF175

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting via webinar.

SUMMARY: The Gulf of Mexico Fishery Management Council will hold a Post Council Meeting Briefing for the public via webinar.

DATES: The meeting will convene on Wednesday, February 8, 2017; starting at 6 p.m. EDT and ending no later than 9 p.m. EDT.

ADDRESSES: The meeting will take place via webinar at: *https://attendee.gotowebinar.com/register/6877778762909006595.*

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Emily Muehlstein, Public Information Officer, Gulf of Mexico Fishery Management Council; *emily.muehlstein@gulfcouncil.org,* telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Agenda

1. Welcome and Introductions
2. Review of Council actions taken during the January, 2017 Council Meeting
3. Questions and Answers
4. Adjourn

You may register for the Post October Council Meeting Briefing Webinar at: *https://attendee.gotowebinar.com/register/6877778762909006595.*

After registering, you will receive a confirmation email containing information about joining the webinar.

Dated: January 17, 2017.

Tracey L. Thompson,

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

[FR Doc. 2017–01447 Filed 1–23–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2015–0018]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by February 23, 2017.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Recreation Use and Expenditure Survey; OMB Control Number 0710–XXXX.

Type of Request: New.

Number of Respondents: 19,050.

Responses per Respondent: 1.11.

Annual Responses: 21,100.

Average Burden per Response: 6 minutes (0.1 hours).

Recreation Use Survey—5 minutes per response.

Abbreviated Bus/Bike Survey—2 minutes per response.

Web-Based Follow-up Economic Survey—11 minutes per response.

Annual Burden Hours: 1,941 hours.

Needs and Uses: This survey estimates the number and type of recreation visits to Corps of Engineers lands and related expenditures. The data collected is used to identify, quantify and evaluate recreation use and expenditures for planning, feasibility studies, environmental assessments, environmental impact statements, development of visitation models, and estimates of economic impacts for both existing water resources projects and proposed water resource development. The survey provides load-factor statistics that can be applied to monthly vehicle traffic meter tallies to estimate use levels.

Affected Public: Individuals or households; Business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Stuart Levenbach.

Comments and recommendations on the proposed information collection should be emailed to Mr. Stuart Levenbach, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

Instructions: All submissions received must include the agency name, Docket ID number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 03F09, Alexandria, VA 22350–3100.

Dated: January 17, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2017–01432 Filed 1–23–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2017–HQ–0002]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: Pursuant to the Privacy Act of 1974 notice is hereby given that the Department of the Army proposes to alter a system of records, A0350–1b TRADOC, entitled ''Army Career Tracker (ACT),'' last published at 76 FR 26714 on May 9, 2011. The Army Career Tracker (ACT) exists to enable Soldiers and Army civilians world-wide with career development and transition resources. ACT provides users with a more efficient and effective way to monitor their career development while allowing leaders to track and advise subordinates on personalized leadership development. As a leader development tool, it integrates data on training, education, and experiential learning from a number of source systems into one personalized and easy-to-use

interface. ACT allows supervisors to track and advise employees on their leadership development and allows career program managers the ability to reach their geographically dispersed careerists. The Total Army Sponsorship Program is also administered through ACT. The sponsorship program provides Soldiers and Army civilians and their families with resources to facilitate their transition and/or relocation between commands and duty assignments.

This alteration to the system of records notice incorporates the applicable DoD Routine Uses in the notice to provide clarity for the public. The categories of individuals has been updated to reflect the inclusion of Army Reserve, Guard, and Reserve Officer Training Corps personnel. The category of records was expanded to cover data that is collected and used in support of the Total Army Sponsorship Program. Further, the authorities were updated to cite the specific sections of the United States Code and identify the DoD issuances that implement the program. The purpose has been revised to clarify the use and description of these records. The systems that are data sources or interface with ACT have been denoted in the records source categories. Lastly, administrative corrections were made to the system location, retrievability, safeguards, system manager and address, notification and record access procedures, and contesting records procedures.

DATES: Comments will be accepted on or before February 23, 2017. This proposed action will be effective the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.*

Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, Regulatory and Advisory Committee Division, 4800 Mark Center Drive, Mailbox #24, Suite 08D09B, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Tracy Rogers, Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905 or by calling (703) 428–7499.

SUPPLEMENTARY INFORMATION: The Department of the Army's notices for system of records subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or from the Defense Privacy, Civil Liberties, and Transparency Division Web site *http://dpcld.defense.gov/.*

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, as amended, were submitted on January 5, 2017, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4 of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' revised November 28, 2000 (December 12, 2000 65 FR 77677).

Dated: January 17, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0350–1b TRADOC

SYSTEM NAME:

Army Career Tracker (ACT) (May 9, 2011, 76 FR 26714)

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Army commands, installations, and activities. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Department of the Army military personnel (active duty, Army National Guard, and Army Reserve), Army Reserve Officers' Training Corps contracted cadets, and Army civilian employees.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Demographic data to include name, grade/rank/series, Social Security Number (SSN); DoD ID Number; Army Knowledge Online User Identification; primary email address; personal and duty phone numbers; service component, branch, personnel classification, military status, military occupational specialty; and unit of assignment. Sponsorship data to include family members' name, age, gender, relationship, identification of exceptional family member, spouse's employment and driver's license information.

Course and training data to include credit hours accumulated; examination and course completion status; professional development model; assignment history; student academic status; curricula, course descriptions and schedules; graduation dates; and individual goals.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''5 U.S.C. 4103, Establishment of training programs; 10 U.S.C. 3013, Secretary of the Army; Department of Defense Directive 1322.18, Military Training; Army Regulation (AR) 350–1, Army Training and Leader Development; AR 600–20, Army Command Policy; AR 600–8–8, The Total Army Sponsorship Program; AR 690–950, Career Management; and E.O. 9397 (SSN), as amended.''

PURPOSE(S):

Delete entry and replace with ''Army Career Tracker (ACT) is a leadership development tool that integrates training and education into one personalized, easy-to-use Web site. ACT receives training, education, experiential learning, personnel, and biographical data from several Army information systems and presents a comprehensive and personalized view of Noncommissioned Officer, Officer, and Army civilian career history, course enrollment, course completion, course catalog, and professional development model information. Users can search multiple education and training resources, monitor their career development and receive personalized advice. The system allows civilian and military supervisors, and mentors to monitor the individual's goals and provide them developmental recommendations, notifications and career advice. Supervisors can view records for both their civilian and military employees.

ACT is also used to administer the Total Army Sponsorship Program which

helps Soldiers, civilian employees, and families successfully relocate into and out of their commands. Soldiers in the ranks of private through colonel (excluding Soldiers arriving at Initial Military Training (IMT) and Soldiers making PCS moves to student detachments at long-term schools) and civilian employees through grade GS–15, undergoing a PCS move, are offered the opportunity to participate in the advance arrival sponsorship program.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act if 1974, as amended, the records contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Law Enforcement Routine Use: If a system of records maintained by a DoD Component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the agency concerned, whether federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

Congressional Inquiries Disclosure Routine Use: Disclosure from a system of records maintained by a DoD Component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Disclosure to the Department of Justice for Litigation Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

Data Breach Remediation Purposes Routine Use: A record from a system of records maintained by a Component may be disclosed to appropriate agencies, entities, and persons when (1) The Component suspects or has confirmed that the security or confidentiality of the information in the system of records has been compromised; (2) the Component has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Component or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Components efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.''

* * * * *

RETRIEVABILITY:

Delete entry and replace with ''Individual's name, SSN, DoD ID Number, or Army Knowledge Online User Identification.''

SAFEGUARDS:

Delete entry and replace with ''Access to the system is restricted to authorized personnel only with Army Knowledge Online authorization using sign-on and password, or a Common Access Card (CAC). Records are maintained within secured buildings in areas accessible only to persons having an official need-to-know and who are properly trained and screened.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Commander, Headquarters, U.S. Army Training and Doctrine Command, Institute of Noncommissioned Officer Professional Development Office (ATCG–NCN), 950 Jefferson Ave., Fort Eustis, VA 23604–5704.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Headquarters, U.S. Army Training and Doctrine Command, Institute of Noncommissioned Officer Professional Development Office (ATCG–NCN), 950 Jefferson Ave., Fort Eustis, VA 23604–5704.

Individuals should provide full name, SSN, military status, or other information verifiable from the record itself.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Headquarters, U.S. Army Training and Doctrine Command, Institute of Noncommissioned Officer Professional Development Office (ATCG–NCN), 950 Jefferson Ave, Fort Eustis, VA 23604–5704.

Individual should provide full name, SSN, military status, or other information verifiable from the record itself.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The Army's rules for accessing records, contesting contents, and appealing initial agency determinations are contained in 32 CFR part 505, the Army Privacy Program, or may be obtained from the system manager.''

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Individual, DoD personnel (supervisors, mentors, training and human resources staff), Army Knowledge Online (AKO), Integrated Total Army Personnel Database (ITAPDB), Headquarters Army Civilian Personnel System (HQ ACPERS), Defense Civilian Personnel Data System for National Guard (NG–DCPDS), Reserve Component Management System (RCMS), Army Training

Requirements & Resources System (ATRRS), Army Learning Management System (ALMS), GoArmyEd, Force Management System Web site (FMSWEB), Credentialing Opportunities On-Line (COOL), Partnership for Youth Success (PaYS), Soldier Fitness Training (SFT), and Comprehensive Soldier Fitness (CSF).''

* * * * *

[FR Doc. 2017–01477 Filed 1–23–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Notice of Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The 2017 Defense Science Board (DSB) Summer Study Task Force on Countering Anti-access Systems with Longer Range and Standoff Capabilities (''the Long Range Effects Summer Study Task Force'') will meet in closed session on Thursday, January 26, 2017, from 8:15 a.m. to 12:00 p.m. and 12:30 p.m. to 6:00 p.m. and Friday, January 27, 2017, from 8:00 a.m. to 3:00 p.m. at the Strategic Analysis Inc. Executive Conference Center, 4075 Wilson Blvd., Suite 350, Arlington, VA.

DATES: January 26, 2017, from 8:15 a.m. to 6:00 p.m.; and January 27, 2017, from 8:00 a.m. to 3:00 p.m.

ADDRESSES: Strategic Analysis Inc. Executive Conference Center, 4075 Wilson Blvd., Suite 350, Arlington, VA (January 26–27, 2017).

FOR FURTHER INFORMATION CONTACT: Ms. Debra Rose, Executive Officer, Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301–3140, via email at *debra.a.rose20.civ@mail.mil,* or via phone at (703) 571–0084 or the Defense Science Board's Designated Federal Officer (DFO) Ms. Karen D.H. Saunders, Executive Director, Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301, via email at *karen.d.saunders.civ@mail.mil* or via phone at (703) 571–0079.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Designated Federal Officer and the Department of Defense, the 2017 Defense Science Board Summer Study Task Force on Countering Anti-access Systems with Longer Range and Standoff Capabilities (''the Long Range Effects Summer Study Task Force'') was unable to provide public notification of its meetings on January 26–27, 2017, as required by 41 CFR 102–3.150(a). Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

These meetings are being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

The mission of the Defense Science Board is to provide independent advice and recommendations on matters relating to the Department of Defense's (DoD) scientific and technical enterprise. The objective of the Long Range Effects Summer Study Task Force is to explore new defense systems and technology that will enable cost effective power projection that relies on the use of longer stand-off distances than current capabilities. System components may be deployed on manned or unmanned platforms with a range of potential autonomous capabilities. Use of cost reducing technology and advanced production practices from defense and commercial industry may be a major part of the strategy for deploying adequate numbers of weapons. The study should investigate and analyze all of these areas and recommend preferred system options. This two-day session will focus on providing general threat briefings, to include country briefings and respective threat system capabilities. United States capabilities will also be briefed by the Joint Staff and the military services. The organizations briefing include the Defense Intelligence Agency, Missile Defense Agency, U.S. Navy and U.S. Air Force. Additionally the DSB will present recently completed studies to include: Air Dominance, Next Generation Unmanned Undersea Systems and Ballistic Missile and Cruise Missile Defense.

In accordance with section 10(d) of the FACA and 41 CFR 102–2.155, the DoD has determined that the Long Range Effects Summer Study Task Force meeting will be closed to the public. Specifically, the Under Secretary of Defense (Acquisition, Technology, and Logistics), in consultation with the DoD Office of General Counsel, has determined in writing that the meeting will be closed to the public because matters covered by 5 U.S.C. 552b(c)(1) will be considered. The determination is based on the consideration that it is expected that discussions throughout will involve classified matters of national security concern. Such classified material is so intertwined with the unclassified material that it cannot reasonably be segregated into separate discussions without defeating the effectiveness and meaning of the overall meetings. To permit the meetings to be open to the public would preclude discussion of such matters and would greatly diminish the ultimate utility of the DSB's findings or recommendations to the Secretary of Defense and to the Under Secretary of Defense for Acquisition, Technology, and Logistics.

In accordance with section 10(a)(3) of the FACA and 41 CFR 102–3.105(j) and 102–3.140, interested persons may submit a written statement for consideration by the Long Range Effects Summer Study Task Force members at any time regarding its mission or in response to the stated agenda of a planned meeting. Individuals submitting a written statement must submit their statement to the DSB's DFO—Ms. Karen D.H. Saunders, Executive Director, Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301, via email at *karen.d.saunders.civ@mail.mil* or via phone at (703) 571–0079 at any point, however, if a written statement is not received at least 3 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Long Range Effects Summer Study Task Force. The DFO will review all submissions with the Long Range Effects Summer Study Task Force Co-Chairs and ensure they are provided to Long Range Effects Summer Study Task Force members prior to the end of the two-day meeting on January 27, 2017.

Dated: January 18, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2017–01516 Filed 1–23–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2017–OS–0005]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: Pursuant to the Privacy Act of 1974, and Office of Management and Budget (OMB) Circular No. A–130, notice is hereby given that the Office of

the Secretary of Defense proposes to alter a system of records, DPR 45 DoD, entitled ''Military OneSource (MOS) Case Management System (CMS)''. Military OneSource (MOS) is an Outreach Web site for the purpose of providing comprehensive information to members of the Armed Forces and their families about the benefits and services that are available to them. The covered benefits and services that are relevant to Military OneSource include information regarding financial compensation including financial counseling, educational assistance and benefits, relocation planning and preparation, quality of life programs, and family and community programs. The MOS is a Department of Defense-funded program (non-personal services contract) providing comprehensive information on every aspect of military life at no cost to Active Duty, Guard and Reserve Service members, and their families. These services are available 24 hours a day by telephone and online from any location in the world.

This update reflects considerable administrative changes that in sum warrant an alteration to the systems of records notice. The applicable DoD Routine Uses have been incorporated in the notice to provide clarity for the public. Additionally, the categories records, authority for maintenance of the system, the purpose, retrievability, safeguards, retention and disposal, notification and record access procedures, and the contesting procedures.

DATES: Comments will be accepted on or before February 23, 2017. This proposed action will be effective the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

* *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, Regulatory and Advisory Committee Division, 4800 Mark Center Drive, Mailbox #24, Suite 08D09B, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mrs. Luz D. Ortiz, Chief, Records, Privacy and Declassification Division (RPD2), 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0478.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy, Civil Liberties and Transparency Division Web site at *http://dpcld.defense.gov/.*

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on January 5, 2017, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4 of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' revised November 28, 2000 (December 12, 2000 65 FR 77677).

Dated: January 17, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DPR 45 DoD

SYSTEM NAME:

Military OneSource (MOS) Case Management System (CMS) (February 11, 2015, 80 FR 7579)

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Individual's full name, date of birth, gender, marital status, relationship to service member, rank, unit, branch of military service, military status, current address and mailing address, telephone numbers (work/home/cell/DSN) and participant authorization or refusal to allow incoming/outgoing text messages between participant and Military OneSource, email address, participant ID and case number (automatically generated internal numbers not provided to the participant), presenting issue/information requested, handoff type to contractor, handoff notes, if interpretation is requested and the language, referrals, and feedback from quality assurance follow-up with participants.

Learning Management System: User account name, course history (attempted dates/times, grades), member type, agency, installation, unit, and service provider affiliation.

Non-medical counseling information: Psychosocial history, assessment of personal concerns, provider name, phone number, and location, authorization number, and outcome summary.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 1781 note, Establishment of Online Resources To Provide Information About Benefits and Services Available to Members of the Armed Forces and Their Families; DoD Directive 1404.10, DoD Civilian Expeditionary Workforce; DoD Directive 1322.18, Military Training; DoD Instruction (DoDI) 1342.22, Military Family Readiness; DoDI 6490.06, Counseling Services for DoD Military, Guard and Reserve, Certain Affiliated Personnel, and Their Family Members; and DoDI 1322.26, Development, Management, and Delivery of Distributed Learning.''

PURPOSE:

Delete entry and replace with ''MOS CMS allows the documentation of an individual's eligibility; identification of the caller's inquiry or issue to provide a warm hand-off, referral and/or requested information; the development towards a final solution and referral information. The system also processes training registration, enrollment requests, and self-motivated education/training for its Learning Management System. Records may be used as a management tool for statistical analysis, tracking, reporting, and evaluating program effectiveness and conducting research. Information about individuals indicating a threat to self or others will be reported to the appropriate authorities in accordance with DoD/Military Branch of Service and Component regulations and established protocols.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C 552a(b)(3) as follows:

To authorized DoD MOS contractors for the purpose of responding to Service member or family member need.

To contractors and grantees for the purpose of supporting research studies concerned with the effectiveness of non-medical counseling interventions.

To local law enforcement entities for the purpose of intervention to prevent harm to the individual (self) in accordance with DoD/Military Branch of Service and Component regulations and established protocols.

Law Enforcement Routine Use: If a system of records maintained by a DoD Component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the agency concerned, whether federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

Congressional Inquiries Disclosure Routine Use: Disclosure from a system of records maintained by a DoD Component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Disclosure to the Department of Justice for Litigation Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

Disclosure of Information to the National Archives and Records Administration Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use to the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

Data Breach Remediation Purposes Routine Use: A record from a system of records maintained by a Component may be disclosed to appropriate agencies, entities, and persons when (1) The Component suspects or has confirmed that the security or confidentiality of the information in the system of records has been compromised; (2) the Component has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Component or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Components efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.''

* * * * *

RETRIEVABILITY:

Delete entry and replace with ''Information is retrieved by the participant's full name, or user account name (for the Learning Management System).''

SAFEGUARDS:

Delete entry and replace with ''MOS CMS is hosted on a certified and accredited infrastructure. Records are maintained in a secure building in a controlled area accessible only to authorized personnel. Physical entry is restricted by the use of locks and passwords and administrative procedures which are changed periodically. The system is designed with access controls, comprehensive intrusion detection, and virus protection. Access to personally identifiable information in this system is role based and restricted to those who require the data in the performance of their official duties and have completed annual information assurance and privacy training. Records are encrypted during transmission to protect session information, and while not in use (data at rest).''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Master database files: Close after 3 years of continuous inactivity or notification of discharge, retirement or separation of the service member, then destroy 10 years after closed.

Non-medical counseling records: Close after 3 years of continuous inactivity or notification of discharge, retirement or separation of the service member, then destroy 15 years after closed.

Training records: Close annually upon completion of training, then destroy 5 years after closed.

Call center recordings: Close after referral to non-medical counseling, employee assistance program support, information and referral, then destroy after 90 days.''

* * * * *

NOTIFICATION PROCEDURES:

Delete entry and replace with ''Individuals seeking to determine if information about themselves is contained in this record system should address inquiries to the appropriate system manager.

Signed, written requests should include the individual's full name, current address, and telephone number.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on [date]. [Signature].'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on [date]. [Signature]'.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking to determine if information about themselves is contained in this record system should address inquiries to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center, 1155 Defense Pentagon, Washington DC 20301–1155.

Signed, written requests should include the individual's full name, current address, and telephone number, and the name and number of this system of records notice.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on [date]. [Signature].'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on [date]. [Signature]'.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The Office of the Secretary of Defense (OSD) rules for accessing records, for

contesting contents, and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311, or may be obtained from the system manager.''

* * * * *

[FR Doc. 2017–01450 Filed 1–23–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2014–OS–0039]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by February 23, 2017.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Military Spouse Employment Partnership (MSEP) Career Portal; OMB Control Number 0704–XXXX.

Type of Request: New collection.

Number of Respondents: 22,450.

Responses per Respondent: 1.

Annual Responses: 22,450.

Average Burden per Response: 28.33 minutes.

Annual Burden Hours: 16,663.

Needs and Uses: The Military Spouse Employment Partnership (MSEP) Career Portal is the sole web platform utilized to connect military spouses with companies seeking to hire military spouse employees. Participating companies, called MSEP Partners, are vetted and approved participants in the MSEP Program and have pledged to recruit, hire, promote and retain military spouses in portable careers.

Affected Public: Business or other for-profit; individuals or households; not-for-profit institutions; federal government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

Instructions: All submissions received must include the agency name, Docket ID number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 03F09, Alexandria, VA 22350–3100.

Dated: January 17, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2017–01444 Filed 1–23–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense.

ACTION: Meeting notice.

SUMMARY: The Department of Defense is publishing this notice to announce the following Federal advisory committee meeting of the Defense Advisory Committee on Military Personnel Testing.

DATES: Thursday, February 23, 2017, from 9:00 a.m. to 4:00 p.m. and Friday, February 24, 2017, from 9:00 a.m. to 12:00 p.m.

ADDRESSES: The Pine Inn, Ocean Avenue, between Lincoln and Monte Verde Street, Carmel, California.

FOR FURTHER INFORMATION CONTACT: Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Under Secretary of Defense for Personnel and Readiness, Room 3D1066, The Pentagon, Washington, DC 20301–4000, telephone (703) 697–9271.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (title 5, United States Code (U.S.C.), Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and title 41, Code of Federal Regulations (CFR), section 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to review planned changes and progress in developing computerized tests for military enlistment screening.

Agenda: The agenda includes an overview of current enlistment test development timelines, test development strategies, and planned research for the next 3 years.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public.

Committee's Designated Federal Officer or Point of Contact: Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Under Secretary of Defense for Personnel and Readiness, Room 3D1066, The Pentagon, Washington, DC 20301–4000, telephone (703) 697–9271.

Persons desiring to make oral presentations or submit written statements for consideration at the committee meeting must contact Dr. Jane M. Arabian at the address or telephone number in **FOR FURTHER INFORMATION CONTACT** no later than January 27, 2017.

Dated: January 17, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2017–01433 Filed 1–23–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Extension of Public Comment Period for the Draft Environmental Impact Statement for EA–18G ''Growler'' Airfield Operations at Naval Air Station Whidbey Island Complex, Washington

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: A notice of availability was published by the U.S. Environmental Protection Agency (EPA) in the **Federal Register** on November 10, 2016 (81 FR

79019) for the Draft Environmental Impact Statement (EIS) for EA–18G ''Growler'' Airfield Operations at Naval Air Station (NAS) Whidbey Island Complex, Washington. At that time, the Department of the Navy (DoN) offered a 75-day extended public comment period which is will end on January 25, 2017. This notice confirms a 30-day extension of the public comment period through February 24, 2017.

FOR FURTHER INFORMATION CONTACT: EA–18G EIS Project Manager, Naval Facilities Engineering Command (NAVFAC) Atlantic, Attention: Code EV21/SS; 6506 Hampton Boulevard, Norfolk, Virginia 23508.

SUPPLEMENTARY INFORMATION: The public comment period for the Draft EIS for EA–18G ''Growler'' Airfield Operations at NAS Whidbey Island Complex, Washington, will be extended until February 24, 2017. Comments may be submitted in writing to the address identified above. In addition, comments may be submitted online at *http://www.whidbeyeis.com.* All written comments must be postmarked or received online by February 24, 2017 to ensure they become part of the official record. All comments submitted to the DoN during the public comment period will be addressed in the Final EIS.

Those commenters submitting written comments should indicate whether they authorize release of personally identifiable information. The DoN may release the city, state, and 5-digit zip code of individuals who provide comments during the Draft EIS public review period. However, the names, street addresses, email addresses and screen names, telephone numbers, or other personally identifiable information of those individuals will not be released by the DoN unless required by law.

The Draft EIS is available for public electronic viewing or download at the project Web site. A paper copy of the Draft EIS may be reviewed at 22 public libraries in the northern Puget Sound region. The full list of and addresses for each of the libraries may be found at the project Web site.

Dated: January 12, 2017.

A.M. Nichols,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2017–01513 Filed 1–23–17; 8:45 am]

BILLING CODE 3810–FF–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Proposed Collection; Submission for OMB Review

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final Notice of Submission for OMB Review—Extension Without Change: Local Union Report (EEO–3).

SUMMARY: In accordance with the Paperwork Reduction Act, the Equal Employment Opportunity Commission (EEOC or Commission) announces that it is submitting to the Office of Management and Budget (OMB) a request for a three-year extension without change of the Local Union Report (EEO–3) (Form 274).

DATES: Written comments on this notice must be submitted on or before February 23, 2017.

ADDRESSES: Comments on this notice must be submitted to Joseph B. Nye, Policy Analyst, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, email *oira_submission@omb.eop.gov.* Commenters are also encouraged to send comments to the EEOC online at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions on the Web site for submitting comments. In addition, the EEOC's Executive Secretariat will accept comments in hard copy. Hard copy comments should be sent to Bernadette Wilson, Acting Executive Officer, EEOC, 131 M Street NE., Washington, DC 20507. Finally, the Executive Secretariat will accept comments totaling six or fewer pages by facsimile (''fax'') machine before the same deadline at (202) 663–4114. (This is not a toll-free number.) Receipt of fax transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TTY). (These are not toll-free telephone numbers.) The EEOC will post online at *http://www.regulations.gov* all comments submitted via this Web site, in hard copy, or by fax to the Executive Secretariat. These comments will be posted without change, including any personal information you provide. However, the EEOC reserves the right to refrain from posting libelous or otherwise inappropriate comments including those that contain obscene, indecent, or profane language; that contain threats or defamatory statements; that contain hate speech directed at race, color, sex, national origin, age, religion, disability, or genetic information; or that promote or endorse services or products. All comments received, including any personal information provided, also will be available for public inspection during normal business hours by appointment only at the EEOC Headquarters Library, 131 M Street NE., Washington, DC 20507. Upon request, individuals who require assistance viewing comments will be provided appropriate aids such as readers or print magnifiers. To schedule an appointment, contact EEOC Library staff at (202) 663–4630 (voice) or (202) 663–4641 (TTY). (These are not toll-free numbers.)

FOR FURTHER INFORMATION CONTACT: Ronald Edwards, Director, Program Research and Surveys Division, Equal Employment Opportunity Commission, 131 M Street NE., Room 4SW30F, Washington, DC 20507; (202) 663–4949 (voice) or (202) 663–7063 (TTY). Requests for this notice in an alternative format should be made to the Office of Communications and Legislative Affairs at (202) 663–4191 (voice) or (202) 663–4494 (TTY).

SUPPLEMENTARY INFORMATION: The EEOC has collected information from local unions on the EEO–3 form since 1967. A notice that EEOC would be submitting this request was published in the **Federal Register** on September 13, 2016 allowing for a 60-day public comment period. There were no comments received from the public.

Overview of Information Collection

Collection Title: Local Union Report (EEO–3).

OMB Number: 3046–0006.

Frequency of Report: Biennial.

Type of Respondent: Referral local unions with 100 or more members.

Description of Affected Public: Referral local unions and independent or unaffiliated referral unions and similar labor organizations.

Responses: 1,075.[1]

Biennial Reporting Hours: 2203.75.

Biennial Cost Burden: $90,885.34.

Biennial Federal Cost: $81,935.

Number of Forms: 1.

Form Number: EEOC Form 274.

Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–8(c), requires labor organizations to make and keep records relevant to a determination of whether unlawful employment practices

[1] This figure differs from the estimated number of respondents provided in the September 13, 2016 **Federal Register** notice. The figure was changed to reflect the most current information on the number of EEO–3 filers.

have been or are being committed and to produce reports from the data. The EEOC issued regulations requiring referral local unions with 100 or more members to submit EEO–3 reports. The individual reports are confidential. The EEOC uses EEO–3 data to investigate charges of discrimination and for research.

Burden Statement: The EEOC has updated its methodology for calculating annual burden to reflect the different staff that are responsible for preparing and filing the EEO–3. The EEOC now accounts for time to be spent biennially on EEO–3 reporting by business agents and administrative staff, as well as time spent by attorneys who, in a few cases, may consult briefly during the reporting process. As shown in Table 1 below, we estimate that Secretaries/Administrative Assistants and Business Agents will each spend 1 hour per report, and Legal Counsel will spend .05 hour per report. The estimated number of respondents included in the biennial EEO–3 survey is 1,075 referral unions, as this is the number of filers from the 2014 reporting cycle. Table 1, below, was utilized to quantify estimates of the annual burden of EEO–3 survey respondents. Burden hour cost was calculated using median hourly wage rates for administrative staff and legal counsel, and average hourly wage rates for labor union business agents.[2] The estimated hour burden per report will be 2.05 hours, and the estimated total biennial respondent burden hours will be 2,203.75. The burden hour cost per respondent will be $84.54, and the estimated total biennial burden hour cost for all respondents will be $90,885.34. (See Table 1 for calculations.)

TABLE 1—ESTIMATE OF BURDEN FOR EEO–3 REPORT

Local referral union staff	Hourly wage rate	Hours per local	Cost per local[3]	Total burden hours[4]	Total burden hour cost[5]
Number of Local Unions = 1075					
Secretaries and Administrative Assistants	$17.55	1	$17.55	1075	$18866.25
Business Agent	64.21	1	64.21	1075	69025.75
Legal Counsel	55.69	0.05	2.7845	53.75	2993.3375
Total	137.45	2.05	84.5445	2203.75	90885.3375

Estimated burden hours were calculated by multiplying the number of reports expected to be filed biennially (1,075 in 2014) by the estimated average time to complete and submit each report (2.05 hours). These estimates are based on an assumption of paper reporting. However, the EEOC has made electronic filing much easier for respondents required to file the EEO–3 Report. As a result, more jurisdictions are using this filing method. This development, along with the greater availability of human resource information software, is expected to have significantly reduced the actual burden of reporting, but empirical data in this area is lacking. The Commission continues to develop more reliable estimates of reporting burdens given the significant increase in electronic filing and explore new approaches to make such reporting even less burdensome. In order to help reduce survey burden, respondents are encouraged to report data electronically whenever possible.

Dated: January 13, 2017.

For the Commission.

Jenny R. Yang,

Chair.

[FR Doc. 2017–01558 Filed 1–23–17; 8:45 am]

BILLING CODE 6570–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination—on the dates indicated—of the waiting period provided by law and the premerger notification rules. The listing for each transaction includes the transaction number and the parties to the transaction. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

EARLY TERMINATIONS GRANTED DECEMBER 1, 2016 THRU DECEMBER 31, 2016

12/01/2016		
20170262	G	GTCR Fund X/A LP; Inteliquent, Inc.; GTCR Fund X/A LP.

[2] Median hourly wage rates for administrative staff and legal counsel were obtained from the Bureau of Labor Statistics (see U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, http://www/bls.gov/ooh/*) and the average hourly wage rate for a labor union business agent was obtained from salaryexpert.com (see *https://www.salaryexpert.com/salarysurveydata/job=labor-union-business-agent/salary*).

[3] The figures in this column were calculated by multiplying the figures in the Hourly Wage Rate column by those in the Hours Per Local Column.

[4] The figures in this column were calculated by multiplying the figures in the Hours Per Local column by 1075, the total number of respondents.

[5] The figures in this column were calculated by multiplying the figures in the Cost Per Local column by 1075, the total number of respondents.

EARLY TERMINATIONS GRANTED DECEMBER 1, 2016 THRU DECEMBER 31, 2016—Continued

12/02/2016		
20170204	G	Bertelsmann Ver.; Advanced Practice Strategies, Inc.; Bertelsmann Ver.
20170248	G	Hainan Cihang Charitable Foundation c/o HNA Group Co., Ltd.; Hilton Worldwide Holdings Inc.; Hainan Cihang Charitable Foundation c/o HNA Group Co., Ltd.
20170259	G	Federated Mutual Insurance Company; RRRF, L.L.C.; Federated Mutual Insurance Company.
20170293	G	SpartanNash Company; Joseph A. Caito; SpartanNash Company.
20170295	G	SpartanNash Company; Philip J. Caito IV; SpartanNash Company.
20170302	G	dormakaba Holding AG; Mesker Holdings, LLC; dormakaba Holding AG.
20170304	G	CenterPoint Energy, Inc.; Atmos Energy Corporation; CenterPoint Energy, Inc.
20170311	G	Tesoro Corporation; George B. Kaiser; Tesoro Corporation.
20170312	G	Tesoro Corporation; MDU Resources Group, Inc.; Tesoro Corporation.
20170315	G	Tesoro Corporation; Whiting Petroleum Corporation; Tesoro Corporation.
20170324	G	Charoen Pokphand Foods Public Company Limited; Centre Capital Investors V, L.P.; Charoen Pokphand Foods Public Company Limited.
20170325	G	Riverside Micro-Cap Fund IV–A, L.P.; Brendan Weaver; Riverside Micro-Cap Fund IV–A, L.P.
20170326	G	Riverside Micro-Cap Fund IV–A, L.P.; Damon Weaver; Riverside Micro-Cap Fund IV–A, L.P.
20170329	Y	KKR Asian Fund II Japan AIV L.P.; Calsonic Kansei Corporation; KKR Asian Fund II Japan AIV L.P.
20170331	G	Cressey & Company Fund V, LP; Beecken Petty O'Keefe Fund III, L.P.; Cressey & Company Fund V, LP.
12/05/2016		
20170278	G	BDT Capital Partners Fund II, L.P.; Athletico Management Holdings, LLC; BDT Capital Partners Fund II, L.P.
20170309	G	PepsiCo, Inc.; KeVita, Inc.; PepsiCo, Inc.
12/06/2016		
20170333	G	Carlyle Partners VI, L.P.; NVLX Holdings, LLC; Carlyle Partners VI, L.P.
12/07/2016		
20161136	G	Boyd Gaming Corporation; Cannery Casino Resorts, LLC; Boyd Gaming Corporation.
20170244	G	Letterone Investment Holdings S.A.; Carter Burden III; Letterone Investment Holdings S.A.
20170249	G	Spectrum Equity Investors VI, L.P.; CBOE Holdings, Inc. ; Spectrum Equity Investors VI, L.P.
20170290	G	Cortec Group Fund VI, L.P.; ICON Eye Care LLC; Cortec Group Fund VI, L.P.
12/08/2016		
20170224	G	Advent OT (Cayman) Ltd.; SAFRAN; Advent OT (Cayman) Ltd.
20170265	G	Arrowhead Holdco Company; Daniel Ariens; Arrowhead Holdco Company.
20170291	G	Rodger O. Riney Family Voting Trust U/A/D 12/31/2012; TD Ameritrade Holding Corporation; Rodger O. Riney Family Voting Trust U/A/D 12/31/2012.
20170292	G	TD Ameritrade Holding Corporation; Rodger O. Riney Family Voting Trust U/A/D 12/31/2012; TD Ameritrade Holding Corporation.
12/09/2016		
20170230	G	Eugenie Patri Sabastien EPS, SA; BBH/Fun, LLC; Eugenie Patri Sabastien EPS, SA
20170231	G	Jorge Paulo Lemann; BBH/Fun, LLC; Jorge Paulo Lemann.
20170305	G	Wang Jianlin; Todd L. Boehly; Wang Jianlin.
20170318	G	Beijing Shareco Technologies Co., Ltd.; Global Eagle Entertainment Inc.; Beijing Shareco Technologies Co., Ltd.
20170335	G	OZRE Holdings XVI LLC; CNL Lifestyle Properties, Inc.; OZRE Holdings XVI LLC.
20170336	G	Acasta Enterprises Inc.; Richard Wachsberg; Acasta Enterprises Inc.
20170337	G	Acasta Enterprises Inc.; Charles Wachsberg; Acasta Enterprises Inc.
20170348	G	Lear Corporation; MVC Private Equity Fund, L.P.; Lear Corporation.
20170355	G	Dr Pepper Snapple Group, Inc.; Bai Brands LLC; Dr Pepper Snapple Group, Inc.
20170356	G	Lully Jersey Holding Limited; JPMorgan & Chase & Co.; Lully Jersey Holding Limited.
20170363	G	Clayton, Dubilier & Rice Fund IX, L.P.; Moelis Capital Partners Opportunity Fund I, L.P.; Clayton, Dubilier & Rice Fund IX, L.P.
20170364	G	Carlyle Global Partners, L.P.; FCOF III UST LLC; Carlyle Global Partners, L.P.
20170377	G	WPP plc; Promotion Execution Partners, LLC; WPP plc.
20170379	G	Palladium Equity Partners IV, L.P.; Trampoline Acquisition Parent Holdings, LLC; Palladium Equity Partners IV, L.P.
20170388	G	JX Holdings, Inc.; TonenGeneral Sekiyu K.K.; JX Holdings, Inc.
20170395	G	1818 Acquisition LLC; Alinda Infrastructure Fund II, L.P.; 1818 Acquisition LLC.
12/10/2016		
20160314	G	Elliott International Limited; CenterPoint Energy, Inc.; Elliott International Limited.
12/12/2016		
20161016	G	Alaska Air Group, Inc.; Virgin America Inc.; Alaska Air Group, Inc.
20170301	G	Insight Enterprises, Inc.; Datalink Corporation; Insight Enterprises, Inc.
20170383	G	Colowide Co., Ltd.; Tomoyoshi Nishiyama; Colowide Co., Ltd.
20170386	G	Coloplast A/S; Liberty Medical Holdings, LLC; Coloplast A/S.

EARLY TERMINATIONS GRANTED DECEMBER 1, 2016 THRU DECEMBER 31, 2016—Continued

20170392	G	QUIKRETE Holdings, Inc.; CEMEX, S.A.B. de C.V.; QUIKRETE Holdings, Inc.
20170400	G	MACOM Technology Solutions Holdings, Inc.; Applied Micro Circuits Corporation; MACOM Technology Solutions Holdings, Inc.
		12/13/2016
20170245	G	Providence Equity Partners VII USRPHC L.P.; EdgeConnex, Inc.; Providence Equity Partners VII USRPHC L.P.
20170345	G	The Allstate Corporation; Bain Capital Fund X, L.P.; The Allstate Corporation.
		12/14/2016
20170277	G	FFL Capital Partners IV, L.P.; Brockway Moran & Partners Fund III, L.P.; FFL Capital Partners IV, L.P.
20170338	G	Mitsubishi Heavy Industries, Ltd.; Mitsubishi Nichiyu Forklift Co., Ltd.; Mitsubishi Heavy Industries, Ltd.
20170393	G	Clearlake Capital Partners IV, L.P.; Harte Hanks, Inc.; Clearlake Capital Partners IV, L.P.
		12/15/2016
20170358	G	Ivanti Investment Holdings, LLC; Clearlake Capital Partners II, L.P.; Ivanti Investment Holdings, LLC.
		12/16/2016
20170297	G	Warburg Pincus Private Equity XII, L.P.; United Internet AG; Warburg Pincus Private Equity XII, L.P.
20170303	G	Crown Castle International Corp.; NextEra Energy, Inc.; Crown Castle International Corp.
20170327	G	Elliott Associates, L.P.; Marathon Petroleum Corporation; Elliott Associates, L.P.
20170328	G	Elliott International Limited; Marathon Petroleum Corporation; Elliott International Limited.
20170349	G	Glanbia Co-operative Society Limited; Brandon A. Bert & Audra J. Bert; Glanbia Co-operative Society Limited.
20170350	G	Glanbia Co-operative Society Limited; Todd R. Habermehl & Brandy L. Habermehl; Glanbia Co-operative Society Limited.
20170354	G	New Residential Investment Corp.; Walter Capital Opportunity, LP; New Residential Investment Corp.
20170396	G	J&F Investimentos S.A.; David W. Maschhoff Family GST Trust; J&F Investimentos S.A.
20170398	G	Vossloh AG; Altus Capital Management II, LLC; Vossloh AG.
20170401	G	Odyssey Investment Partners Fund V, L.P.; Trilantic Capital Partners V (North America) L.P.; Odyssey Investment Partners Fund V, L.P.
20170406	G	Comvest Investment Partners V, L.P.; IMC Group, LLC; Comvest Investment Partners V, L.P.
20170407	G	Roger S. Penske; Christopher W. Turner; Roger S. Penske.
20170410	G	Mr. Zhiqiang Lu; Genworth Financial, Inc.; Mr. Zhiqiang Lu.
20170421	G	Platinum Equity Capital Partners IV, L.P.; Cox Family Voting Trust u/a/d 7/26/13; Platinum Equity Capital Partners IV, L.P.
20170423	G	PSI Enterprises, LLC; Spire Capital Partners II, L.P.; PSI Enterprises, LLC.
		12/19/2016
20170275	G	Windstream Holdings, Inc.; EarthLink Holdings Corp.; Windstream Holdings, Inc.
20170332	G	Samsung Electronics Co., Ltd.; Harman International Industries, Incorporated; Samsung Electronics Co., Ltd.
20170382	G	ArcLight Energy Partners Fund VI, L.P.; TransCanada Corporation; ArcLight Energy Partners Fund VI, L.P.
20170387	G	Bayview MSR Opportunity Master Fund, L.P.; PHH Corporation; Bayview MSR Opportunity Master Fund, L.P.
20170429	G	Charlesbank Equity Fund VIII, Limited Partnership; Clearview Capital Fund II, L.P.; Charlesbank Equity Fund VIII, Limited Partnership.
		12/20/2016
20160997	G	Wang Jianlin; Carmike Cinemas, Inc.; Wang Jianlin.
20161550	G	McKesson Corporation; PF2 NewCo LLC; McKesson Corporation.
		12/21/2016
20170313	G	London Stock Exchange Group plc; Carousel Capital Partners III L.P.; London Stock Exchange Group plc.
20170322	G	Booz Allen Hamilton Holding Corporation; Bruce E. Toll; Booz Allen Hamilton Holding Corporation.
20170323	G	Booz Allen Hamilton Holding Corporation; Mark Kozak; Booz Allen Hamilton Holding Corporation.
20170380	G	Tencent Holdings Limited; Pocket Gems, Inc.; Tencent Holdings Limited.
20170384	G	Sanofi; C.H. Boehringer Sohn AG & Co. KG; Sanofi.
20170404	G	Symantec Corporation; LifeLock, Inc.; Symantec Corporation.
		12/22/2016
20170321	G	Francisco Partners IV, L.P.; Operative Media, Inc.; Francisco Partners IV, L.P.
20170339	G	Siemens Aktiengesellschaft; Mentor Graphics Corporation; Siemens Aktiengesellschaft.
20170428	G	Community Bank System, Inc.; Northeast Retirement Services, Inc.; Community Bank System, Inc.
		12/23/2016
20160876	G	GTCR Fund XI/B LP; Thomas H. Lee Equity Fund VI, L.P.; GTCR Fund XI/B LP.
20160877	G	GTCR Fund XI/B LP; Bain Capital CC Investors, L.P.; GTCR Fund XI/B LP.
20170342	G	Elliott Associates, L.P.; Cognizant Technology Solutions Corporation; Elliott Associates, L.P.
20170343	G	Elliott International Limited; Cognizant Technology Solutions Corporation; Elliott International Limited.
20170434	G	Vista Equity Partners Fund VI, L.P.; Fidelity National Information Services, Inc.; Vista Equity Partners Fund VI, L.P.
20170435	G	Vista Equity Partners Fund V, L.P.; Fidelity National Information Services, Inc.; Vista Equity Partners Fund V, L.P.

EARLY TERMINATIONS GRANTED DECEMBER 1, 2016 THRU DECEMBER 31, 2016—Continued

20170443	G	WWEX UNI Topco Holdings, LLC; Quad-C Partners VIII, L.P.; WWEX UNI Topco Holdings, LLC.
20170444	G	WWEX UNI Topco Holdings, LLC; REP UNI I–B Feeder, L.P.; WWEX UNI Topco Holdings, LLC.
20170447	G	Bain Capital Fund XI, L.P.; Sun Capital Partners V, L.P.; Bain Capital Fund XI, L.P.
20170457	G	Baseline Industries, L.P.; Stitch Fix, Inc.; Baseline Industries, L.P.
12/27/2016		
20161298	G	ABBOTT LABORATORIES; St. Jude Medical, Inc; ABBOTT LABORATORIES.
12/28/2016		
20160766	G	C.H. Boehringer Sohn AG & Co. KG; Sanofi; C.H. Boehringer Sohn AG & Co. KG.
20170365	G	CSL Completions Co-Invest, LLC; BJ Services, LLC; CSL Completions Co-Invest, LLC.
20170374	G	Trident V, L.P.; American Capital, Ltd.; Trident V, L.P.
20170412	G	Zayo Group Holdings, Inc.; Electric Lightwave Parent, Inc.; Zayo Group Holdings, Inc.
12/29/2016		
20170375	G	BCEC–SIS Holdings (Guernsey) LP; Medina Capital Fund, LP; BCEC–SIS Holdings (Guernsey) LP.
20170376	G	BCEC–SIS Holdings (Guernsey) LP; CenturyLink, Inc.; BCEC–SIS Holdings (Guernsey) LP.
20170452	G	Marcato International Ltd.; Buffalo Wild Wings, Inc.; Marcato International Ltd.
12/30/2016		
20170372	G	WellCare Health Plans, Inc.; Universal American Corp.; WellCare Health Plans, Inc.
20170389	G	AT&T Inc.; Invidi Technologies Corporation; AT&T Inc.

FOR FURTHER INFORMATION CONTACT: Theresa Kingsberry Program Support Specialist, Federal Trade Commission Premerger Notification Office Bureau of Competition, Room CC–5301, Washington, DC 20024, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2017–01491 Filed 1–23–17; 8:45 am]

BILLING CODE 6750–01–P

OFFICE OF GOVERNMENT ETHICS

Agency Information Collection Activities; Submission for OMB Review; Proposed Collection; Comment Request for a Modified OGE Form 278e Executive Branch Personnel Public Financial Disclosure Report

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice of request for agency and public comments.

SUMMARY: After publication of this second round notice, OGE intends to submit a modified OGE Form 278e Executive Branch Personnel Public Financial Disclosure Report to the Office of Management and Budget (OMB) for review and approval of a three-year extension under the Paperwork Reduction Act of 1995.

DATES: Written comments by the public and the agencies on this proposed extension are invited and must be received by February 23, 2017.

ADDRESSES: You may submit comments on this paperwork notice to the Office of Management and Budget, Attn: Desk Officer for OGE, via fax at 202–395–6974 or email at *OIRA_Submission@omb.eop.gov.* (Include reference to ''OGE Form 278e paperwork comment'' in the subject line of the message.)

FOR FURTHER INFORMATION CONTACT: Brandon Steele at the U.S. Office of Government Ethics; telephone: 202–482–9209; TTY: 800–877–8339; FAX: 202–482–9237; Email: *basteele@oge.gov.* An electronic copy of the OGE Form 278e is available in the Forms Library section of OGE's Web site at *http://www.oge.gov.* A paper copy may also be obtained, without charge, by contacting Mr. Steele.

SUPPLEMENTARY INFORMATION:

Title: Executive Branch Personnel Public Financial Disclosure Report.

Form Number: OGE Form 278e.

OMB Control Number: 3209–0001.

Type of Information Collection: Extension with modifications of a currently approved collection.

Type of Review Request: Regular.

Respondents: Private citizen Presidential nominees to executive branch positions subject to Senate confirmation; other private citizens who are potential (incoming) Federal employees whose positions are designated for public disclosure filing; those who file termination reports from such positions after their Government service ends; and Presidential and Vice-Presidential candidates.

Estimated Annual Number of Respondents: 4,884.

Estimated Time per Response: 3 hours.

Estimated Total Annual Burden: 14,652 hours.

Abstract: The OGE Form 278 collects information from certain officers and high-level employees in the executive branch for conflicts of interest review and public disclosure. The form is also completed by individuals who are nominated by the President for high-level executive branch positions requiring Senate confirmation and new entrants to other public reporting positions in the executive branch. The financial information collected relates to: Assets and income; transactions; gifts, reimbursements and travel expenses; liabilities; agreements or arrangements; outside positions; and compensation over $5,000 paid by a source—all subject to various reporting thresholds and exclusions. The information is collected in accordance with section 102 of the Ethics in Government Act, 5 U.S.C. app. section 102, as amended by the Stop Trading on Congressional Knowledge Act of 2012 (Public Law 112–105) (STOCK Act) and OGE's implementing financial disclosure regulations at 5 CFR part 2634.

OGE published a first round notice of its intent to request paperwork clearance for a modified OGE Form 278e Executive Branch Personnel Public Financial Disclosure Report. See 81 FR 71503 (October 17, 2016). OGE received two responses, one of which did not actually address the information collection. The other response suggested

that the form require additional information and opposes the changes on the grounds that they would ''streamline'' the form and reduce transparency. OGE declined to adopt these recommendations. The information required on the form is dictated by the Ethics in Government Act, as amended, and OGE's implementing regulations. With regard to the changes made to the form, OGE believes that they make the form more user-friendly and more clear and therefore improve, not impede, transparency.

Request for Comments: Agency and public comment is again invited specifically on the need for and practical utility of this information collection, the accuracy of OGE's burden estimate, the enhancement of quality, utility, and clarity of the information collected, and the minimization of burden (including the use of information technology). Comments received in response to this notice will be summarized for, and may be included with, the OGE request for extension of OMB paperwork approval. The comments will also become a matter of public record.

Approved: January 17, 2017.

Walter M. Shaub, Jr.,

Director, Office of Government Ethics.

[FR Doc. 2017–01483 Filed 1–23–17; 8:45 am]

BILLING CODE 6345–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Proposed Collection; Public Comment Request; Revised Annual and Final Reports for Performance Reporting Data From NIDILRR Grantees

AGENCY: National Institute on Disability, Independent Living and Rehabilitation Research NIDILRR, Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL/NIDILRR) is announcing an opportunity for the public to comment on ACL's intention to obtain annual and final performance data from NIDILRR grantees. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. This notice collects comments on the information collection requirements relating to the reinstatement with change of a previously approved data collection covering ten NIDILRR programs.

DATES: Submit written comments on the collection of information by March 27, 2017.

ADDRESSES: Submit electronic comments on the collection of information to: *Mary.Darnell@acl.hhs.gov.* Submit written comments on the collection of information to Mary Darnell, U.S. Administration for Community Living, 330 C Street SW., Room 2510–D Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Mary Darnell, 202–795–7337.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, ACL is publishing a notice of the proposed collection of information set forth in this document.

Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Proposed Collection: Annual and Final Performance Reporting (APR) Forms for NIDILRR Grantees.

The forms included in this package are revised versions of those used by grantees in the following 10 programs to submit their Annual and Final Performance Reports for Reporting Year 2016 under OMB collection number 1820–0675:

- Rehabilitation Research Training Centers (RRTCs)
- Rehabilitation Engineering Research Centers (RERCs)
- Field Initiated Research Projects (FIPs)
- Advanced Rehabilitation Research Training Projects (ARRTs)
- Model Systems (including spinal cord injury, traumatic brain injury, and burn centers)
- Disability and Rehabilitation Research Projects (DRRPs)
- Knowledge Translation (KT) Projects
- ADA National Network Centers (ADAs)
- Small Business Innovation Research Projects (SBIR) grantees (Phase 2 only)
- Research Fellowships Program (RFP)

The APR includes common information and information specific to individual programs. The final report is a subset of items from the annual report and provides a summary of progress and outcomes for the full project period. OMB's approval of the forms used in Reporting Year 2016 expired December 31, 2016.

Need and Use of Information Collection: The National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR) Administration for Community Living (ACL) of the Department of Health and Human Services (HHS) requests clearance of revised Annual Performance Reporting (APR) and Final Report forms to be completed by all NIDILRR grantees. (Previously housed in the Department of Education and known as the National Institute on Disability and Rehabilitation Research [NIDRR], NIDILRR was renamed and relocated to HHS by the Workforce Innovation and Opportunity Act of 2014.)

Changes in the Reporting Forms: The Web-based system used for Reporting Year 2016 reporting incorporate a number of features to meet NIDILRR's information needs while minimizing burden. The reporting form and system currently in use were designed so that information provided by grantees each year is automatically carried forward to the next. Under this design, grantees need only review and, if necessary, edit their previous year's entries in order to complete subsequent annual reports. To further reduce burden, the proposed form is designed so that, instead of describing their accomplishments, grantees simply select their most important accomplishments from among the outputs they report. Data from grant applications, such as contact and budget

information, are preloaded for efficiency. To facilitate grantee and NIDILRR staff review of information submitted, the system includes system-generated tables that summarize information entered in specific sections. The Web-based system also carries forward information from one section of the form to the next; for example, information on outcome-oriented goals is carried forward for convenient linkage with projects/activities and publications. New mandates promoting public-access to government-sponsored information and products have led to new requirements for NIDILRR's grantees. NIDILRR and the Administration for Community Living have recently published our public access plan to operationalize these requirements related to public access to publications that result from work we sponsor. Specifically the Type 1 Outputs: Publications section has been modified to meet these requirements. NIDILRR took time to build these requirements into its annual performance report (APR) so that we can systematically monitor grantee compliance with the public access plan. The current reporting section will remain for all grants funded prior to 10/1/16 and continue to be used until such grants have ended. Grants funded after this date will see the section meeting the new reporting requirements. Minor changes to the currently approved reporting form were necessary to reflect NIDILRR's new name and its move from ED to HHS. These include:

- Replacing references to ED's statutory requirements, forms, systems, and CFDA numbers with appropriate HHS references.
- Changes necessary to accommodate the assignment of new HHS grant numbers (in a different format) to existing and new grants. The addition of one response option in the Indirect Costs section of the reporting form.

Changes in the Burden Statement, reflecting the agency's move from ED to HHS, have been previously approved by OMB.

Other changes include:

Changes were made in the instructions for grantees' reporting on technology transfer plans (RERC grantees only).

Insertion of one item about the stages of research in the Research Projects section and one item about the stages of development in the Development Projects section.

Regulatory changes required minor changes to the response section for development projects and the addition of a question regarding commercialization.

Reporting forms for all 10 programs are Web-based; that is, all grantees will complete their annual reports via the Internet. Data collected through these forms will be used to:

(a) Facilitate program planning and management;

(b) respond to Department of Health and Human Services (DHHS) Grants Policy Administration Manual (GPAM) requirements; and

(c) respond to the reporting requirements of the Government Performance and Results Act (GPRA) of 1993 (Pub. L. 103–62).[1]

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The average annual burden associated with these activities over a three-year period is summarized below.

NIDILRR and HHS will use the information gathered annually from these data collection efforts to provide Congress with the information mandated in GPRA, provide OMB information required for assessment of performance on GPRA indicators, and support its evaluation activities. Data collected from the 10 grant programs will provide a national description of the research activities of approximately 275 NIDILRR grantees per year in fiscal years 2017–2019.

While the number of grantees will vary from year to year, all grantees will be required to submit an annual performance report and a final report at the completion of the project. Based on our experience with reporting burden, we estimate that it will take an average of 52 hours to complete the reporting form in a grantee's first year of award. In subsequent years, the estimated response burden is approximately 22 hours. The estimated response burden includes time to review the instructions, gather existing data, and complete and review the form. The number of respondents is based on the average number of grants administered by NIDILRR over time. The proposed NIDILRR Annual Performance Report (APR) and final report forms can be found on the ACL Web site at:

https://acl.gov/Programs/NIDILRR/docs/NIDILRR-AnnualPerfReport-2016.pdf.

https://acl.gov/Programs/NIDILRR/docs/NIDILRR-APR-FinalForm-2016.pdf.

ACL estimates the burden hours for this collection of information as follows:

	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
New Grantees	75	1	52	3,900
Continuations and Final Reports	200	1	22	4.400
Total				8,300

Date: January 17, 2017.

Edwin Walker,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2017–01537 Filed 1–23–17; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Meeting of the Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2030

AGENCY: Office of the Secretary, Office of the Assistant Secretary for Health, Office of Disease Prevention and Health Promotion, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The U.S. Department of Health and Human Services (HHS) announces the next federal advisory committee meeting regarding the development of national health promotion and disease prevention objectives for 2030. This meeting will be held online via webinar and is open to

[1] The Government Performance and Results Act of 1993 and the Government Performance and Results Modernization Act of 2010 are available at *http://www.whitehouse.gov/omb/mgmt-gpra/index-gpra.*

the public. The Committee will discuss the nation's health promotion and disease prevention objectives and will provide recommendations to improve health status and reduce health risks for the nation by the year 2030. The Committee will advise the Secretary on the Healthy People 2030 mission, vision, framework, and organizational structure. The Committee will provide advice regarding criteria for identifying a more focused set of measurable, nationally representative objectives. The Committee's advice must assist the Secretary in reducing the number of objectives while ensuring that the selection criteria identifies the most critical public health issues that are high-impact priorities supported by current national data.

DATES: The Committee will meet on February 13, 2017 from 12:00 p.m. to 4:00 p.m. Eastern Time (ET).

ADDRESSES: The meeting will be held online, via the WebEx platform. To register to attend the meeting, please visit the Healthy People Web site at *http://www.healthypeople.gov.*

FOR FURTHER INFORMATION CONTACT: Emmeline Ochiai, Designated Federal Officer, Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2030, U.S. Department of Health and Human Services, Office of the Assistant Secretary for Health, Office of Disease Prevention and Health Promotion, 1101 Wootton Parkway, Room LL–100, Rockville, MD 20852, (240) 453–8280 (telephone), (240) 453–8281 (fax). Additional information is available on the Healthy People Web site at *http://www.healthypeople.gov.*

SUPPLEMENTARY INFORMATION: The names of the Committee members are available at *https://www.healthypeople.gov/2020/about/history-development/healthy-people-2030-advisory-committee.*

Purpose of Meeting: Through the Healthy People initiative, HHS leverages scientific insights and lessons from the past decade, along with new knowledge of current data, trends, and innovations, to develop the next iteration of national health promotion and disease prevention objectives. Healthy People provides science-based, 10-year national objectives for promoting health and preventing disease. Since 1979, Healthy People has set and monitored national health objectives that meet a broad range of health needs, encourage collaboration across sectors, guide individuals toward making informed health decisions, and measure the impact of our prevention and health promotion activities. Healthy People 2030 health objectives will reflect assessments of major risks to health and wellness, changing public health priorities, and emerging technologies related to our nation's health preparedness and prevention.

Public Participation at Meeting: Members of the public are invited to join the online Committee meeting. There will be no opportunity for oral public comments during this online Committee meeting. However, written comments are welcome throughout the entire development process of the national health promotion and disease prevention objectives for 2030 and may be emailed to *HP2030@hhs.gov.*

To join the Committee meeting, individuals must pre-register at the Healthy People Web site at *http://www.healthypeople.gov.* Participation in the meeting is limited. Registrations will be accepted until maximum webinar capacity is reached, and must be completed by 9:00 a.m. ET on February 13, 2017. A waiting list will be maintained should registrations exceed capacity, and those individuals will be contacted as additional space for the meeting becomes available. Registration questions may be directed to: Jim Nakayama at *events@nakamotogroup.com,* or (240) 672–4011.

Authority: 42 U.S.C. 217a. The Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2030 is governed by provisions of the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C., App.) which sets forth standards for the formation and use of federal advisory committees.

Dated: January 12, 2017.

Don Wright,

Deputy Assistant Secretary for Health, Disease Prevention and Health Promotion.

[FR Doc. 2017–01541 Filed 1–23–17; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting Announcement for the Technical Advisory Panel on Medicare Trustee Reports

ACTION: Notice of Public Meeting.

SUMMARY: This notice announces the meeting dates for the Technical Advisory Panel on Medicare Trustee Reports on Tuesday, February 7, 2017 and Wednesday February 8, 2017 in Washington, DC.

DATES: The meeting will be held on Tuesday, February 7, 2017 from 9:15 a.m. to 5:00 p.m. and Wednesday February 8, 2017, from 9:00 a.m. to 3:00 p.m. Eastern Time and it is open to the public.

ADDRESSES: The meeting will be held at the Hubert Humphrey Building 200 Independence Ave. SW., Washington, DC, 20201 Room 738G.3.

FOR FURTHER INFORMATION CONTACT: Dr. Donald Oellerich, Designated Federal Officer, at the Office of Human Services Policy, Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, 200 Independence Ave. SW., Washington, DC 20201, (202) 690–8410.

SUPPLEMENTARY INFORMATION:

I. Purpose: The Panel will discuss the long-term rate of change in health spending and may make recommendations to the Secretary on how the Medicare Trustees might more accurately estimate health spending in the short and long run. The Panel's discussion is expected to be very technical in nature and will focus on the actuarial and economic assumptions and methods by which Trustees might more accurately measure health spending. This Committee is governed by the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)). The Committee is composed of nine members appointed by the Assistant Secretary for Planning and Evaluation.

II. Agenda. The Panel will likely hear presentations from two outside experts; one on prescription drugs spending and a second on spillover effects. In addition the HHS Office of the Actuary will present on issues the panel may wish to address. Additional presentations regarding long range growth, sustainability of provider payments under Affordable Care Act (ACA) and Medicare Access and Chip Reauthorization Act (MACRA), methods for transitioning from short term (10 year) to long term (75 year) projections and methods and the presentation of uncertainty in the report may follow. After any presentations, the Panel will deliberate openly on the topics. Interested persons may observe the deliberations, but the Panel will not hear public comments during this time. The Panel will also allow an open public session for any attendee to address issues specific to the topic.

III. Meeting Attendance. The Tuesday, February 7, 2017 and Wednesday February 8, 2017 meetings are open to the public; however, in-person attendance is limited to space available.

Meeting Registration

The public may attend the meeting in-person. Space is limited and registration is *required* in order to attend in-person. Registration may be completed by emailing or faxing all the following information to Dr. Donald Oellerich at *don.oellerich@hhs.gov* or fax 202–690–6562:

Name.
Company name.
Postal address.
Email address.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact Dr. Oellerich, no later than January 31, 2017 by sending an email message to *don.oellerich@hhs.gov* or calling 202–690–8410.

A confirmation email will be sent to the registrants shortly after completing the registration process.

IV. Special Accommodations. Individuals requiring special accommodations must include the request for these services during registration.

V. Copies of the Charter. The Secretary's Charter for the Technical Advisory Panel on Medicare Trustee Reports is available upon request from Dr. Donald Oellerich at *don.oellerich@hhs.gov* or by calling 202–690–8410.

Dated: January 12, 2017.

Kathryn E. Martin,

Acting Assistant Secretary for Planning and Evaluation.

[FR Doc. 2017–01479 Filed 1–23–17; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Peer Review Meeting.

Date: February 21, 2017.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Susana Mendez, DVM, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3G53B, National Institutes of Health, NIAID, 5601 Fishers Lane Dr. MSC 9823, Bethesda, MD 20892–9823, (240) 669–5077, *mendezs@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 17, 2017.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–01453 Filed 1–23–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; 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 Nursing Research Initial Review Group.

Date: February 16–17, 2017.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Weiqun Li, M.D., Scientific Review Officer, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Boulevard, Suite 703, Bethesda, MD 20892, 301–402–5807, *wli@mail.nih.gov.*

Name of Committee: National Institute of Nursing Research Special Emphasis Panel; Loan Repayment.

Date: March 8, 2017.

Time: 9:00 a.m. to 10:00 a.m.

Agenda: To review and evaluate grant applications.

Place: Office of Review, Division of Extramural Activities, National Inst of Nursing Research, National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Suite 703, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mario Rinaudo, M.D., Scientific Review Officer, Office of Review, Division of Extramural Activities, National Inst of Nursing Research, National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Suite 703, Bethesda, MD 20892, 301–402–5807, *mrinaudo@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: January 13, 2017.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–01457 Filed 1–23–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed 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 Dental and Craniofacial Research Special Emphasis Panel; NIDCR Secondary Data Analysis.

Date: February 22, 2017.

Time: Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: GUO HE ZHANG, MPH, Ph.D., SCIENTIFIC REVIEW OFFICER, Scientific Review Branch, National Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Suite 672, Bethesda, MD 20892, *zhanggu@mail.nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; NIDCR DSR Member Conflict SEP.

Date: March 1, 2017.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Latarsha J. Carithers, Ph.D., Scientific Review Officer, Division of Extramural Activities, NIDCR, 6701 Democracy Boulevard, Suite 672, Bethesda, MD 20892, 301–594–4859, *latarsha.carithers@nih.gov*.

*Name of Committee:*National Institute of Dental and Craniofacial Research Special Emphasis Panel; Oral HIVacc SEP.

Date: March 6, 2017.

Time: 10:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Latarsha J. Carithers, Ph.D., Scientific Review Officer Division of Extramural Activities, NIDCR, 6701 Democracy Boulevard, Suite 672, Bethesda, MD 20892, 301–594–4859, *latarsha.carithers@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 17, 2017.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–01454 Filed 1–23–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Allergy, Immunology, and Transplantation Research Committee.

Date: February 16–17, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: James T. Snyder, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities/ Room 3G31B, National Institutes of Health, NIAID, 5601 Fishers Lane, MSC 9834, Bethesda, MD 20892–9834, (240) 669–5060, *james.snyder@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 17, 2017.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–01452 Filed 1–23–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: NIGMS Initial Review Group, Training and Workforce Development Subcommittee—B, REVIEW OF T32 APPLICATIONS.

Date: March 3, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Cambria Suites Rockville, 1 Helen Heneghan Way, Rockville, MD 20850.

Contact Person: Lisa A. Newman, SCD, Scientific Review Officer, OFFICE OF SCIENTIFIC REVIEW, National Institutes of General Medical Sciences, 45 CENTER DR RM 3AN18A, Bethesda, MD 20814, (301)435–0965, *newmanla2@mail.nih.gov*.

Name of Committee: NIGMS Initial Review Group, Training and Workforce Development Subcommittee—D,

Date: March 9–10, 2017,

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Wardman Park Washington DC Hotel, 2660 Woodley Road, NW., Washington, DC 20008.

Contact Person: Rebecca H. Johnson, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18C, Bethesda, MD 20892, 301–594–2771, *johnsonrh@nigms.nih.gov*.

*Name of Committee:*NIGMS Initial Review Group, Training and Workforce Development Subcommittee—A: REVIEW OF T32 APPLICATIONS.

Date: March 20, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Cambria Suites Rockville, 1 Helen Heneghan Way, Rockville, MD 20850.

Contact Person: John J. Laffan, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18J, Bethesda, MD 20892, 301–594–2773, *laffanjo@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: January 17, 2017.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–01455 Filed 1–23–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 on Aging Special Emphasis Panel; Alzheimer's Disease in the Post Genomics Era (RFA) M2.
Date: February 16, 2017.
Time: 3:30 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute on Aging, Gateway Building, Suite 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Nijaguna Prasad, MS, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Aging, National Institutes of Health, Bethesda, MD 20892, 301.496.9667, *nijaguna.prasad@nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Alzheimer's Disease in the Post Genomics Era (RFA) M1.
Date: February 16, 2017.
Time: 12:00 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications
Place: National Institute on Aging, Gateway Building, Suite 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Nijaguna Prasad, MS, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Aging, National Institutes of Health, Bethesda, MD 20892, 301.496.9667, *nijaguna.prasad@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: January 17, 2017.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–01451 Filed 1–23–17; 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; Special Topic in Nephrology.
Date: January 26, 2017.
Time: 1:00 p.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Jonathan K. Ivins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040A, MSC 7806, Bethesda, MD 20892, (301) 594–1245, *ivinsj@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: Biobehavioral and Behavioral Processes Integrated Review Group; Motor Function, Speech and Rehabilitation Study Section.
Date: February 16–17, 2017.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: JW Marriott New Orleans, 614 Canal Street, New Orleans, LA 70130.
Contact Person: Biao Tian, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, 301–402–4411, *tianbi@csr.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Cancer Biomarkers Study Section.
Date: February 16–17, 2017.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: DoubleTree by Hilton Los Angeles Westside, 6161 W. Centinela Ave., Culver City, CA 90230.
Contact Person: Lawrence Ka-Yun Ng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7804, Bethesda, MD 20892, 301–357–9318, *ngkl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Risk, Prevention, and Health Behavior AREA (R15) Review.
Date: February 17, 2017.
Time: 12:00 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, (Virtual Meeting).
Contact Person: John H. Newman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3222, MSC 7808, Bethesda, MD 20892, (301) 435–0628, *newmanjh@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 17, 2017.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–01488 Filed 1–23–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; COBRE Phase II.
Date: March 8, 2017.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.
Contact Person: Nina Sidorova, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.22, Bethesda, MD 20892–6200, 301–594–3663, *sidorova@nigms.nih.gov.*

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; To Review K99/R00 Applications.
Date: March 17, 2017.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Bethesda Downtown, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Tracy Koretsky, Scientific Review Officer, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.12F, Bethesda, MD 20892–6200, 301–594–2886, *tracy.koretsky@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96,

Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: January 17, 2017.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–01456 Filed 1–23–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Evaluation of the Cooperative Agreements To Benefit Homeless Individuals (CABHI) Program (OMB No. 0930–0339)—REVISION

SAMHSA is conducting a cross-site evaluation of the FY2016 cohort of the CABHI grant program. The CABHI Evaluation builds on a previous evaluation of SAMHSA's 2009–2012 homeless services grant programs (*i.e.,* Grants for the Benefit of Homeless Individuals, Services in Supportive Housing, and CABHI), under which the approved data collection tools were developed and implemented. SAMHSA is requesting approval from OMB to revise the burden inventory, which has been calculated based on the number of FY2016 CABHI grantees, and to modify the data collection mode of a project director interview.

In 2016, SAMHSA awarded 30 CABHI grants across three levels: States (up to $1.5 million per year), Local Governments (up to $800,000 per year), and Communities (up to $400,000 per year). The grantees are united by the goal of enhancing and expanding infrastructure and capacity for mental health and substance abuse treatment and related support services for individuals experiencing chronic homelessness or veterans, families, or youth experiencing homelessness as a result of these conditions. This is accomplished through the provision of permanent supportive housing, behavioral health treatment, and recovery support services, and enrollment in health insurance, Medicaid, or other mainstream benefit programs.

The primary task of the CABHI evaluation is to conduct a comprehensive process and outcome evaluation, addressing questions related to the implementation of the CABHI grant projects and the extent to which they were able to meet the program's goals. Process evaluation primarily represents what is done to and for the client (*e.g.,* services provided); this aspect of the evaluation will also include a focus on structure, or the resources available in the service delivery system, which represent the capacity to deliver quality care, but not the care itself. The outcome evaluation will focus on outputs, which are the most immediate or proximal results of project activities (*e.g.,* changes in partner collaboration, the number of clients enrolled in mainstream benefits), and client outcomes, particularly those related to behavioral health and homelessness and housing instability. The data collection tools included in this request collect a wide range of quantitative and qualitative data on characteristics of the grantee organization and its partnerships; the system within which the project is embedded; relationships with stakeholders; characteristics of the target population; services received, including implementation of EBPs; staffing patterns; costs of services; barriers and facilitators of project implementation; and project sustainability efforts. Data collection efforts that will support the evaluation are described below.

The *Project Director (PD) Phone Interview/Web Survey* is designed to systematically collect key grant project characteristics which will directly inform the process evaluation component and will also provide essential data by documenting the partnerships and services each grantee includes in their project. The interview includes two components, a semi-structured telephone interview and a Web survey, which represents a change from the original approval. The interview was developed to be conducted as a telephone interview; however, some sections are better suited for self-administration through a Web-based survey (*e.g.,* reporting which services the project is providing to clients) and the instrument has been modified accordingly. The *PD Phone Interview/Web Survey* is composed of the following sections: Grantee Agency and Project Characteristics, Target Population, Stakeholders/Partners, Services, Evidence-Based Practices (EBPs), Housing, Project Organization and Implementation, Sustainability, Local Evaluation, Technical Assistance, and Lessons Learned. A total of 39 respondents are expected to complete the *PD Phone Interview/Web Survey;* this includes one respondent from all of the CABHI grantees (n=30) and the State sub-recipients (n=9). This data collection will occur one time during Year 1 and one time during Year 3 of the evaluation.

Site Visits will consist of in-person, semi-structured discussions with grant project directors, State sub-recipient coordinators, project evaluators, financial staff, behavioral health treatment staff, case managers, housing providers, other support services staff, primary partner staff and other key stakeholders, and project client participants. The purpose of the *Site Visits* is to collect detailed qualitative information and economic data on project activities conducted by the grantees and their partners, which will directly inform the process evaluation. The qualitative data will also provide essential information for the outcome evaluation component by documenting the interventions provided to clients and the implementation, barriers, facilitators, challenges and successes for each grant project visited. Each CABHI grant project (n=30) will be visited once during Year 2 and once during Year 3 of the evaluation. No changes have been made to the *Site Visit* instruments.

The *EBP Self-Assessment* is a Web-based survey designed to collect information on the services implemented in CABHI grant projects that have a demonstrable evidence base, providing a description of the EBP interventions received by project clients. The *EBP Self-Assessment* tool is divided into two parts. Part 1 collects information on general implementation of the projects' primary EBPs (*i.e.,* those received by the most project clients). Thirty-six respondents (9 State sub-recipients, 12 Local Governments, and 15 Communities) are expected to complete Part 1 of the *EBP Self-Assessment,* which may be completed up to 3 times based on the number of primary EBPs being implemented by the project. Part 2 collects detailed implementation data on a selected group of EBPs (*i.e.,* Assertive Community Treatment, Integrated Dual Disorders Treatment, Illness Management and Recovery, Supported Employment, Critical Time Intervention, and Supplemental Security Income [SSI]/Social Security Disability Insurance [SSDI] Outreach, Access, and Recovery) and will be administered only to projects using the

selected EBPs and only for the EBPs they are implementing. Thirty-six respondents (9 State sub-recipients, 12 Local Governments, and 15 Communities) are expected to complete Part 2 of the *EBP Self-Assessment,* which may be completed up to 3 times based on the number of Part 2 EBPs being implemented by the project. Respondents for both Part 1 and 2 may include grant project directors, State sub-recipient coordinators, or other staff knowledgeable about the project's EBPs. The *EBP Self-Assessment* will be administered in Year 2 of the evaluation. No changes have been made to the *EBP Self-Assessment* instrument.

The *Permanent Supportive Housing (PSH) Self-Assessment* is a Web-based survey completed by the CABHI grant projects to understand the extent to which they are implementing key dimensions of PSH and capture the variability of the PSH model among the projects. Information is collected on the following dimensions: Choice of housing, separation of housing and services; decent, safe, and affordable housing; housing integration; tenancy rights; access to housing; flexible, voluntary services; service philosophy; and team-based behavioral health. Thirty-six respondents (9 State sub-recipients, 12 Local Governments, and 15 Communities) are expected to complete the *PSH Self-Assessment* one time, and may include grant project directors, State sub-recipient coordinators, or other staff knowledgeable about the project's PSH model. The *PSH Self-Assessment* will be administered in Year 2 of the evaluation. No changes have been made to the *PSH Self-Assessment* instrument.

ANNUALIZED BURDEN HOURS

Instrument/Activity	Number of respondents	Responses per respondent	Total number of responses	Hours per response	Total burden hours
PD Phone Interview/Web Survey	39	1	39	2.1	82
Site Visits:					
Opening Session/Project Director Interview	[a] 300	1	300	2.5	750
Case Manager, Treatment, Housing Staff/Provider Interview	[b] 540	1	540	2	1,080
Stakeholder Interview	[c] 270	1	270	1.5	405
Evaluator Interview	[d] 60	1	60	1	60
Client Focus Group	[e] 450	1	450	1.5	675
Cost Interview	[f] 60	1	60	2	120
Evidence-Based Practice Self-Assessment Part 1	36	3	108	0.58	63
Evidence-Based Practice Self-Assessment Part 2	36	3	108	0.25	27
Permanent Supportive Housing Self-Assessment	36	1	36	0.67	24
Total	[g] 1,650		1,971		3,286

[a] 10 respondents × 30 site visits = 300 respondents.
[b] 18 respondents × 30 site visits = 540 respondents.
[c] 9 respondents × 30 site visits = 270 respondents.
[d] 2 respondents × 30 site visits = 60 respondents.
[e] 15 respondents × 30 site visits = 450 respondents.
[f] 2 respondents × 30 site visits = 60 respondents.
[g] This is an unduplicated count of total respondents.

Written comments and recommendations concerning the proposed information collection should be sent by February 23, 2017 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,

Statistician.

[FR Doc. 2017–01430 Filed 1–23–17; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5997–N–01]

30-Day Notice of Proposed Information Collection: Public Comment Request: Notice on Equal Access Regardless of Sexual Orientation, Gender Identity, or Marital Status for HUD's Community Planning and Development Programs

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 30 days of public comment.

DATES: *Comments Due Date:* February 23, 2017.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806, Email: *OIRA Submission@omb.eop.gov*

Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–5535 (this is not a toll-free number) or email at *Anna.P.Guido@hud.gov* for a copy of

the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the notice.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Persons who are deaf or hard of hearing or have speech impairments may access this number via TTY by calling the toll-free Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Anna P. Guido at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Person with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on September 21, 2016 at 81 FR 64930.

I. Background

As noted in the Summary, elsewhere in today's **Federal Register**, HUD is publishing its final rule entitled ''Equal Access in Accordance with an Individual's Gender Identity in Community Planning and Development Programs.'' Through this final rule, HUD ensures equal access to individuals in accordance with their gender identity in programs and shelter funded under programs administered by HUD's Office of Community Planning and Development (CPD). This rule builds upon HUD's February 2012 final rule entitled ''Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity'' (2012 Equal Access Rule), which aimed to ensure that HUD's housing programs would be open to all eligible individuals and families regardless of sexual orientation, gender identity, or marital status. The 2012 Equal Access Rule, however, did not address how transgender and gender non-conforming individuals should be accommodated in temporary, emergency shelters and other buildings and facilities used for shelter that have physical limitations or configurations that require and that are permitted to have shared sleeping quarters or shared bathing facilities.[1] This final rule published in today's **Federal Register** follows HUD's November 20, 2015 proposed rule, which addressed this issue after soliciting public comment. The final rule requires that recipients and subrecipients of CPD funding, as well as owners, operators, and managers of shelters, and other buildings and facilities and providers of services funded in whole or in part by any CPD program to grant equal access to such facilities, and other buildings and facilities, benefits, accommodations and services to individuals in accordance with the individual's gender identity, and in a manner that affords equal access to the individual's family.

The notice set out in the appendix presents an additional measure by HUD to ensure that individuals seeking placement or accommodation in a shelter or other building or facility and housing funded under a program administered by CPD are aware of HUD's equal access policy, as established in HUD's 2012 Equal Access Rule, and elaborated upon in the final rule published in today's **Federal Register**. Through this PRA notice, HUD proposes to require owners and operators of CPD-funded shelters, housing, buildings and other facilities to post this notice on bulletin boards and in other public places where individuals staying in the shelter, building, housing or facility or seeking placement or accommodation in the shelter, building, housing, or facility would see this information. HUD strives to reduce burden by providing the content of the notice to be posted and estimates it will take about six minutes for owners and operators to print and post this notice. All existing and new owners would be required to post the notice only once, and ensure that it remains visible to those accessing the shelter, housing, or facility.

A. Overview of Information Collection

Title of Information Collection: Notice on Equal Access Regardless of Sexual Orientation, Gender Identity, or Marital Status for HUD's Community Planning and Development Programs.

OMB Approval Number: 2506–New.

Type of Request: New collection of information.

Form Number: None.

Description of the need for the information and proposed use: As noted above, the purposeof the notice set out in the appendix to this PRA notice is to ensure that individuals seeking placement or accommodation in a shelter, building, housing or facility funded under a program administered by CPD are aware of HUD's equal access requirements, as established in HUD's 2012 Equal Access Rule, and elaborated upon in the final rule published in today's **Federal Register**.

Members of affected public: Owners and operators of a shelter, building, housing or facility funded under programs administered by CPD.

[1] Shared sleeping quarters and shared bathing facilities are those for simultaneous use by more than one person.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Please see table below.

Information collection	Number of respondents *	Response frequency (average)	Total ** responses	Burden hours per response	Total annual hours	Hourly rate ***	Burden cost per instrument
A	B	C	D	E	F		
HOME Investment Partnerships program	25,350	1	25,350	.10	2,535	$21.73	$55,085.55
Community Development Block Grant program (State and Entitlement)	2430	1	2430	.10	243	21.73	5,280.39
Housing Opportunities for Persons with AIDS program	100	1	100	.10	10	21.73	217.30
Emergency Solutions Grants program & Continuum of Care	6,750	1	6,750	.10	675	21.73	14,667.75
Total	34,630		34,630		3,463		75,250.99

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: January 13, 2017.

Anna P. Guido,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2017–01556 Filed 1–23–17; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6001–N–02]

60-Day Notice of Proposed Information Collection: FHA-Insured Mortgage Loan Servicing Involving the Claims and Conveyance Process, Property Inspection/Preservation

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* March 27, 2017.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Ivery W. Himes, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Ivery W. Himes at *Ivery.W.Himes@hud.gov* or telephone 202–708–1672, option 3. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Himes.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: FHA-Insured Mortgage Loan Servicing Involving the Claims and Conveyance Process, Property Inspection/Preservation.

OMB Approval Number: 2502–0429.

Type of Request: Revision of currently approved collection.

Form Numbers: HUD–27011, HUD–50002, HUD–50012, HUD–9519a, HUD–9539.

Description of the need for the information and proposed use: This information collection consists of the claims and conveyance process involving mortgage loan servicers; mortgagees, who service Federal Housing Administration ''FHA'' insured mortgage loans and the mortgagors, who are the homeowners.

Respondents (*i.e. affected public*): Servicers of FHA-insured mortgages.

Estimated Number of Respondents: 357.

Estimated Number of Responses: 1,198,168.

Frequency of Response: Monthly.

Average Hours per Response: 30 minutes.

Total Estimated Burdens: 1,086,582.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected

parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: January 17, 2017.

Janet M. Golrick,

Associate General Deputy Assistant Secretary for Housing Associate Deputy Federal Housing Commissioner.

[FR Doc. 2017–01550 Filed 1–23–17; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6015–N–01]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Administration under the provisions of the National Housing Act (the Act). The interest rate for debentures issued under Section 221(g)(4) of the Act during the 6-month period beginning January 1, 2017, is 2⅛ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the 6-month period beginning January 1, 2017, is 2¾ percent. However, as a result of an amendment to Section 224 of the Act, if an insurance claim relating to a mortgage insured under Sections 203 or 234 of the Act and endorsed for insurance after January 23, 2004, is paid in cash, the debenture interest rate for purposes of calculating a claim shall be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years.

FOR FURTHER INFORMATION CONTACT: Yong Sun, Department of Housing and Urban Development, 451 Seventh Street SW., Room 5148, Washington, DC 20410–8000; telephone (202) 402–4778 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (12 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. These regulatory provisions state that the applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the annual interest rate determined by the Secretary of the Treasury pursuant to a statutory formula based on the average yield of all outstanding marketable Treasury obligations of maturities of 15 or more years.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of Section 224, that the statutory maximum interest rate for the period beginning January 1, 2017, is 2¾ percent; and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 2¾ percent for the 6-month period beginning January 1, 2017. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4)) with insurance commitment or endorsement date (as applicable) within the first 6 months of 2017.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	On or after	Prior to
9½	Jan. 1, 1980	July 1, 1980.
9⅞	July 1, 1980	Jan. 1, 1981.
11¾	Jan. 1, 1981	July 1, 1981.
12⅞	July 1, 1981	Jan. 1, 1982.
12¾	Jan. 1, 1982	Jan. 1, 1983.
10¼	Jan. 1, 1983	July 1, 1983.
10⅜	July 1, 1983	Jan. 1, 1984.
11½	Jan. 1, 1984	July 1, 1984.
13⅜	July 1, 1984	Jan. 1, 1985.
11⅝	Jan. 1, 1985	July 1, 1985.
11⅛	July 1, 1985	Jan. 1, 1986.
10¼	Jan. 1, 1986	July 1, 1986.
8¼	July 1, 1986	Jan. 1. 1987.
8	Jan. 1, 1987	July 1, 1987.
9	July 1, 1987	Jan. 1, 1988.
9⅛	Jan. 1, 1988	July 1, 1988.
9⅜	July 1, 1988	Jan. 1, 1989.
9¼	Jan. 1, 1989	July 1, 1989.
9	July 1, 1989	Jan. 1, 1990.
8⅛	Jan. 1, 1990	July 1, 1990.
9	July 1, 1990	Jan. 1, 1991.
8¾	Jan. 1, 1991	July 1, 1991.
8½	July 1, 1991	Jan. 1, 1992.
8	Jan. 1, 1992	July 1, 1992.
8	July 1, 1992	Jan. 1, 1993.
7¾	Jan. 1, 1993	July 1, 1993.
7	July 1, 1993	Jan. 1, 1994.
6⅝	Jan. 1, 1994	July 1, 1994.
7¾	July 1, 1994	Jan. 1, 1995.
8⅜	Jan. 1, 1995	July 1, 1995.
7¼	July 1, 1995	Jan. 1, 1996.
6½	Jan. 1, 1996	July 1, 1996.
7¼	July 1, 1996	Jan. 1, 1997.
6¾	Jan. 1, 1997	July 1, 1997.
7⅛	July 1, 1997	Jan. 1, 1998.
6⅜	Jan. 1, 1998	July 1, 1998.
6⅛	July 1, 1998	Jan. 1, 1999.
5½	Jan. 1, 1999	July 1, 1999.
6⅛	July 1, 1999	Jan. 1, 2000.
6½	Jan. 1, 2000	July 1, 2000.
6½	July 1, 2000	Jan. 1, 2001.
6	Jan. 1, 2001	July 1, 2001.
5⅞	July 1, 2001	Jan. 1, 2002.
5¼	Jan. 1, 2002	July 1, 2002.
5¾	July 1, 2002	Jan. 1, 2003.
5	Jan. 1, 2003	July 1, 2003.
4½	July 1, 2003	Jan. 1, 2004.
5⅛	Jan. 1, 2004	July 1, 2004.
5½	July 1, 2004	Jan. 1, 2005.
4⅞	Jan. 1, 2005	July 1, 2005.
4½	July 1, 2005	Jan. 1, 2006.
4⅞	Jan. 1, 2006	July 1, 2006.
5⅜	July 1, 2006	Jan. 1, 2007.
4¾	Jan. 1, 2007	July 1, 2007.
5	July 1, 2007	Jan. 1, 2008.
4½	Jan. 1, 2008	July 1, 2008.

Effective interest rate	On or after	Prior to
4⅝	July 1, 2008	Jan. 1, 2009.
4⅛	Jan. 1, 2009	July 1, 2009.
4⅛	July 1, 2009	Jan. 1, 2010.
4¼	Jan. 1, 2010	July 1, 2010.
4⅛	July 1, 2010	Jan. 1, 2011.
3⅞	Jan. 1, 2011	July 1, 2011.
4⅛	July 1, 2011	Jan. 1, 2012.
2⅞	Jan. 1, 2012	July 1, 2012.
2¾	July 1, 2012	Jan. 1, 2013.
2½	Jan. 1, 2013	July 1, 2013.
2⅞	July 1, 2013	Jan. 1, 2014.
3⅝	Jan. 1, 2014	July 1, 2014.
3¼	July 1, 2014	Jan. 1, 2015.
3	Jan. 1, 2015	July 1, 2015.
2⅞	July 1, 2015	Jan. 1, 2016.
2⅞	Jan. 1, 2016	July 1, 2016.
2½	July 1, 2016	Jan. 1, 2017.
2¾	Jan. 1, 2017	July 1, 2017.

Section 215 of Division G, Title II of Public Law 108–199, enacted January 23, 2004 (HUD's 2004 Appropriations Act) amended Section 224 of the Act, to change the debenture interest rate for purposes of calculating certain insurance claim payments made in cash. Therefore, for all claims paid in cash on mortgages insured under Section 203 or 234 of the National Housing Act and endorsed for insurance after January 23, 2004, the debenture interest rate will be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years, as found in Federal Reserve Statistical Release H–15. The Federal Housing Administration has codified this provision in HUD regulations at 24 CFR 203.405(b) and 24 CFR 203.479(b).

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the ''going Federal rate'' in effect at the time the debentures are issued. The term ''going Federal rate'' is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a statutory formula based on the average yield on all outstanding marketable Treasury obligations of 8 to 12 year maturities, for the 6-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.255 and 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to Section 221(g)(4) during the 6-month period beginning January 1, 2017, is 2⅛ percent.

The subject matter of this Notice falls within the categorical exemption from HUD's environmental clearance procedures set forth in 24 CFR 50.19(c)(6). For that reason, no environmental finding has been prepared for this notice.

(Authority: Sections 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715l, 1715o; Section 7(d), Department of HUD Act, 42 U.S.C. 3535(d).)

Dated: January 17, 2017.

Edward L. Golding,

Principal Deputy Assistant Secretary for - Housing.

[FR Doc. 2017–01547 Filed 1–23–17; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6003–N–01]

60-Day Notice of Proposed Information Collection: Survey of Market Absorption of New Multifamily Units

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The U.S. Department of Housing and Urban Development (HUD) is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* March 27, 2017.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–5534 (this is not a toll-free number) or email at *Anna.P.Guido@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Anna P. Guido at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Survey of Market Absorption of New Multifamily Units.

OMB Approval Number: 2528–0013 (Expires March 31, 2017).

Type of Request: Extension of currently approved collection.

Form Number: N/A.

Description of the need for the information and proposed use: The Survey of Market Absorption (SOMA) provides the data necessary to measure the rate at which new rental apartments and new condominium apartments are absorbed; that is, taken off the market, usually by being rented or sold, over the course of the first twelve months following completion of a building. The data are collected at quarterly intervals until the twelve months conclude, or until the units in a building are completely absorbed. The survey also provides estimates of certain characteristics, including asking rent/price, number of units, and number of bedrooms. The survey provides a basis for analyzing the degree to which new apartment construction is meeting the present and future needs of the public.

Members of affected public: Rental Agents/Builders.

Estimated Number of Respondents: 12,000 yearly (maximum).

Estimated Time per Response: 15 minutes/initial interview and 5 minutes for any subsequent interviews (up to three additional, if necessary).

Frequency of Response: Four times (maximum).

Estimated Total Annual Burden Hours: 6,000 (12,000 buildings × 30 minutes).

Estimated Total Annual Cost: The only cost to respondents is that of their time. The total estimated cost to HUD in FY 2017 is $1,120,000.

Respondent's Obligation: Voluntary.

Legal Authority: The survey is conducted under Title 12, United States Code, Section 1701Z.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Cost
SOMA	12,000	4	48,000	.125 (30 minutes total divided by 4 interviews).	6000	$0	$0
Total	12,000	4	48,000	.125	6000	0	0

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: January 10, 2017.

Matthew Ammon,

General Deputy Secretary for Policy Development and Research.

[FR Doc. 2017–01552 Filed 1–23–17; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–R–2016–N168; FXRS12650200000–178–FF02R04000]

Little Sandy National Wildlife Refuge, Wood County, Texas; Draft Comprehensive Conservation Plan and Draft Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft Comprehensive Conservation Plan (dCCP) and the draft Environmental Assessment (dEA) for Little Sandy National Wildlife Refuge (NWR), located approximately 80 miles east of Dallas, Texas, for public review and comment. The dCCP/dEA describes our proposal for managing the refuge for the next 15 years.

DATES: To ensure consideration, please send your written comments by February 23, 2017. We will announce any potential upcoming public meetings in local news media.

ADDRESSES: You may submit comments or requests for copies or more information by any of the following methods. You may request hard copies or a CD–ROM of the documents. Please contact David Weaver, Refuge Manager, or Joseph Lujan, Natural Resource Planner.

Email: Joseph_Lujan@fws.gov. Include ''Little Sandy NWR draft CCP and draft EA'' in the subject line of the message.

Fax: Attn: Joseph Lujan, 505–248–6803.

U.S. Mail: Joseph Lujan, Natural Resource Planner, U.S. Fish and Wildlife Service, NWRS, Division of Planning, P.O. Box 1306 Room 4335, Albuquerque, New Mexico 87103.

In-Person Drop-off, Viewing, or Pickup: In-Person Drop-off: You may drop off comments during regular business hours of 8 a.m. to 4:30 p.m. at 500 Gold Avenue SW; 4th Floor, Room 4335; Albuquerque, New Mexico 87102. Little Sandy NWR, CCP Project, P.O. Box 340, Broken Bow, Oklahoma 74728

FOR FURTHER INFORMATION CONTACT: David Weaver, Refuge Manager, Little Sandy NWR, CCP Project, P.O. Box 340, Broken Bow, Oklahoma 74728; phone: 580–584–6211.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the Comprehensive Conservation Planning (CCP) process for the Little Sandy NWR. We started this process through a notice in the **Federal Register** (72 FR 46095; August 16, 2007).

The primary purpose of Little Sandy NWR is to protect a remnant of the bottomland hardwood forest ecosystem along the Sabine River in East Texas. The Little Sandy NWR was established in December 1986 as a permanent non-development easement with the Little Sandy Hunting and Fishing Club (LSHFC). It is managed as a unit of the National Wildlife Refuge System (NWRS) out of the Little River NWR Complex headquarters in Broken Bow Oklahoma.

Background

The CCP Process

The National Wildlife Refuge System Improvement Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Refuge Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15 year plan for achieving refuge purposes and contributing toward the mission of the NWRS, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and FWS policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Refuge Administration Act.

Public Outreach

Formal scoping began when we published a notice of intent to prepare a CCP and EA in the **Federal Register** on August 16, 2007, and formally invited the Texas Parks and Wildlife Department (TPWD) to participate in the development of the document. TPWD has provided constant input and the Service has continued to involve them throughout the planning process. Information sheets were sent to the public, and news releases were sent to a variety of media outlets. A public open house meeting was held on September 9, 2009, at Jarvis Christian College in Hawkins, Texas. Additional written comments were received prior to the open house. A variety of stakeholders contributed feedback at the open house meeting and via written

comments and we used the feedback in development of the dCCP.

CCP Alternatives We Are Considering

The public raised multiple issues during the public scoping process that initiated this dCCP. Our dCCP addresses them in detail. A full description of each alternative is in the dEA. To address these issues, we developed and evaluated the following alternatives, summarized below.

COMPARISON OF ALTERNATIVES

Issues and topics	Alternative A: Current management	Alternative B: Proposed action
I. Habitat Management		
• Climate Change	The Service has limited activities at Little Sandy NWR; as such, the Refuge attempts to limit carbon footprints by consolidating trips from Caddo Lake NWR; what few trips are made to the Refuge are offset by the conservation of the bottomland hardwood habitat found on the Refuge. There are no Service facilities present on the Refuge; therefore, there is no effort to utilize green products commonly associated with such facilities.	The Refuge would establish a baseline dataset for Refuge resources. To do so, the Refuge would use technologies including historical imagery and tabular data, existing maps and records, LiDAR, contemporary ortho-rectified imagery, ground-truthing and on-screen digitizing. This baseline dataset would enable the Refuge to develop a decision-based research and monitoring program to track potential impacts from climate change on the Refuge. There would be no Service development of facilities on the Refuge.
• Land Acquisition	The Service would work within the 10 percent rule which allows Refuge expansion to occur up to 10 percent of the total Refuge establishment acres within the Refuge or up to 1 mile of the existing Refuge boundary. This includes fee acquisition and conservation easements from willing sellers or donors.	The Refuge will participate in a partnership driven Land Protection Planning process that would guide land acquisition efforts and provide the opportunity to acquire any adjacent lands from willing sellers. Both bottomland and upland tracts would be considered in the plan.
• Flora Inventory	An initial habitat assessment of the refuge was completed by refuge staff when Little Sandy was brought into the Refuge System, and an additional ecological community characterization survey was conducted by the U.S. Geological Survey's National Wetland Research Center. Current inventory activities are limited to identification and confirmation of invasive flora species when Little Sandy Hunting and Fishing Club (LSHFC) members report them.	Same as Alternative A plus the development of a comprehensive species list for the Refuge would be beneficial for determining ecological integrity and habitat diversity as well as providing a baseline dataset from which any changes to habitat as a result of climate change and management activities can be tracked.
• Prescribed Burning	There is currently no prescribed fire plan or program on Little Sandy NWR. A Fire program would mimic natural fire ecology and be beneficial to upland habitat.	The completion and implementation of a step-down fire management plan would be focused on mimicking natural fire ecology on the upland portions of the Refuge, controlling invasive flora species, reducing fuel loads from wildfires and promote pine savanna habitat.
• Invasive Species Management (Flora).	Limited management activities are present in the form of chemical (Garlon 3A and Garlon4) treatments when identified by LSHFC members.. In 2011 and 2012, limited funding was available to treat Chinese tallow and privet.	Same as Alternative A plus increased efforts to locate, map, treat, and monitor these, as well as other invasive species, which may be present on the Refuge. In addition, some stumps may be cut and sprayed to minimize spread of invasive species. This can be conducted in conjunction with the Flora Inventory as described above. Prescribed burning can also be used to treat with the production of a fire management plan.
• Water Body Management	Brumley and Overton Lake levels managed by LSHFC for recreation and hunting purposes; the Refuge serves in an advisory function only.	Same as Alternative A.
II. Wildlife Management		
• Fauna Inventory	Annual aerial waterfowl surveys were conducted between October and March, from 2008–2011, on a monthly basis by the Region 2 pilot and a Refuge staff member. Aerial surveys were halted in 2011 when the Region no longer had a airplane. In addition, annual bird point counts are conducted with assistance from Region 2 migratory bird biologist, Texas Parks and Wildlife biologist and Refuge staff each spring in May and June.	Same as Alternative A, plus expand current wildlife monitoring on the Refuge and coordinate with the Division of Biological Sciences. This alternative would also provide an opportunity to utilize LiDAR to monitor changes in habitat throughout the Refuge. The alternative includes; expansion of bird point counts and monitoring to meet Service standards, continuation of on the ground waterfowl surveys and the collection of biological data from fauna harvested by the LSHFC.

COMPARISON OF ALTERNATIVES—Continued

Issues and topics	Alternative A: Current management	Alternative B: Proposed action
• Nuisance and Invasive Species Management (Fauna).	The LSHFC staff identifies and removes beaver dams throughout the year from culverts and small drains to promote drainage and maintain trails. Hunt club members may take hogs during other hunting activities, but these circumstances are opportunistic and relatively rare; there have been coordinated trapping efforts between the Service and LSHFC since 2013.	Under this alternative, the Refuge will develop step down management plans focused on nuisance and invasive species management. Step Down Plans would be initiated for an Invasive Species Management Plan, a Feral Hog and Beaver Management Plan. Step Down Management Plans may initiate management practices for nuisance species (beaver, nutria), such as dam removal and trapping, reducing the negative impacts to existing infrastructure. Additionally, the Refuge will utilize their own staff or contract services to conduct hunting and trapping of feral hogs.
III. Staff Requirements Under the Two Alternatives		
	Zero (0) Full-Time Equivalent (FTE) Staff	2.5 FTE.
IV. Budgets Under the Two Alternatives		
• Refuge Base Operational Budget.	$0	$612,476.00.
• Annual Maintenance	$0	$0.
• Fire Operations	$0	$0.
• Tallow/Forest Inventory	$18,884.00	$18,884.00.
Total Budget	$18,884.00	$631,360.00.

Public Availability of Documents

In addition to using any methods in **ADDRESSES**, you can view or obtain documents at the following locations:

- Little River NWR, P.O. Box 340, Broken Bow, Oklahoma 74728, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.
- Our Web site: *https://www.fws.gov/southwest/refuges/texas/little_sandy/CCP.*
- The following public libraries:

Library	Address	Phone number
Allen Memorial Public Library	121 East Blackbourn Street, Hawkins, Texas 75765	903–769–2241
Tyler Public Library	201 South College Avenue, Tyler, Texas 75702	903–593–7323

Submitting Comments/Issues for Comment

We consider comments substantive if they:

- Question, with reasonable basis, the accuracy of the information in the document;
- Question, with reasonable basis, the adequacy of the dEA;
- Present reasonable alternatives other than those presented in the dEA; and/or
- Provide new or additional information relevant to the dEA.

Next Steps

After this comment period ends, we will analyze the comments and then address them in the form of a final CCP and The National Environmental Policy Act decision document.

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.

Dated: January 11, 2017.

Benjamin Tuggle,

Regional Director, Southwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2017–01543 Filed 1–23–17; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX17LR000F60100]

Agency Information Collection Activities: Request for Comments

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of a renewal of a currently approved information collection (1028–0070).

SUMMARY: We (the U.S. Geological Survey) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. This collection consists of 1 form. As required by the Paperwork Reduction Act (PRA) of 1995, and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This collection is scheduled to expire on May 31, 2017.

DATES: To ensure that your comments are considered, we must receive them on or before March 27, 2017.

ADDRESSES: You may submit comments on this information collection to the Information Collection Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive MS 807, Reston, VA 20192 (mail); (703) 648–7197 (fax); or *gs-info_collections@usgs.gov* (email). Please reference 'Information Collection 1028–0070, Consolidated Consumers' Report in all correspondence.

FOR FURTHER INFORMATION CONTACT: Elizabeth S. Sangine, National Minerals Information Center, U.S. Geological Survey, 12201 Sunrise Valley Drive, MS 989, Reston, VA 20192 (mail); 703–648–7720 (phone); or *escottsangine@usgs.gov* (email). You may also find information about this ICR at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Respondents to this form supply the USGS with domestic consumption data for 12 metals and ferroalloys, some of which are considered strategic and critical to assist in determining stockpile goals. These data and derived information will be published as chapters in Minerals Yearbooks, monthly Mineral Industry Surveys, annual Mineral Commodity Summaries, and special publications, for use by Government agencies, industry education programs, and the general public.

II. Data

OMB Control Number: 1028–0070.

Form Number: USGS Form 9–4117–MA.

Title: Consolidated Consumers' Report.

Type of Request: Renewal of existing information collection.

Affected Public: Business or Other-For-Profit Institutions: U.S. nonfuel minerals producers.

Respondent's Obligation: None. Participation is voluntary.

Frequency of Collection: Monthly and Annually.

Estimated Total Number of Annual Responses: 1,407.

Estimated Time per Response: 45 minutes.

Estimated Annual Burden Hours: 1,055 hours.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: There are no ''non-hour cost'' burdens associated with this IC.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number and current expiration date.

III. Request for Comments

We are soliciting comments as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that the comments submitted in response to this notice are a matter of public record. Before including your personal mailing address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment, including your personally identifiable information, may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifiable information from public view, we cannot guarantee that we will be able to do so.

Michael J. Magyar,

Associate Director, National Minerals Information Center, U.S. Geological Survey.

[FR Doc. 2017–01445 Filed 1–23–17; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–PWR–PWRO–22324; PPPWGO6AP0/PPMPSAS1Z.YP0000]

Final Environmental Impact Statement for Alcatraz Ferry Embarkation, Counties of Marin and San Francisco, California

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service (NPS) has prepared the Final Environmental Impact Statement (Final EIS) for the Alcatraz Ferry Embarkation project. The Final EIS evaluates four alternatives for establishing a long-term ferry embarkation site for passenger service between the northern San Francisco waterfront and Alcatraz Island, and additional occasional ferry service between the Alcatraz ferry embarkation site and the existing Fort Baker pier, as well as other excursions within the San Francisco Bay.

DATES: The NPS will execute a Record of Decision no sooner than 30 days after the date of publication in the **Federal Register** of the Environmental Protection Agency's (EPA) notice of filing and availability of the Final EIS.

FOR FURTHER INFORMATION CONTACT: Please contact Golden Gate National Recreation Area at (415) 561–4930 or *goga_planning@nps.gov.*

SUPPLEMENTARY INFORMATION: After operating out of Pier 41 for many years, the Alcatraz Island ferry embarkation site moved to Pier 31½ in 2006 when a new ferry service concessioner was selected, which led to inconsistencies in the delivery of visitor services and impacts on surrounding communities, business interests, and transit providers. Federal law generally limits the term of concession contracts to 10 years or fewer, and requires that a competitive process be used to select new concessioners.

The NPS seeks to secure a site that will provide a long-term orientation and ferry embarkation facility for service to Alcatraz Island from the northern San Francisco waterfront. The NPS desires an identifiable and well-functioning facility that will provide a quality welcome and support program for visitors, orient visitors to the history of Alcatraz Island, and provide a connection to other Golden Gate National Recreation Area (GGNRA) parklands and orientation to the national park system in general. The NPS also seeks to establish additional occasional ferry service between the primary Alcatraz ferry embarkation site and the existing Fort Baker pier, as well as other excursions within the Bay departing from the primary embarkation site. The Final EIS evaluated additional service to and from Fort Mason, but this activity is not included in the preferred alternative. These elements would improve cross-Bay connectivity and accommodate existing and future visitor demand for recreational travel to Fort Baker and the Marin Headlands, thereby enhancing GGNRA's operational effectiveness. Many potential visitors are unable to obtain tickets to Alcatraz Island due to the high demand. Enhanced on-shore visitor facilities would provide those visitors with interpretive information about the island and options for visiting other GGNRA destinations from San Francisco.

Public scoping was initiated in the late spring of 2012. The Notice of Intent to prepare an EIS was published in the **Federal Register** on June 1, 2012. Scoping meetings were held on June 26 and 28, 2012, at Fort Mason Building 201 in San Francisco and the City Hall in Sausalito, respectively. Over the comment period, approximately 90 correspondences were collected from interested stakeholders.

The Draft EIS was released on March 20, 2015 with comments accepted through June 4, 2015. During the comment period, one public meeting was held on March 31, 2015 at Pier 1 in San Francisco. Approximately 277 pieces of correspondence were received. Some plan content was modified based

on public comments, but there have been very few substantial changes to the alternatives under consideration. Changes include adding additional specificity on the number of planned trips for special ferry service to Fort Baker and identifying the preferred alternative to include developing the primary embarkation site as Pier 31½ as well as providing occasional ferry service to Fort Baker.

Range of Alternatives: The Final EIS describes and analyzes four alternatives.

No-Action Alternative: Ferry service to Alcatraz Island would continue from Pier 31½, controlled by the Port of San Francisco, with no changes to management or site operations and infrastructure. This alternative serves as the environmental baseline from which potential effects of the three ''action'' alternatives were compared.

Pier 31½ Alternative: Retrofit existing structures (parts of piers 31, 33 and associated bulkhead buildings) and establish long-term ferry service and embarkation site operations at Pier 31½ along the Embarcadero. A third berth would be constructed to support ferry travel to other GGNRA sites. This is the ''agency-preferred'' alternative for the Alcatraz Ferry Embarkation site. This alternative also includes consideration of limited ferry service to/from Fort Baker.

Pier 41 Alternative: Retrofit and expand existing structures and establish long-term embarkation at Pier 41, controlled by the Port of San Francisco in Fisherman's Wharf. A third berth would be constructed to support ferry travel to other GGNRA sites.

Pier 3 Alternative: Retrofit existing structures and establish a long-term embarkation site at Pier 3 in Fort Mason, a federal property managed by GGNRA. A third berth between Piers 1 and 2 would also be constructed.

In the future, the selected embarkation site would include additional ferry services from the primary embarkation site to provide recreational ferry service to other destinations in the Bay, as well as Bay excursions, which would enhance the connectivity and accommodation of visitor demands to other GGNRA destinations. The details associated with providing any such potential ferry service to particular locations other than Alcatraz Island and Fort Baker would be analyzed in future environmental documents.

The NPS will execute a Record of Decision no sooner than 30 days following EPA's notice published in the **Federal Register** announcing filing and release of the Final EIS. The official responsible for approval of the Alcatraz Ferry Embarkation project is the Regional Director of the Pacific West Region, and subsequently the General Superintendent, GGNRA, will be responsible for implementation.

Dated: November 4, 2016.

Laura E. Joss,

Regional Director, Pacific West Region.

[FR Doc. 2017–01469 Filed 1–23–17; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1037]

Certain Graphics Processors, DDR Memory Controllers, and Products Containing the Same Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 16, 2016, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of ZiiLabs Inc., Ltd. of Bermuda. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain graphics processors, DDR memory controllers, and products containing the same by reason of infringement of U.S. Patent No. 6,677,952 ('952 patent''); U.S. Patent No. 6,950,350 ('350 patent''); U.S. Patent No. 7,518,616 ('616 patent''); and U.S. Patent No. 8,643,659 ('659 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2016).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 17, 2017, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain graphics processors, DDR memory controllers, and products containing the same by reason of infringement of one or more of claims 1–8 of the '952 patent; claims 1–16 of the '350 patent; claims 1–8 of the '616 patent; and claims 1–20 of the '659 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding Administrative Law Judge shall take evidence or other information and hear arguments from the parties or other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

ZiiLabs Inc., Ltd., Clarendon House, 2 Church Street, Hamilton, HM11, Bermuda

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Advanced Micro Devices, Inc., One AMD Place, P.O. Box 3453, Sunnyvale, CA 94088–3453
Lenovo Group Ltd., Shangdi Information Industry Base, No. 6 Chuang Ye Road, Haidan District, 10085 Beijing, China
Lenovo Holding Co., Inc., 1009 Think Place, Morrisville, NC 27650
Lenovo (United States) Inc., 1009 Think Place, Morrisville, NC 27650
LG Electronics, Inc., LG Twin Towers, 20, Yeouido-dong, Yeongdeungpo-gu, Seoul 150–721, Republic of Korea
LG Electronics U.S.A., Inc., 1000 Sylvan Avenue, Englewood Cliffs, NJ 07632
LG Electronics MobileComm U.S.A., Inc., 10101 Old Grove Road, San Diego, CA 92131
MediaTek, Inc., No. 1, Dusing Rd. 1, Hsinchu Science Park, Hsinchu City 30078, Taiwan
MediaTek USA Inc., 2860 Junction Ave., San Jose, CA 95134
Motorola Mobility LLC, 600 N. U.S. Highway 45, Libertyville, IL 60048
Qualcomm Inc., 5775 Morehouse Drive, San Diego, CA 92121
Sony Corporation, 1–7–1 Konan, Minato-ku, Tokyo 108–0075, Japan
Sony Corporation of America, 25 Madison Avenue, New York, NY 10022–33211
Sony Electronics, Inc., 16535 Via Esprillo Building 1, San Diego, CA 97127
Sony Mobile Communications (USA) Inc., 2207 Bridgepoint Parkway, San Mateo, CA 94404
Sony Computer Entertainment Inc., 1–7–1 Konan, Minato-ku, Tokyo 108–0075, Japan
Sony Interactive Entertainment LLC, 2207 Bridgepoint Parkway, San Mateo, CA 94404

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: January 18, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–01530 Filed 1–23–17; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1091 (Second Review)]

Artists' Canvas From China; Scheduling of an Expedited Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty order on artists' canvas from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: *Effective Date:* January 6, 2017.

FOR FURTHER INFORMATION CONTACT: Christopher Cassise (708–5408), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On January 6, 2017, the Commission determined that the domestic interested party group response to its notice of institution (81 FR 68049, October 3, 2016) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on February 1, 2017, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before February 6, 2017 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by February 6, 2017. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] The Commission has found the response submitted by Tara Materials, Inc. to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules with respect to filing were revised effective July 25, 2014. *See* 79 FR 35920 (June 25, 2014), and the revised Commission Handbook on E-filing, available from the Commission's Web site at *https://edis.usitc.gov.*

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: January 17, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–01446 Filed 1–23–17; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1018]

Certain Athletic Footwear; Commission's Determination Not To Review an Initial Determination Terminating the Investigation; Issuance of Consent Order; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 11) terminating the respondents based on consent order stipulations and a joint proposed consent order. The Commission has terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Amanda Pitcher Fisherow, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 13, 2016, based on a complaint, including supplements, filed on behalf of Reebok International Ltd. of Canton, Massachusetts and Reebok International Limited of England. (''complainants''). 81 FR 62920 (Sept. 13, 2016). The complaint as supplemented alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain athletic footwear by reason of infringement of certain claims of U.S. Patent No. 7,637,035 and U.S. Patent No. 8,505,221. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. The Commission's notice of investigation named the following respondents: TRB Acquisitions LLC (''TRB'') of New York, New York; RBX Active 01 LLC, RBX Direct LLC, and RBX.COM LLC (collectively, ''RBX'') all of New York, New York; and Elite Performance Footwear, LLC (''Elite'') of New York, New York.

On November 14, 2016, respondent TRB filed a motion to terminate the investigation as to TRB based on a consent order stipulation and proposed consent order. On November 25, 2016, the RBX respondents filed a motion to terminate the investigation as to the RBX respondents based on a consent order stipulation and proposed consent order. Finally, on December 1, 2016, respondent Elite filed a motion to terminate the investigation as to Elite based on a consent order stipulation and proposed consent order. Complainants originally opposed TRB's motion but later complainants and respondents filed a joint notice on December 12, 2016, that complainants now join respondents' motions to terminate. This filing included a joint proposed consent order,

On December 20, 2016, the ALJ issued an ID (Order No. 11) terminating the investigation based on the consent order stipulations and a joint proposed consent order. The ALJ found that the consent order stipulations complied with the rules and that the respondents represented that ''there are no other agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation.'' The ALJ also found that the joint proposed consent order complies with Commission Rule 210.21(c)(4). Finally, the ALJ found termination of the investigation ''does not impose any undue burdens on the public health and welfare, competitive conditions in the United States economy, production of like or directly competitive articles in the United States, or United States consumers.''

The Commission has determined not to review the subject ID and has issued the joint consent order. The Commission has terminated the investigation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: January 17, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–01482 Filed 1–23–17; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1036]

Certain Magnetic Tape Cartridges and Components Thereof Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 15, 2016, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Sony Corporation of Japan; Sony Storage Media and Devices Corporation of Japan; Sony DADC US Inc. of Terre Haute, Indiana; and Sony Latin America Inc. of Miami, Florida. Supplements to the complaint were filed on January 5, 2017. The complaint, as supplemented, alleges violations of section 337 based

upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain magnetic tape cartridges and components thereof by reason of infringement of certain claims of U.S. Patent No. 6,345,779 (''the '779 patent''); U.S. Patent No. 6,896,959 (''the '959 patent''); U.S. Patent No. 7,016,137 (''the '137 patent''); and U.S. Patent No. 7,115,331 (''the '331 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2016).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 17, 2017, Ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain magnetic tape cartridges and components thereof by reason of infringement of one or more of claims 1–6 of the '779 patent; claims 1, 2, 4–9, 13, 16, and 17 of the '959 patent; claims 1–5 of the '137 patent; and claims 1–3, 7, 9–11, 13, 14, 16, and 17 of the '331 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(l), (f)(1), (g)(1).

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Sony Corporation, 1–7–1 Konan, Minato-ku, Tokyo 108–0075, Japan

Sony Storage Media and Devices Corporation, 3–4–1 Sakuragi, Tagajo, Miyagi 985–0842, Japan

Sony DADC US Inc., 1800 North Fruitridge Avenue, Terre Haute, IN 47804

Sony Latin America Inc., 5201 Blue Lagoon Drive, Suite 400, Miami, FL 33126

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Fujifilm Holdings Corporation, 7–3 Akasaka 9-chome, Minato-ku, Tokyo 107–0052, Japan

Fujifilm Corporation, 7–3 Akasaka 9-chome, Minato-ku, Tokyo 107–0052, Japan

Fujifilm Holdings America Corporation, 200 Summit Lake Drive, Valhalla, NY 10595

Fujifilm Recording Media U.S.A., Inc., 45 Crosby Drive, Bedford, MA 01730–1401

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: January 18, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–01531 Filed 1–23–17; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1027]

Certain Food Supplements and Vitamins, Including Ocular Antioxidants and Components Thereof and Products Containing the Same; Commission Determination Not To Review an Initial Determination Terminating the Investigation Based on Settlement; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 8) terminating the investigation based on settlement.

FOR FURTHER INFORMATION CONTACT: Amanda P. Fisherow, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202)

205–2737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 8, 2016, based on a complaint filed by Kemin Industries, Inc. and Kemin Foods, L.C. both of Des Moines, Iowa (collectively, ''complainants''). 81 FR 78634–35 (Nov. 8, 2016). The complaint alleges violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, by reason of infringement of certain claims of U.S. Patent Nos. 8,815,955 and 9,226,940. The complaint further alleges the existence of a domestic industry. The notice of investigation named as respondents OmniActive Health Technologies of Mumbai, India and OmniActive Health Technologies, Inc. of Morristown, New Jersey (collectively, ''respondents''). *Id.* at 78635. The Office of Unfair Import Investigations was not named as a party.

On December 13, 2016, complainants and respondents filed a joint motion to terminate the investigation based on settlement. The parties represent that the settlement agreement reflects the entire and only agreement between the parties regarding the subject matter of the investigation and that there are no other agreement, written or oral, express or implied between the parties concerning the subject matter of the investigation.

On December 28, 2016, the ALJ granted the joint motion to terminate the investigation based on settlement. The ALJ found that the parties' submissions, including a modified public version of the settlement agreement submitted on December 22, 2016, satisfy the Commission's rules. The ALJ found that the termination of this investigation based on settlement does not pose any public interest concerns. The ALJ also found that it is in the interest of the public and administrative economy to grant the motion.

No petitions for review of the subject ID were filed, and the Commission has determined not to review the ID. The investigation is terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.
Issued: January 17, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–01481 Filed 1–23–17; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation Liability Act (''CERCLA'')

On January 17, 2017, the Department of Justice lodged a proposed Consent Decree (''Decree'') with the United States District Court for the District of Arizona in the lawsuit entitled *United States* v. *Cyprus Amax Minerals Company and Western Nuclear, Inc., Civil Action No. 2:17–cv–00140.*

In this action, the United States and the Navajo Nation filed complaints against Cyprus Amax Minerals Company and Western Nuclear, Inc. (''Defendants'') seeking past and future response costs and injunctive relief under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9606 and 9607. The United States and the Navajo Nation concurrently lodged a Consent Decree resolving the claims alleged in the complaint. The Defendants, through either their corporate predecessors or past activities, operated mine sites on the Navajo Nation. There are Navajo Nation communities located close to the mine sites, on and near the Navajo Nation Reservation, and downstream and down-wind from the waste piles on the mine sites. There have been or may be releases and/or threatened releases of hazardous substances from the mine sites formerly operated by the Defendants into the environment at each of the mine sites. More specifically, there have been or may be releases and/or threatened releases of uranium and radium-226, each of which constitutes a hazardous substance. The Decree requires the Settling Defendants to pay past and future response costs to EPA and implement injunctive relief to abate releases or threatened releases from the mine sites.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Cyprus Amax Minerals Company and Western Nuclear, Inc., D.J. Ref. No. 90–11–2–10823/1.* All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-decrees.*

We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $15.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Commenters should be aware that comments received are submitted to the Court as a public filing, and may be submitted to counsel and other parties associated with the litigation.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2017–01565 Filed 1–23–17; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Third Partial Consent Decree Under the Clean Air Act

On January 11, 2017, the Department of Justice lodged a proposed Third Partial Consent Decree with the United States District Court for the Northern District of California in the lawsuit entitled *In re: Volkswagen* ''*Clean Diesel*'' *Marketing, Sales Practices, and*

Products Liability Litigation, Case No: MDL No. 2672 CRB (JSC), partially resolving Clean Air Act claims against Volkswagen Group of America, Inc., and others, concerning certain noncompliant 2.0 and 3.0 liter diesel vehicles.

On January 4, 2016, the United States, on behalf of the Environmental Protection Agency (''EPA''), filed a complaint against Volkswagen AG, Volkswagen Group of America, Inc., Volkswagen Group of America Chattanooga Operations, LLC, and Audi AG (the ''VW Defendants''), and Dr. Ing. h.c. F. Porsche AG, and Porsche Cars North America, Inc. (the ''Porsche Defendants'') alleging that the defendants violated Sections 203(a)(1), (2), (3)(A), and (3)(B) of the Clean Air Act (''Act''), 42 U.S.C. 7522(a)(1), (2), (3)(A), and (3)(B), with regard to approximately 500,000 model year 2009 to 2015 motor vehicles containing 2.0 liter diesel engines (2.0 Liter Subject Vehicles) and approximately 80,000 model year 2009 to 2016 motor vehicles containing 3.0 liter diesel engines (3.0 Liter Subject Vehicles). An amended complaint was filed on October 7, 2016. The United States' complaint (initial and as amended) alleges that each 2.0 and 3.0 Liter Subject Vehicle contains computer algorithms that are prohibited defeat devices that cause the emissions control system of those vehicles to perform differently during normal vehicle operation and use than during emissions testing. The complaint alleges that the defeat devices cause the vehicles, during normal vehicle operation and use, to emit levels of oxides of nitrogen (''NO_X'') significantly in excess of EPA-compliant levels. The complaint seeks, among other things, injunctive relief to remedy the violations, including mitigation of excess NO_X emissions, and civil penalties.

The proposed Third Partial Consent Decree (''Decree'') is entered into between the United States and all defendants. This Decree addresses defendants' liability under the Clean Air Act for civil penalties and injunctive relief to prevent similar violations in the future. Under the Decree, the Defendants must pay a civil penalty of $1,450,000,000, with interest running from the date of lodging, which resolves the civil penalty claims of both EPA and, pursuant to a separate agreement, U.S. Customs and Border Protection.

The VW Defendants and the Porsche Defendants are also each required to undertake a number of specific corporate governance reforms and to perform in-use testing of their vehicles using a portable emissions measurement system. In addition, the VW Defendants must retain an independent compliance auditor for a three-year period to review the VW Defendants' compliance with the Decree.

The publication of this notice opens a period for public comment on the Third Partial Consent Decree. Comments concerning the Decree should be addressed to the Assistant Attorney General, Environment and Natural Resources Division and should refer to *In re: Volkswagen ''Clean Diesel'' Marketing, Sales Practices, and Products Liability Litigation,* Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90–5–2–1–11386.

All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

The Third Partial Consent Decree may be viewed and downloaded from *http://www.cand.uscourts.gov/crb/vwmdl.* During the public comment period, the Decree may also be examined and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Third Partial Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $20.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Karen S. Dworkin,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2017–01471 Filed 1–23–17; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0314]

Bureau of Justice Statistics; Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension Without Change, of a Previously Approved Collection Firearm Inquiry Statistics (FIST) Program

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, 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.

DATES: Comments are encouraged and will be accepted for 60 days until March 27, 2017.

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 Allina D. Lee, Statistical Policy Advisor, Bureau of Justice Statistics, 810 Seventh Street NW., Washington, DC 20531 (phone: 202–305–2696).

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:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* 2016 Firearm Inquiry Statistics Program: Annual Survey of Background Checks for Firearm Transfers and Permits.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* There is no agency form number at this time. The applicable component within the Department of Justice is the Bureau of Justice Statistics, in the Office of Justice Programs.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Through the Firearm Inquiry Statistics (FIST) Program, the Bureau of Justice Statistics (BJS) obtains information from state and local checking agencies responsible for maintaining records on the number of background checks for firearm transfers or permits that were issued, processed, tracked, or conducted during the calendar year. Specifically, state and local checking agencies are asked to provide information on the number of applications and denials for firearm transfers received or tracked by the agency, and reasons why an application was denied. BJS combines these data with the Federal Bureau of Investigation's (FBI) National Instant Criminal Background Check System transaction data to produce comprehensive national statistics on firearm application and denial activities resulting from the Brady Handgun Violence Prevention Act of 1993 (the Brady Act) and similar state laws governing background checks and firearm transfers. BJS also collects information from the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) on FBI denials screened and referred to ATF field offices for investigation and possible prosecution. BJS began the FIST program in 1995 and collects FIST data annually. BJS publishes FIST data on the BJS Web site in statistical tables and uses the information to respond to inquiries from Congress, federal, state, and local government officials, researchers, students, the media, and other members of the general public interested in in criminal justice statistics.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 1,044 checking agencies will take part in the 2016 FIST survey, including the 34 state agency reporters that provide complete statewide counts of applications of firearm transfers or permits and denials, a full census of local checking agencies in 9 states where the local agencies are the FIST points-of-contact, and a sample of agencies in 3 states where local checking agencies are responsible for conducting background checks. Based on testing of the current survey form and BJS's extensive history conducting the FIST collection, BJS estimates that the burden will vary depending on the number of permit or transfer types the respondent agency conducts background checks: 20 minutes for agencies that conduct background checks for 1 type; 30 minutes for agencies that conduct background checks for 2 types; and 30 minutes for state reporting agencies. The overall estimated burden is 25 minutes, which is consistent with the burden associated with the 3 most recent collections (2012, 2014, and 2015).

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 435 hours annually. It is estimated that respondents will take 25 minutes to complete a questionnaire. The burden hours for collecting respondent data sum to 435 hours (1,044 respondents × 25 minutes = 435 hours).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405A, Washington, DC 20530.

Dated: January 18, 2017.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2017–01570 Filed 1–23–17; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

[OMB Number 1110–0056]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Previously Approved Collection

AGENCY: Department of Justice, Federal Bureau of Investigation, Critical Incident Response Group, Investigative and Operational Support Section, National Center for the Analysis of Violent Crime (NCAVC).

ACTION: 30-day notice.

SUMMARY: The Department of Justice, Federal Bureau of Investigation, Critical Incident Response Group has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with established review procedures of the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until February 23, 2017.

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 Lesa Marcolini, Federal Bureau of Investigation, Critical Incident Response Group, FBI Academy, Quantico, Virginia 22135.

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: Extension of a currently approved collection.

2. The Title of the Form/Collection: FBI–NCAVC Satisfaction Survey.

3. The agency form number, if any, and the applicable component of the

Department sponsoring the collection: There is no agency form number applicable to this survey.

4. Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: Federal, state, local, and tribal government law enforcement agencies to which the NCAVC has provided investigative assistance.

Abstract: The mission of the National Center for the Analysis of Violent Crime (NCAVC) combines investigative and operational support functions, research, and training in order to provide assistance, without charge, to law enforcement agencies investigating unusual or repetitive violent crimes. The NCAVC also provides support through expertise and consultation in non-violent matters such as national security, corruption, and white-collar crime investigations.

5. An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 100 respondents per calendar year will be contacted to complete a survey consisting of 11 questions. An approximate non-response rate of 50% is anticipated. It is estimated that a burden of approximately three to five minutes, or .05 to .08 hours, will be cast upon each respondent to complete the survey, with a total estimate of five to 8.3 hours in a calendar year for all respondents combined, if all respondents complete a survey. If the expected non-response rate of 50% holds true, then the combined burden estimate drops to approximately 2.5 to 4.2 hours per calendar year. The NCAVC estimates little to no variability within this time estimate based upon on individualized data retrieval systems, availability of requested data, and other variables, because this survey is intended to assess customer satisfaction rather than generate empirical data.

6. An estimate of the total public burden (in hours) associated with the collection: 20–32 annual burden hours.

If additional information is required contact: Melody Braswell, 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: September 30, 2016.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2017–01495 Filed 1–23–17; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., January 25, 2017.

PLACE: U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: Approval of October 26, 2016 minutes; Reports from the Vice Chairman, Commissioners and Senior Staff; Hearings by Video Conference; Transfer Treaty; Medical Parole-Federal Population.

CONTACT PERSON FOR MORE INFORMATION: Jacqueline Graham, Staff Assistant to the Chairman, U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC 20530, (202) 346–7010.

Dated: January 19, 2017.

J. Patricia W. Smoot,

Chairman, U.S. Parole Commission.

[FR Doc. 2017–01693 Filed 1–19–17; 4:15 pm]

BILLING CODE 4410–31–P

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

TIME AND DATE: 12:00 p.m., Wednesday, January 25, 2017.

PLACE: U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Determination on three original jurisdiction cases.

CONTACT PERSON FOR MORE INFORMATION: Jacqueline Graham, Staff Assistant to the Chairman, U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC 20530, (202) 346–7010.

Dated: January 19, 2017.

J. Patricia W. Smoot,

Chairman, U.S. Parole Commission.

[FR Doc. 2017–01691 Filed 1–19–17; 4:15 pm]

BILLING CODE 4410–31–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

DATE AND TIME: The Legal Services Corporation's Board of Directors and its six committees will meet January 26–28, 2017. On Thursday, January 26, the first meeting will commence at 1:15 p.m., Eastern Standard Time (EST), with the meeting thereafter commencing promptly upon adjournment of the immediately preceding meeting. On Friday, January 27, the first meeting will commence at 2:00 p.m., EST, with the next meeting commencing promptly upon adjournment of the immediately preceding meeting. On Saturday, January 28, the first meeting will commence at 9:30 a.m., EST and will be followed by the closed session meeting of the Board of Directors that will commence promptly upon adjournment of the prior meeting.

LOCATION: The Hyatt Regency Atlanta, 265 Peachtree Street, NE., Atlanta, Georgia 30303.

PUBLIC OBSERVATION: Unless otherwise noted herein, the Board and all committee meetings will be open to public observation. Members of the public who are unable to attend in person but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below.

CALL-IN DIRECTIONS FOR OPEN SESSIONS:

- Call toll-free number: 1–866–451–4981;
- When prompted, enter the following numeric pass code: 5907707348
- Once connected to the call, your telephone line will be *automatically* ''MUTED''.
- To participate in the meeting during public comment press #6 to ''UNMUTE'' your telephone line, once you have concluded your comments please press *6 to ''MUTE'' your line.

Members of the public are asked to keep their telephones muted to eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold if doing so will trigger recorded music or other sound. From time to time, the presiding Chair may solicit comments from the public.

MEETING SCHEDULE

	Time *
Thursday, January 26, 2017:	
1. Operations & Regulations Committee.	1:15 p.m.
2. Governance and Performance Review Committee	
Friday, January 27, 2017:	
1. Delivery of Legal Services Committee.	2:00 p.m.
2. Institutional Advancement Committee	
3. Communications Subcommittee of the Institutional Advancement Committee	
4. Combined Audit and Finance Committee	
5. Finance Committee	
6. Audit Committee	
Saturday, January 28, 2017:	

MEETING SCHEDULE—Continued

	Time *
1. Board of Directors	9:30 a.m.

STATUS OF MEETING: Open, except as noted below.

Board of Directors—Open, except that, upon a vote of the Board of Directors, a portion of the meeting may be closed to the public to hear briefings by management and LSC's Inspector General, and to consider and act on the General Counsel's report on potential and pending litigation involving LSC, and on a list of prospective funders.**

Institutional Advancement Committee—Open, except that, upon a vote of the Board of Directors, the meeting may be closed to the public to consider and act on recommendation of new prospective donors and to receive a briefing on the donor report.**

Audit Committee—Open, except that the meeting may be closed to the public to hear a briefing on the Office of Compliance and Enforcement's active enforcement matters.**

Combined Audit and Finance Committee—Open, except that the meeting may be closed to the public to hear a briefing from the Corporation's Auditor.**

A verbatim written transcript will be made of the closed session of the Board, Institutional Advancement Committee, Audit Committee, and Combined Audit and Finance Committee meetings. The transcript of any portions of the closed sessions falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6) and (10), will not be available for public inspection. A copy of the General Counsel's Certification that, in his opinion, the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

January 26, 2017

OPERATIONS & REGULATIONS COMMITTEE

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting of October 16, 2016
3. Approval of minutes of the Committee's telephonic Open Session meeting of November 22, 2016
4. Consider and act on *Resolution #2017–XXX,* Revisions to the Operations and Regulations Committee Charter
5. Discussion of Committee's evaluations for 2016 and goals for 2017
6. Discussion of Management's report on implementation of the Strategic Plan 2012–2016 as provided by Section VI (3) of the Committee Charter
   - Jim Sandman, President
7. Consider and act on Final Rule for 45 CFR Parts1610—Use of Non-LSC Funds, Transfers of LSC Funds, Program Integrity; 1627—Subgrants and Membership Fees or Dues, and 1630—Cost Standards and Procedures
   - Ron Flagg, General Counsel and Vice President for Legal Affairs
   - Stefanie Davis, Assistant General Counsel
   - Mark Freedman, Senior Associate General Counsel
8. Consider and act on Proposed Rule for 45 CFR part 1609—Fee Generating Cases
   - Ron Flagg, General Counsel and Vice President for Legal Affairs
   - Stefanie Davis, Assistant General Counsel
9. Other public comment
10. Consider and act on other business
11. Consider and act on adjournment of meeting

January 26, 2017

GOVERNANCE AND PERFORMANCE REVIEW COMMITTEE

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting on October 17, 2016
3. Consider and act on *Resolution #2017–XXX,* Revisions to the Governance and Performance Review Committee Charter
4. Discussion of Board and Committee evaluations Review Committee Charter
   a. Staff Report on 2016 Board and Committee Evaluations
   b. Discussion of Governance and Performance Committee evaluations for 2016 and the Committee's goals for 2017
   - Carol Bergman, Director of Government Relations & Public Affairs
5. Discussion of President's evaluation 2016
6. Discussion of the Inspector General's FY 2016 activities
7. Update on transition planning
   - Report on White House transition, Carol Bergman, Vice President for Government Relations & Public Affairs
   - Report on Board transition, Ron Flagg, General Counsel and Vice President for Legal Affairs
8. Report on foundation grants and LSC's research agenda
   - Jim Sandman, President
9. Consider and act on other business
10. Public comment
11. Consider and act on adjournment of meeting

January 27, 2017

DELIVERY OF LEGAL SERVICES COMMITTEE

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting on October 17, 2016
3. Discussion of Committee's evaluations for 2016 and the Committee's goals for 2017
4. Panel presentation and Committee discussion on follow-up of outcomes achieved in limited services
   - Steve Gottlieb, Executive Director, Atlanta Legal Aid Society
   - Kristin Verrill, Director of Grants and Innovation, Atlanta Legal Aid Society
   - Vicky Kimbrell, Family Violence Project Director, Georgia Legal Services Program
   - Janet LaBella, Director, Office of Program Performance (Moderator)
5. Public comment
6. Consider and act on other business
7. Consider and act on motion to adjourn the meeting

January 27, 2017

INSTITUTIONAL ADVANCEMENT COMMITTEE

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting of October 16, 2016
3. Approval of minutes of the Committee's Open Session telephonic meeting of November 2, 2016
4. Consider and act on *Resolution #2017–XXX,* Revision to the Institutional Advancement Committee Charter
5. Discussion of Committee's evaluations for 2016 and the Committee's goals of 2017
6. Update on Leaders Council
   - John G. Levi, Chairman of the Board

* Please note that all times in this notice are in *Eastern Standard Time.*

** Any portion of the closed session consisting solely of briefings does not fall within the Sunshine Act's definition of the term ''meeting'' and, therefore, the requirements of the Sunshine Act do not apply to such portion of the closed session. 5 U.S.C. 552b(a)(2) and (b). *See also* 45 CFR 1622.2 & 1622.3.

7. Development report
   - Jim Sandman, President
8. Public Comment
9. Consider and act on other business
10. Consider and act on motion to adjourn the open session meeting and proceed to a closed session

Closed Session

11. Approval of minutes of the Committee's Closed Session meeting of October 16, 2016
12. Development activities report
13. Consider and act on motion to approve Leaders Council invitees
14. Consider and act on other business
15. Consider and act on motion to adjourn the meeting

COMMUNICATIONS SUBCOMMITTEE OF THE INSTITUTIONAL ADVANCEMENT COMMITTEE

Open Session

1. Approval of agenda
2. Approval of minutes of the Subcommittee's Open Session meeting of October 16, 2016
3. Consider and act on *Resolution #2017–XXX,* Adoption of the Communications Subcommittee Charter
4. Discussion of Subcommittee's evaluations for 2016 and the Subcommittee's goals for 2017
5. Communications analytics update
   - Carl Rauscher, Director of Communications and Media Relations
6. Public comment
7. Consider and act on other business
8. Consider and act on motion to adjourn the meeting

January 27, 2017

COMBINED AUDIT & FINANCE COMMITTEE

Open Session

1. Approval of agenda
2. Presentation of the Fiscal Year (FY) 2016 Annual Financial Audit
   - John Seeba, Assistant Inspector General for Audits
   - Eric Strauss, and David Karakashian, WithumSmith+Brown
3. Consider and act on acceptance of Annual Financial Audit Management Letter for FY 2016, *Resolution 2017–XXX*
4. Presentation of Financial Report for FY 2016
5. Review of LSC's Form 990 for FY 2016
6. Public comment
7. Consider and act on other business
8. Consider and act on motion to adjourn the open session meeting and proceed to a closed session

Closed Session

9. Communication by Corporate Auditor with those charged with governance under Statement on Auditing Standard 114
   - Jeffrey Schanz, Inspector General
   - John Seeba, Assistant Inspector General for Audits
   - Eric Strauss, and David Karakashian, WithumSmith+Brown
10. Consider and act on motion to adjourn the meeting

January 27, 2017

FINANCE COMMITTEE

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting on October 16, 2016
3. Consider and act on *Resolution #2017–XXX,* Revision to the Finance Committee Charter
4. Discussion of Committee's evaluations for 2016 and the Committee's goals of 2017
5. Presentation of LSC's Financial Report for the first two months of FY 2017
   - David Richardson, Treasurer/Comptroller
6. Discussion of LSC's FY 2017 appropriations
   - Carol Bergman, Vice President for Government Relations & Public Affairs
7. Consider and act on *Resolution #2017–XXX,* LSC's Revised Operating Budget for FY 2017
   - David Richardson, Treasurer/Comptroller
8. Discussion of LSC's FY 2018 appropriations request
   - Carol Bergman, Director of Government Relations & Public Affairs
9. Report on the Selection of Accounts and Depositories for LSC Funds
   - David Richardson, Treasurer/Comptroller
10. Public comment
11. Consider and act on other business
12. Consider and act on adjournment of meeting

January 27, 2017

AUDIT COMMITTEE

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting on October 16, 2016
3. Discussion of Committee's evaluations for 2016 and the Committee's Goals for 2017
4. Briefing of Office of Inspector General
   - Jeffrey Schanz, Inspector General
   - John Seeba, Assistant Inspector General for Audits
5. Management update regarding risk management
   - Ron Flagg, General Counsel and Vice President for Legal Affairs
6. Briefing about follow-up by the Office of Compliance and Enforcement on referrals by the Office of Inspector General regarding audit reports and annual Independent Public audits of grantees
   - Lora Rath, Director of Compliance and Enforcement
   - John Seeba, Assistant IG for Audits
7. Public comment
8. Consider and act on other business
9. Consider and act on motion to adjourn the open session meeting and proceed to a closed session

Closed Session

10. Approval of minutes of the Committee's Closed Session meeting of October 16, 2016
11. Briefing by the Office of Compliance and Enforcement on active enforcement matter(s) and follow-up to open investigation referrals from the Office of Inspector General
    - Lora Rath, Director of Compliance and Enforcement
12. Consider and act on adjournment of meeting

January 28, 2017

BOARD OF DIRECTORS

Open Session

1. Pledge of Allegiance
2. Approval of agenda
3. Approval of minutes of the Board's Open Session meeting of October 18, 2016
4. Approval of minutes of the Board's Open Session telephonic meeting of November 22, 2016
5. Consider and act on nomination for the Chairman of the Board Directors
6. Consider and act on nominations for the Vice Chairman of the Board of Directors
7. Chairman's Report
8. Members' Report
9. President's Report
10. Inspector General's Report
11. Consider and act on the report of the Finance Committee
12. Consider and act on the report of the Audit Committee
13. Consider and act on the Combined Audit and Finance Committee
14. Consider and act on the report of the Operations and Regulations Committee
15. Consider and act on the report of the Governance and Performance Review Committee

16. Consider and act on the report of the Institutional Advancement Committee
17. Consider and act on the report of the Delivery of Legal Services Committee
18. Consider and act on *Resolution #2017–XXX,* In Memoriam Bertrand Thomas
19. Public comment
20. Consider and act on other business
21. Consider and act on whether to authorize an executive session of the Board to address items listed below, under Closed Session

Closed Session

22. Approval of minutes of the Board's Closed Session meeting of October 18, 2016
23. Briefing by Management
24. Briefing by Inspector General
25. Consider and act on General Counsel's report on potential and pending litigation Involving LSC
26. Consider and act on list of prospective Leaders Council members
27. Consider and act on motion to adjourn meeting

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

NON-CONFIDENTIAL MEETING MATERIALS: Non-confidential meeting materials will be made available in electronic format at least 24 hours in advance of the meeting on the LSC Web site, at *http://www.lsc.gov/board-directors/meetings/board-meeting-notices/non-confidential-materials-be-considered-open-session.*

ACCESSIBILITY: LSC complies with the American's with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals who need other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov,* at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: January 19, 2017.

Katherine Ward,

Executive Assistant to the Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 2017–01721 Filed 1–19–17; 4:15 pm]

BILLING CODE 7050–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub., L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Proposal Review Panel for the Division of Physics (1208) (V170894)—Site Visit.

Date and Time:

February 16, 2017; 8:00 a.m.–7:00 p.m.
February 17, 2017; 8:00 a.m.–1:00 p.m.

Place: University of Notre Dame, Notre Dame, IN 46556 (UND).

Type of Meeting: Part-Open.

Contact Person: Allena Opper, Program Director for Nuclear Precision Measurements, Division of Physics, National Science Foundation, 4201 Wilson Blvd., Room 1015, Arlington, VA 22230; Telephone: (703) 292–8958.

Purpose of Meeting: Site visit to provide an evaluation of the progress of the projects at the host site for the Division of Physics at the National Science Foundation.

Agenda

February 16, 2017; 8:00 a.m.–7:00 p.m.

8:00 a.m. Executive Session—Closed
8:30 a.m. Welcome Dean/VP
8:50 a.m. Introduction (Wiescher)
9:20 a.m. Anna Simon
9:45 a.m. Manoel Couder
10:10 a.m. Coffee Break
10:30 a.m. Dan Bardayan
10:55 a.m. Michael Wiescher
11:20 a.m. Ani Aprahamian
11:45 a.m. Executive Session—Closed
12:15 p.m. Lunch with grad students and post docs
1:30 p.m. Maxime Brodeur
1:55 p.m. Tan Ahn
2:20 p.m. Umesh Garg
2:45 p.m. Lab Tour/Poster Session/Coffee break
4:30 p.m. Phillippe Collon
4:55 p.m. Graham Peaslee
5:20 p.m. Micha Kilburn
5:45 p.m. Executive Session—Closed
7:00 p.m. Dinner

February 17, 2017; 8:00 a.m.–2:00 p.m.

8:00 a.m. Executive Session—Closed
8:30 a.m. Executive Session—Closed
9:00 a.m. Answer to questions
11:00 p.m. Executive Session—Closed
1:00 p.m. Close Out Session

Reason for Closing: Topics to be discussed and evaluated during closed portions of the site review will include information of a proprietary or confidential nature, including technical information and information on personnel. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 18, 2017.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2017–01526 Filed 1–23–17; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub., L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Proposal Review Panel for the Division of Physics (1208) (V170844)—Site Visit.

Date and Time:

February 13, 2017; 8:00 a.m.–6:35 p.m.
February 14, 2017; 8:00 a.m.–1:00 p.m.

Place: Florida State University, Tallahassee, FL 32306 (FSU).

Type of Meeting: Part-Open.

Contact Person: Allena Opper, Program Director for Nuclear Precision Measurements, Division of Physics, National Science Foundation, 4201 Wilson Blvd., Room 1015, Arlington, VA 22230; Telephone: (703) 292–8958.

Purpose of Meeting: Site visit to provide an evaluation of the progress of the projects at the host site for the Division of Physics at the National Science Foundation.

Agenda

February 13, 2017; 8:00 a.m.–6:35 p.m.

8:00 a.m. Executive Session—Closed
8:30 a.m. Overview (Wiedenhoever)
9:00 a.m. Nuclear Astrophysics and Fusion (Almaraz-Calderon)
9:45 a.m. Lab tour and coffee break
11:15 a.m. Relativistic Heavy Ions (Frawley)
12:00 p.m. Executive Session—Closed
12:30 p.m. Lunch with students
1:15 p.m. Exotic Nuclei (Tabor)
2:00 p.m. Nuclei at the extremes (Riley)
2:45 p.m. Evolution of Shell Structure (Cottle)
3:30 p.m. Education, Broader Impacts
4:00 p.m. Executive Session—Closed

4:30 p.m. Executive Session with Dean A&S Sam Huckaba—Closed
5:00 p.m. V.P. for Research (G. Ostrander) or Assoc. V.P. for Research (R. Ellington)
5:20 p.m. Executive Session—Closed
6:20 p.m. Questions to the PI's
6:35 p.m. Dinner

February 14, 2017; 8:00 a.m.–1:00 p.m.

8:00 a.m. Executive Session—Closed
8:30 a.m. Response to questions
9:00 a.m. Committee discussion/ writing
12:00 p.m. Lunch
1:00 p.m. Closeout

Reason for Closing: Topics to be discussed and evaluated during closed portions of the site review will include information of a proprietary or confidential nature, including technical information and information on personnel. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: .January 18, 2017.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2017–01525 Filed 1–23–17; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Ocean Sciences Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub., L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

NAME: Proposal Review Panel for Ocean Sciences—Site Visit (#10752).

DATE AND TIME: March 1–3, 2017; 9:00 a.m.–5:00 p.m.

PLACE: JOIDES Resolution Science Operator (JRSO), Texas A&M University, 1000 Discovery Drive, Texas A&M University West Campus, College Station, TX 77845, Conference Room C126.

TYPE OF MEETING: Part Open.

CONTACT PERSON: James F. Allan, Program Director, Ocean Drilling, Division of Ocean Sciences; National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–8144

PURPOSE OF MEETING: To provide advice and recommendations concerning the performance of the International Ocean Discovery Program (IODP) drillship facility *JOIDES Resolution* during FY 2016.

AGENDA:

Wednesday, March 1, 2017; 9 a.m.–5 p.m.

9:00 a.m.–9:15 a.m. NSF and panel introduction (Open)
9:15 a.m.–11:00 a.m. Initial Report of the JOIDES Resolution Science Operator (JRSO) (Open)
11:00 a.m.–12:00 p.m. Co-Chief Review Report (Open)
12:00 p.m.–1:00 p.m. Lunch (Open)
1:00 p.m.–3:00 p.m. JRSO response to Co-Chief Review Report (Open)
3:00 p.m.–5:00 p.m. Site Visit Panel discussion of presentations and overnight questions to JRSO (Closed)

Thursday, March 2, 2017; 9 a.m.–5 p.m.

9:00 a.m.–10:00 a.m. Response of JRSO to Panel questions (Open)
10:00 a.m.–12:00 p.m. JRSO discussion of major challenges in operational context, and how they are responding (Open and Closed)
12:00 p.m.–1:00 p.m. Lunch (Open)
1:00 p.m.–2:00 p.m. Meet with JRSO Staff (Closed)
2:00 p.m.–3:00 p.m. JRSO discussion of major challenges in providing services and innovation to IODP science community, and how they are responding (Open)
3:00 p.m.–4:00 p.m. Site Visit team discussion, work on report (Closed)
4:00 p.m.–4:30 p.m. Break
4:30 p.m.–5:00 p.m. Site Visit Panel discussion of major challenges and overnight questions to JRSO (Closed)

Friday, March 3, 2017; 9 a.m.–5 p.m.

9:00 a.m.–10:00 a.m. Response of JRSO to Panel questions (Open)
10:00 a.m.–12:00 p.m. Site Visit Panel discussion; work on report (Closed)
12:00 p.m.–1:00 p.m. Lunch (Closed)
1:00 p.m.–3:30 p.m. Site Visit Panel discussion; work on report (Closed)
3:30 p.m.–4:00 p.m. Break
4:00 p.m.–5:00 p.m. Site Visit Panel presents report and recommendations to JRSO (Closed)

REASON FOR CLOSING: During closed sessions the review will include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 18, 2017.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2017–01486 Filed 1–23–17; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2017–0001]

Sunshine Act Meeting Notice

DATES: January 23, 30, February 6, 13, 20, 27, 2017

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of January 23, 2017

Monday, January 23, 2017

10:00 a.m. Discussion of Management and Personnel Issues (Closed Ex. 2, 6 & 9)

ADDITIONAL INFORMATION: The meeting scheduled for January 23, 2017 was previously noticed as, ''Discussion of Management and Personnel Issues (Closed Ex. 2 & 6).''

Week of January 30, 2017—Tentative

There are no meetings scheduled for the week of January 30, 2017.

Week of February 6, 2017—Tentative

There are no meetings scheduled for the week of February 6, 2017.

February 13, 2017—Tentative

Thursday, February 16, 2017

9:00 a.m. Briefing on Lessons Learned from the Fukushima Dai-ichi Accident (Public Meeting), (Contact: Andrew Proffitt: 301–415–1418).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Friday, February 17, 2017

9:30 a.m. Briefing on Project Aim (Public Meeting) (Contact: Tammy Bloomer: 301–415–1785).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of February 20, 2017—Tentative

There are no meetings scheduled for the week of February 20, 2017.

Week of February 27, 2017—Tentative

Wednesday, March 1, 2017

10:00 a.m. Briefing on NRC International Activities (Closed Ex. 1 & 9)

Thursday, March 2, 2017

9:00 a.m. Strategic Programmatic Overview of the Fuel Facilities and the Nuclear Materials Users Business Lines (Public Meeting) (Contact: Soly Soto; 301–415–7528)

* * * * *

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 301–415–0981 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.*

* * * * *

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: January 19, 2017.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2017–01663 Filed 1–19–17; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Southern Nuclear Operating Company, Inc., Vogtle Electric Generating Plant, Units 3 and 4, Piping Line Number Additions, Deletions and Functional Capability Re-Designation

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and issuing License Amendment No. 41 to Combined Licenses (COL), NPF–91 and NPF–92. The COLs were issued to Southern Nuclear Operating Company, Inc. (SNC), Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC., MEAG Power SPVJ, LLC., MEAG Power SPVP, LLC., and the City of Dalton, Georgia (together ''the licensees''), for construction and operation of the Vogtle Electric Generating Plant (VEGP), Units 3 and 4, located in Burke County, Georgia.

The granting of the exemption allows the changes to Tier 1 information requested in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

DATES: January 24, 2017.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. 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.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that a document is referenced. The request for the amendment and exemption was submitted by the letter dated October 16, 2014 (ADAMS Accession No. ML14290A139). The licensee supplemented this request by letters dated May 14 and August 24, 2015 (ADAMS Accession Nos. ML15134A147 and ML15236A335, respectively).
- *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: Chandu Patel, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3025; email: *Chandu.Patel@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is granting an exemption from Tier 1 information in the certified DCD incorporated by reference in part 52 of Title 10 of the *Code of Federal Regulations* (10 CFR), Appendix D, ''Design Certification Rule for the AP1000 Design,'' and issuing License Amendment No. 41 to COLs, NPF–91 and NPF–92, to the licensee. The exemption is required by Paragraph A.4 of Section VIII, ''Processes for Changes and Departures,'' Appendix D to 10 CFR part 52 to allow the licensee to depart from Tier 1 information. With the requested amendment, the licensee sought proposed changes to add or delete line numbers of existing piping lines, as well as update the functional capability classification of existing process flow lines, to provide consistency with the Updated Final Safety Analysis Report Tier 2 information.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in 10 CFR 50.12, 10 CFR 52.7, and 10 CFR 52.63(b)(1). The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML15237A391.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for VEGP, Units 3 and 4 (COLs NPF–91 and NPF–92). These documents can be found in ADAMS under Accession Nos. ML15237A373 and ML15237A384, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–91 and NPF–92 are available in ADAMS under Accession Nos. ML15237A366 and ML15237A370, respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to VEGP, Units 3 and 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated October 16, 2014, and as supplemented by letters dated May 14 and August 24, 2015, the licensee requested from the NRC an exemption to allow departures from Tier 1 information in the certified DCD incorporated by reference in 10 CFR part 52, appendix D as part of license amendment request 13–031, ''Piping Line Number Additions, Deletions and Functional Capability Re-Designation.''

For the reasons set forth in Section 3.1 of the NRC staff's Safety Evaluation that supports this license amendment, which can be found at ADAMS Accession No. ML15237A391, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption, and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption to the provisions of 10 CFR part 52, appendix D, Section III.B, to allow deviations from the certified DCD Tier 1 Tables 2.1.2–2, 2.2.1–2, 2.2.2–2, 2.2.3–2, 2.3.6–2, 2.3.7–2, and 2.7.1–2, as described in the licensee's request dated October 16, 2014, and supplemented by letters dated May 14, 2015 and August 24, 2015. This exemption is related to, and necessary for the granting of License Amendment No. 41, which is being issued concurrently with this exemption.

3. As explained in Section 5 of the NRC staff's Safety Evaluation that supports this license amendment (ADAMS Accession No. ML15237A391), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

III. License Amendment Request

The request for the amendment and exemption was submitted by the letter dated October 16, 2014. The licensee supplemented this request by the letters dated May 14 and August 24, 2015. The proposed amendment is described in Section I, above.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on December 9, 2014 (79 FR 73112). The May 14 and August 24, 2015, supplements had no effect on the no significant hazards consideration determination, and no comments were received during the 30-day comment period.

The NRC staff has found that the amendment involves no significant hazards consideration. The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that the licensee requested on October 16, 2014, and supplemented by the letters dated May 14 and August 24, 2015. The exemption and amendment were issued on November 9, 2015, as part of a combined package to the licensee (ADAMS Accession No. ML15237A355).

Dated at Rockville, Maryland, this 12th day of January 2017.

For the Nuclear Regulatory Commission.

Jennifer Dixon-Herrity,

Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2017–01549 Filed 1–23–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 052–00027 and 052–00028; NRC–2008–0441]

South Carolina Electric & Gas Company and South Carolina Public Service Authority; Virgil C. Summer Nuclear Station, Units 2 and 3, In-Containment Refueling Water Storage Tank (IRWST) Volume Changes

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment and exemption to Combined Licenses (NPF–93 and NPF–94), issued to South Carolina Electric & Gas Company (SCE&G) and South Carolina Public Service Authority (Santee Cooper) (the licensee); for construction and operation of the Virgil C. Summer Nuclear Station (VCSNS) Units 2 and 3, located in Fairfield County, South Carolina.

DATES: Submit comments by February 23, 2017. Requests for a hearing or petition for leave to intervene must be filed by March 27, 2017.

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

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0441. 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 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 information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: William (Billy) Gleaves, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–000; telephone: 301–415–5848; email: *Bill.Gleaves@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2008–0441 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–2008–0441.
- *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 application for amendment, dated December 6, 2016, is available in ADAMS under Accession No. ML16342B712.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2008–0441 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Introduction

The NRC is considering issuance of an amendment to Facility Operating License Nos. NPF–93 and NPF–94, issued to SCE&G and Santee Cooper for operation of the VCSNS, Units 2 and 3, located in Fairfield County, South Carolina.

The proposed changes would revise the Combined Licenses, Tier 1 information as reflected in COL Appendix C, certain COL Appendix A, Technical Specifications information, and the Tier 2 information in the Updated Final Safety Analysis Report to ensure the consistency of these sections with the Updated Final Safety Analysis Report (UFSAR) IRWST minimum volume value in the locations previously mentioned. Because, this proposed change requires a departure from Tier 1 information in the Westinghouse AP1000 Design Control Document (DCD), the licensee also requested an exemption from the requirements of the Generic DCD Tier 1 in accordance with section 52.63(b)(1) of title 10 of the *Code of Federal Regulations* (10 CFR).

Before any issuance of the proposed license amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes do not affect the operation of any systems or equipment that initiate an analyzed accident or alter any structure, system, or component (SSC) accident initiator or initiating sequence of events. The proposed changes do not affect the physical design and operation of the IRWST, including as-installed inspections, testing, and maintenance requirements, as described in the UFSAR. Therefore, the operation of the IRWST is not affected. There are no inadvertent operations or failures of the IRWST considered as accident initiators or part of an initiating sequence of events for an accident previously evaluated. Therefore, the probabilities of the accidents previously evaluated in the UFSAR are not affected.

The proposed changes do not adversely affect the ability of the IRWST to perform its design functions. The design of the IRWST continues to meet the same regulatory acceptance criteria, codes, and standards as required by the UFSAR. In addition, the proposed changes maintain the capabilities of the IRWST to mitigate the consequences of an accident and to meet the applicable regulatory acceptance criteria. The proposed changes do not affect the prevention and mitigation of other abnormal events, *e.g.,* anticipated operational occurrences, earthquakes, floods and turbine missiles, or their safety or design analyses. Therefore, the consequences of the accidents evaluated in the UFSAR are not affected.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not affect the operation of any systems or equipment that may initiate a new or different kind of accident, or alter any SSC such that a new accident initiator or initiating sequence of events is created. The proposed changes do not affect the physical design and operation of the IRWST, including as-installed inspections, testing, and maintenance requirements, as described in the UFSAR. Therefore, the operation of the IRWST is not affected. These proposed changes do not adversely affect any other SSC design functions or methods of operation in a manner that results in a new failure mode, malfunction, or sequence of events that affect safety-related or nonsafety-related equipment. Therefore, this activity does not allow for a new fission product release path, result in a new fission product barrier failure mode, or create a new sequence of events that results in significant fuel cladding failures.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes maintain existing safety margins. The proposed changes maintain the capabilities of the IRWST to perform its design functions. The proposed changes maintain existing safety margin through continued application of the existing requirements of the UFSAR, while updating the acceptance criteria for verifying the design features necessary to ensure the IRWST performs the design functions required to meet the existing safety margins in the safety analyses. Therefore, the proposed changes satisfy the same design functions in accordance with the same codes and standards as stated in the UFSAR. These changes do not adversely affect any design code, function, design analysis, safety analysis input or result, or design/safety margin. No safety analysis or design basis

acceptance limit/criterion is challenged or exceeded by the proposed changes, and no margin of safety is reduced.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves a no significant hazards consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day notice period if the Commission concludes the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, the Commission will publish a notice of issuance in the **Federal Register**. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by March 27, 2017. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section. A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any

prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public Web site at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this action, see the application for license amendment dated December 6, 2016.

Attorney for licensee: Ms. Kathryn M. Sutton, Morgan, Lewis & Bockius LLC, 1111 Pennsylvania Avenue NW., Washington, DC 20004–2514.

Dated at Rockville, Maryland, this 12th day of January 2017.

For the Nuclear Regulatory Commission.

Jennifer Dixon-Herrity,

Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2017–01555 Filed 1–23–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Southern Nuclear Operating Company, Inc., Vogtle Electric Generating Plant, Units 3 and 4 CA04 Structural Module ITAAC Dimensions Change

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and issuing License Amendment No. 42 to Combined Licenses (COL), NPF–91 and NPF–92. The COLs were issued to Southern Nuclear Operating Company, Inc. (SNC), Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC., MEAG Power SPVJ, LLC., MEAG Power SPVP, LLC., and the City of Dalton, Georgia (together ''the licensees''), for construction and operation of Vogtle Electric Generating Plant (VEGP), Units 3 and 4, located in Burke County, Georgia.

The granting of the exemption allows the changes to Tier 1 information requested in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

DATES: January 24, 2017.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. 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.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that a document is referenced. The request for the amendment and exemption was submitted by the letter dated September 18, 2015 (ADAMS Accession No. ML15261A757).
- *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: Chandu Patel, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3025; email: *Chandu.Patel@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is granting an exemption from Tier 1 information in the certified DCD incorporated by reference in part 52 of Title 10 of the *Code of Federal Regulations* (10 CFR), appendix D, ''Design Certification Rule for the AP1000 Design,'' and issuing License Amendment No. 42 to COLs, NPF–91 and NPF–92, to the licensee. The exemption is required by Paragraph A.4 of Section VIII, ''Processes for Changes and Departures,'' appendix D to 10 CFR part 52 to allow the licensee to depart from Tier 1 information. With the requested amendment, the licensee sought proposed changes related to the design details of the containment internal structural wall modules (CA04, CA01, and CB65). The proposed changes to Tier 2 information in the VEGP Units 3 and 4 Updated Final Safety Analysis Report (UFSAR), plant-specific Tier 1 information, and corresponding COL Appendix C information would allow an increase of the concrete wall thickness tolerances. The proposed changes would allow:

(1) A change to Tier 2 information in UFSAR Subsection 3.8.3.6.1, ''Fabrication, Erection, and Construction of Structural Modules,'' to allow an increase in wall thickness tolerance beyond the American Concrete Institute (ACI) 117, ''Standard Specifications for Tolerance for Concrete Construction and Material,'' specified tolerance for some Containment Internal Structure (CIS) walls, and

(2) the addition of Note 10 to Tier 1 Table 3.3–1, which provides the wall thickness tolerance deviations.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in 10 CFR 50.12, 10 CFR 52.7, and 10 CFR 52.63(b)(1). The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML15302A473.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for VEGP Units 3 and 4 (COLs NPF–91 and NPF–92). These documents are available in ADAMS under Accession Nos. ML15302A418 and ML15302A443, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–91 and NPF–92 are available in ADAMS under Accession Nos. ML15302A406 and ML15302A413, respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to VEGP, Units 3 and 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated September 18, 2015, Southern Nuclear Operating Company, Inc. (licensee) requested from the NRC an exemption to allow departures from Tier 1 information in the certified Design Control Document (DCD) incorporated by reference in 10 CFR part 52, appendix D, ''Design Certification Rule for the AP1000 Design,'' as part of license amendment request (LAR) 15–015, ''CA04 Structural Module Inspection, Test, Analysis, and Acceptance Criteria Dimensions Change.''

For the reasons set forth in Section 3.1 of the NRC staff's Safety Evaluation, which can be found in ADAMS under Accession No. ML15302A473, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption, and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption from the certified DCD Tier 1 Table: 3.3–1, as described in the licensee's request dated September 18, 2015. This exemption is related to, and necessary for the granting of License Amendment No. 42, which is being issued concurrently with this exemption.

3. As explained in Section 5.0 of the NRC staff's Safety Evaluation (ADAMS Accession No. ML15302A473), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

III. License Amendment Request

The request for the amendment and exemption was submitted by the letter dated September 18, 2015. The proposed amendment is described in Section I, above.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on October 8, 2015 (80 FR 60937). Comments were received during the 30-day comment period.

IV. Public Comments

On November 9, 2015, the staff received a public comment from the Blue Ridge Environmental Defense League and its Chapter Concerned Citizens of Shell Bluff (BREDL), regarding the proposed amendment request for the VEGP, Units 3 and 4. This document can be found in ADAMS under Accession No. ML15320A016. On December 7, 2015, BREDL filed its Petition and on December 23, 2015, BREDL filed a corrected petition (ADAMS Accession Nos. ML15341A348 and ML15357A000, respectively). On January 4, 2016, NRC and SNC filed their respective answers to the Petition for Leave to Intervene and Request for Hearing (ADAMS Accession Nos. ML16004A471 and ML16004A479, respectively). The Atomic Safety and Licensing Board issued a ruling on the VEGP Units 3 and 4 license amendment request contention admissibility proceeding on April 29, 2016. This document can be found in ADAMS under Accession No. ML16120A508.

The NRC staff has found that the amendment involves no significant hazards consideration. The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

V. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that the licensee requested on September 18, 2015. The exemption and amendment were issued on December 16, 2015, as part of a combined package to the licensee (ADAMS Accession No. ML15302A398).

Dated at Rockville, Maryland, this 12th day of January 2017.

For the Nuclear Regulatory Commission.

Jennifer Dixon-Herrity,

Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2017–01548 Filed 1–23–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–027 and 52–028; NRC–2008–0441]

South Carolina Electric & Gas Company, South Carolina Public Service Authority; Virgil C. Summer Nuclear Station, Units 2 and 3; Tier 1 Editorial and Consistency Changes

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and is issuing License Amendment No. 55 to Combined Licenses (COLs), NPF–93 and NPF–94. The COLs were issued to South Carolina Electric & Gas Company, (the licensee); for construction and operation of the Virgil C. Summer Nuclear Station (VCSNS) Units 2 and 3, located in Fairfield County, South Carolina.

The granting of the exemption allows the changes to Tier 1 information asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

DATES: The exemption and amendment were issued on November 25, 2016.

ADDRESSES: Please refer to Docket ID NRC–2008–0441 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0441. 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.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The request for the amendment and exemption was submitted by letter dated May 16, 2016, and available in ADAMS under Accession No. ML16137A169.
- *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: William (Billy) Gleaves, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5848; email: *Bill.Gleaves@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is granting an exemption from Paragraph B of Section III, ''Scope and Contents,'' of appendix D, ''Design Certification Rule for the AP1000,'' to part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), and issuing License Amendment No. 55 to COLs, NPF–93 and NPF–94, to the licensee. The exemption is required by Paragraph A.4 of Section VIII, ''Processes for Changes and Departures,'' appendix D, to 10 CFR part 52 to allow the licensee to depart from Tier 1 information. With the requested amendment, the licensee sought proposed changes that would correct editorial errors in plant-specific Tier 1 information, with corresponding changes to the associated COL Appendix C information, to promote consistency with the Updated Final Safety Analysis Report Tier 2 information. One of the proposed changes to plant-specific Tier 1 information also involves a change to Updated Final Safety Analysis Report Tier 2 information. The proposed amendment also involves a proposed editorial correction to COL Paragraph 2.D.(12)(f)1.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in 10 CFR 50.12, 10 CFR 52.7, and Section VIII.A.4 of appendix D to 10 CFR part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML16288A818.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for VCSNS Units 2 and 3 (COLs NPF–93 and NPF–94). The exemption documents for VCSNS Units 2 and 3 can be found in ADAMS under Accession Nos. ML16288A806 and ML16288A813, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–93 and NPF–94 are available in ADAMS under Accession Nos. ML16288A795 and ML16288A798, respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to Summer Units 2 and Unit 3. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In an application dated May 16, 2016, the licensee requested from the Commission an exemption to allow departures from Tier 1 information in the certified DCD incorporated by reference in 10 CFR part 52, appendix D as part of license amendment request 15–05, ''Tier 1 Editorial and Consistency Changes.''

For the reasons set forth in Section 3 of the NRC staff's Safety Evaluation, which can be found in ADAMS under Accession No. ML16288A818, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption from the certified DCD Tier 1 information, with corresponding information in Appendix C of the Facility Combined License as described in the licensee's request dated May 16, 2016. This exemption is related to, and necessary for the granting of License Amendment No. 55, which is being issued concurrently with this exemption.

3. As explained in Section 5.0 of the NRC staff's Safety Evaluation (ADAMS Accession No. ML16288A818), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

III. License Amendment Request

By letter dated May 16, 2016, the licensee requested that the NRC amend the COLs for VCSNS, Units 2 and 3, COLs NPF–93 and NPF–94. The proposed amendment is described in Section I of this **Federal Register** notice.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on July 5, 2016 (81 FR 43646). No comments were received during the 30-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that the licensee requested on May 16, 2016.

The exemption and amendment were issued on November 25, 2016 as part of a combined package to the licensee (ADAMS Accession No. ML16288A775).

Dated at Rockville, Maryland, this 10th day of January 2017.

For the Nuclear Regulatory Commission.

Jennifer Dixon-Herrity,

Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2017–01551 Filed 1–23–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0190]

Program-Specific Guidance About Commercial Radiopharmacy Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft NUREG; request for comments.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is revising its licensing guidance for licenses authorizing commercial nuclear pharmacy use of byproduct material. The NRC is requesting public comment on draft NUREG–1556, Volume 13, Revision 2, ''Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Commercial Radiopharmacy Licenses.'' The document has been updated from the previous revision to include information on safety culture, security of radioactive materials, protection of sensitive information, and changes in regulatory policies and practices. This document is intended for use by applicants, licensees, and the NRC staff.

DATES: Submit comments by March 24, 2017. Comments received after this date will be considered if it is practical to do so, but the NRC is only able to assure consideration of comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0190. 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 comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H8, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Said Daibes, Office of Nuclear Material Safety and Safeguards; U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6863; email: *Said.Daibes@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0190 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0190.
- *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 draft NUREG–1556, Volume 13, Revision 2, is available in ADAMS under Accession No. ML16356A040.
- *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.

The draft NUREG–1556, Volume 13, Revision 2, is also available on the NRC's public Web site on the: (1) ''Consolidated Guidance About Materials Licenses (NUREG–1556)'' page at *https://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1556;* and the (2) ''Draft NUREG-Series Publications for Comment'' page at *http://www.nrc.gov/public-involve/doc-comment.html#nuregs.*

B. Submitting Comments

Please include Docket ID NRC–2016–0190 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Further Information

NUREG–1556, Volume 13, Revision 2 provides program-specific guidance to assist applicants and licensees in preparing applications for materials licenses for commercial radiopharmacies. In particular, it describes the types of information needed to complete NRC Form 313, ''Application for Materials License.'' It also provides the NRC with criteria for evaluating a license application. The purpose of this notice is to provide the public with an opportunity to review and provide comments on draft NUREG–1556, Volume 13, Revision 2, ''Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Commercial Radiopharmacy Licenses.'' These comments will be considered in the final version or subsequent revisions.

This draft NUREG–1556, Volume 13, Revision 2 does not include any revisions associated with the proposed rule ''Medical Use of Byproduct Material-Medical Event Definitions, Training and Experience, and Clarifying Amendments.'' That proposed rule would amend the following requirements in parts 30, 32, and 35 of title 10 of the *Code of Federal Regulations* related to commercial nuclear pharmacies:

- Removal of the requirement for the board certified nuclear pharmacist to have an attestation statement in addition to the board certificate;
- measuring molybdenum contamination and reporting of failed technetium generators;
- labeling requirements for radioactive drugs; and
- clarifying other revisions to the regulations.

This draft NUREG–1556, Volume 13, Revision 2 does not include any guidance for the proposed rule revisions because that rule is not final at this time.

The proposed rule, ''Medical Use of Byproduct Material-Medical Event Definitions, Training and Experience, and Clarifying Amendments,'' and proposed changes to NUREG–1556 commercial radiopharmacy licenses

associated with the proposed rule were published for public comment in the **Federal Register** (79 FR 42409 and 79 FR 42224) on July 21, 2014. Comments received on those changes in the proposed rule and guidance are being considered by the NRC staff separately. If the proposed rule becomes final, the proposed revisions to NUREG–1556, Volume 13 addressing the implementation of the proposed rule will be incorporated into NUREG–1556, Volume 13, Revision 2 before its final publication.

Dated at Rockville, Maryland, this 13th day of January, 2017.

For the U.S. Nuclear Regulatory Commission.

Pamela J. Henderson,

Deputy Director, Division of Material Safety, State, Tribal and Rulemaking Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2017–01546 Filed 1–23–17; 8:45 am]

BILLING CODE 7590–01–P

U.S. OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Revision of an Existing Information Collection, USAJOBS®, OMB Control No. 3206–0219

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-Day Notice and request for comments.

SUMMARY: The Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a revised information collection request (ICR), OMB Control No. 3206–0219, USAJOBS.

DATES: Comments are encouraged and will be accepted until March 27, 2017. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESS: Interested persons are invited to submit written comments on the proposed information collection to the U.S. Office of Personnel Management, Chief Information Officer, Employee Services IT PMO, USAJOBS, 1900 E. Street NW., Washington, DC 20415, Attention: John Still or send them via electronic mail to *john.still@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the U.S. Office of Personnel Management, Chief Information Officer, Employee Services IT PMO, USAJOBS, 1900 E. Street NW., Washington, DC 20415, Attention: John Still, or by sending a request via electronic mail to *john.still@opm.gov*

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. USAJOBS is the Federal Government's centralized source for most Federal jobs and employment information, including both positions that are required by law to be posted at that location and positions that can be posted there at an agency's discretion. The Applicant Profile and Resume Builder are two components of the USAJOBS application system.

USAJOBS reflects the minimal critical elements collected across the Federal Government to begin an application for Federal jobs under the authority of sections 1104, 1302, 3301, 3304, 3320, 3361, 3393, and 3394 of title 5, United States Code. This revision proposes to renew a currently approved collection. Therefore, we invite comments that:

1. 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;
2. 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;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Analysis:

Agency: Office of Personnel Management.

Title: USAJOBS.

OMB Number: 3206–0219.

Frequency: Annually.

Affected Public: Individuals.

Number of Respondents: 4,196,336.

Estimated Time per Respondent: 43 minutes.

Total Burden Hours: 3,007,374.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

[FR Doc. 2017–01475 Filed 1–23–17; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from September 1, 2016 to September 30, 2016.

FOR FURTHER INFORMATION CONTACT: Senior Executive Resources Services, Senior Executive Service and Performance Management, Employee Services, 202–606–2246.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/.* OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

Schedule A

No schedule A authorities to report during September 2016.

Schedule B

No schedule B authorities to report during September 2016.

The following Schedule C appointing authorities were approved during September 2016.

Agency name	Organization name	Position title	Request No.	Effective date
DEPARTMENT OF AGRICULTURE.	Office of Communications	Press Assistant	DA160166	09/06/2016
		Deputy Press Secretary	DA160176	09/26/2016
	Foreign Agricultural Service	Speechwriter & Communications Advisor.	DA160169	09/06/2016

Agency name	Organization name	Position title	Request No.	Effective date
	Office of the Under Secretary for Research, Education & Economics.	Confidential Assistant	DA160173	09/14/2016
	Office of the Under Secretary for Marketing and Regulatory Programs.	Confidential Assistant	DA160175	09/14/2016
DEPARTMENT OF COMMERCE.	Office of the Deputy Secretary	Special Advisor	DC160199	09/12/2016
	Office of Scheduling and Advance	Scheduling and Advance Assistant	DC160203	09/29/2016
COUNCIL ON ENVIRONMENTAL QUALITY.	Office of the Director	Executive Assistant	EQ160002	09/08/2016
DEPARTMENT OF DEFENSE.	Office of the Secretary of Defense	Special Assistant	DD160177	09/01/2016
	Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics).	Special Assistant	DD160184	09/08/2016
DEPARTMENT OF EDUCATION.	Office of Elementary and Secondary Education.	Deputy Assistant Secretary for Policy and Strategic Initiatives.	DB160127	09/14/2016
	Office of the Secretary	Deputy Director of Scheduling and Advance.	DB160130	09/30/2016
	Office of the Under Secretary	Director of Operations	DB160131	09/30/2016
DEPARTMENT OF ENERGY	Office of Energy Policy and Systems Analysis.	Special Advisor	DE160151	09/08/2016
	Office of the Deputy Secretary	Special Advisor	DE160156	09/23/2016
	Office of Scheduling and Advance	Special Advisor	DE160158	09/23/2016
	Office of Management	Senior Advisor and Director of Special Projects.	DE160159	09/29/2016
ENVIRONMENTAL PROTECTION AGENCY.	Office of the Administrator	Special Assistant	EP160058	09/14/2016
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Administration for Children and Families.	Special Advisor	DH160177	09/01/2016
	Office of the Secretary	Senior Advisor	DH160180	09/01/2016
		Special Assistant	DH160181	09/12/2016
		Senior Regulatory Advisor	DH160197	09/22/2016
	Office of Intergovernmental and External Affairs.	Special Advisor	DH160183	09/02/2016
	Centers for Medicare and Medicaid Services.	Special Advisor for Engagement	DH160192	09/13/2016
	Office of the Assistant Secretary for Legislation.	Chief of Staff	DH160195	09/15/2016
	Office of the Assistant Secretary for Health.	Associate Director for Operations and Engagement.	DH160198	09/29/2016
		Special Assistant	DH160196	09/15/2016
DEPARTMENT OF HOMELAND SECURITY.	Office of the Executive Secretariat	Briefing Book Coordinator	DM160310	09/01/2016
	Office of the Assistant Secretary for Policy.	Special Assistant (2)	DM160307	09/02/2016
			DM160296	09/15/2016
	Office of the Assistant Secretary for Public Affairs.	Director of Strategic Communications	DM160305	09/07/2016
		Assistant Press Secretary	DM160311	09/08/2016
	United States Citizenship and Immigration Services.	Special Assistant	DM160306	09/07/2016
	Office of the Assistant Secretary for International Affairs—Policy.	Special Assistant, Office of International Affairs.	DM160313	09/12/2016
	Office of the Chief of Staff	Counselor	DM160315	09/30/2016
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of the Administration	Special Assistant and Briefing Book Coordinator.	DU160048	09/07/2016
		Deputy Executive Secretary	DU160050	09/29/2016
	Office of Congressional and Intergovernmental Relations.	Congressional Relations Specialist Assistant.	DU160049	09/15/2016
DEPARTMENT OF THE INTERIOR.	Secretary's Immediate Office	Deputy Communications Director and Press Secretary.	DI160094	09/16/2016
	Office of the Assistant Secretary—Fish and Wildlife and Parks.	Special Assistant	DI160093	09/23/2016
OFFICE OF MANAGEMENT AND BUDGET.	Office of Legislative Affairs	Confidential Assistant	BO160049	09/16/2016
	Office of Federal Procurement Policy	Confidential Assistant	BO160050	09/23/2016
PRESIDENT'S COMMISSION ON WHITE HOUSE FELLOWSHIPS.	Office of the Director	Special Assistant	WH160004	09/01/2016
SMALL BUSINESS ADMINISTRATION.	Office of Congressional and Legislative Affairs.	Deputy Assistant Administrator for Congressional and Legislative Affairs.	SB160036	09/16/2016
	Office of Capital Access	Special Advisor	SB160037	09/23/2016

Agency name	Organization name	Position title	Request No.	Effective date
DEPARTMENT OF THE TREASURY.	Office of the Assistant Secretary (Public Affairs).	Senior Digital Strategy Specialist	DY160124	09/14/2016
		Spokesperson	DY160125	09/14/2016
DEPARTMENT OF VETERANS AFFAIRS.	Office of the Secretary and Deputy	Special Advisor and White House Liaison.	DV160079	09/20/2016
	Office of Planning and Evaluation	Chief Design Officer	DV160080	09/20/2016

The following Schedule C appointing authorities were revoked during September 2016.

Agency name	Organization name	Position title	Request No.	Date vacated
DEPARTMENT OF AGRICULTURE.	Rural Housing Service	State Director—Virginia	DA140054	09/02/2016
OFFICE OF THE SECRETARY OF DEFENSE.	Office of the Under Secretary of Defense (Policy).	Special Assistant to the Deputy Assistant Secretary of Defense for Middle East.	DD150002	09/03/2016
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of the Secretary	Deputy White House Liaison	DU150031	09/17/2016
NATIONAL ENDOWMENT FOR THE ARTS.	Office of the Chairman	Senior Advisor to the Chairman and Director of Strategic Partnerships.	NA110005	09/09/2016
SMALL BUSINESS ADMINISTRATION.	Office of Communications and Public Liaison.	Deputy Press Secretary	SB150046	09/03/2016
DEPARTMENT OF VETERANS AFFAIRS.	Office of Public Affairs	Special Advisor	DV160033	09/20/2016

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

[FR Doc. 2017–01470 Filed 1–23–17; 8:45 am]

BILLING CODE 6325–39–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* January 24, 2017.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on January 18, 2017, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 288 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–79, CP2017–106.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2017–01557 Filed 1–23–17; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79809; File No. SR–NASDAQ–2017–001]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Transaction Fees To Implement New Incentive

January 17, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 3, 2017, 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 amend the Exchange's transaction fees at Chapter XV, Section 2, entitled ''NASDAQ Options Market—Fees and Rebates,'' which governs pricing for Nasdaq members using the NASDAQ Options Market (''NOM''), Nasdaq's facility for executing and routing standardized equity and index options. Nasdaq proposes to implement a new incentive for NOM Participants that add liquidity for Customer and Professional orders in Penny and Non-Penny Pilot Options as described further below.

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to create an alternative method for earning a rebate for adding liquidity for both Customers [3] and Professionals [4] in Penny Pilot [5] and Non-Penny Pilot Options. For Customers and Professionals transacting in Penny Pilot Options, the Exchange currently pays a volume-based tiered rebate to add liquidity. That rebate consists of 8 tiers, ranging from $0.20 per contract to $0.48 per contract, with the volume requirements increasing with each tier. Thus, a NOM Participant would qualify for a rebate of $0.20 per contract in Tier 1 for Customers and Professionals if it added Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of up to 0.10% of total industry customer equity and ETF option average daily volume (''ADV'') contracts per day in a month. In comparison, a Participant would qualify for a rebate of $0.48 in Tier 8 for Customers and Professionals if it adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.75% or more of total industry customer equity and ETF option ADV contracts per day in a month, or if the Participant adds: (1) Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 0.25% or more of total industry customer equity and ETF option ADV contracts per day in a month, and (2) has added liquidity in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.00% or more of Consolidated Volume in a month or qualifies for MARS.[6]

Currently, Customers and Professionals transacting in Non-Penny Pilot Options on NOM receive a $0.80 per contract Rebate to Add Liquidity. In addition, a Participant that qualifies for a Customer or Professional Penny Pilot Options Rebate to Add Liquidity in Tiers 2, 3, 4, 5 or 6 in a month will receive an additional $0.10 per contract Non-Penny Pilot Options Rebate to Add Liquidity for each transaction which adds liquidity in Non-Penny Pilot Options in that month. A Participant that qualifies for a Customer or Professional Penny Pilot Options Rebate to Add Liquidity in Tiers 7 or 8 in a month will receive an additional $0.20 per contract Non-Penny Pilot Options Rebate to Add Liquidity for each transaction which adds liquidity in Non-Penny Pilot Options in that month.

Furthermore, a Participant that may receive a $0.53 per contract Rebate to Add Liquidity in Penny Pilot Options as a Customer or Professional, and $1.00 per contract Rebate to Add Liquidity in Non-Penny Pilot Options as a Customer or Professional, if that NOM Participant transacts on the NASDAQ Stock Market through one or more of its Nasdaq Market Center MPIDs in the same month, and such transactions in all securities on the NASDAQ Stock Market that month through all of its Nasdaq Market Center MPIDs represent 3.00% or more of Consolidated Volume.[7] Participants that qualify for this rebate would not be eligible for any other rebates in Tiers 1 through 8 or other rebate incentives on NOM for Customer and Professional order flow in Chapter XV, Section 2(1) of NOM Rules.[8]

The Exchange proposes an additional incentive to a Participant that adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 1.45% of total industry customer equity and ETF option ADV contracts per day in a month, (b) executes greater than 0.04% of Consolidated Volume (''CV'') [9] via Market-on-Close/Limit-on-Close (''MOC/LOC'') [10] volume within the NASDAQ Stock Market Closing Cross within a month, and (c) adds greater than 1.5 million shares per day of non-displayed volume within the NASDAQ Stock Market within a month. The Participant would receive a $0.55 per contract rebate to add liquidity in Penny Pilot Options as Customer or Professional and $1.05 per contract rebate to add liquidity in Non-Penny Pilot Options as Customer or Professional. Participants that qualify for this rebate would not be eligible for any other rebates in Tiers 1–8 or other rebate incentives on NOM for Customer and Professional order flow in Chapter XV, Section 2(1). The Exchange believes that the new incentives will attract a greater amount of order flow on NOM by offering a discounted rate.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[12] 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its

[3] The term ''Customer'' or (''C'') applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation (''OCC'') which is not for the account of broker or dealer or for the account of a ''Professional'' (as that term is defined in Chapter I, Section 1(a)(48)).

[4] The term ''Professional'' or (''P'') means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Chapter I, Section 1(a)(48). All Professional orders shall be appropriately marked by Participants.

[5] The Penny Pilot was established in March 2008. *See* Securities Exchange Act Release No. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR–NASDAQ–2008–026) (notice of filing and immediate effectiveness establishing Penny Pilot). Since that date, the Penny Pilot has been expanded and is currently extended through December 31, 2016 or the date of permanent approval, if earlier. *See* Securities Exchange Act Release No. 78037 (June 10, 2016), 81 FR 39299 (June 16, 2016) (SR–NASDAQ–2016–052).

[6] MARS refers to the Market Access and Routing Subsidy, which is set forth in Chapter XV, Section 6 [sic]. The MARS payment comprises four volume-based tiers, and is paid to NOM Participants that route eligible contracts to NOM through a participating NOM Participant's System. The MARS Payment will be paid on all executed Eligible Contracts that add liquidity. *See* NOM Rules at Chapter XV, Section 6 [sic].

[7] Consolidated Volume would be determined as set forth in Nasdaq Rule 7018(a).

[8] In calculating total volume, the Exchange will add the NOM Participant's total volume transacted on the NASDAQ Stock Market in a given month across its Nasdaq Market Center MPIDs, and will divide this number by the total industry Consolidated Volume.

[9] *See* note 7 above.

[10] MOC/LOC, as set forth in NASDAQ Rule 4754, represents the volume in the NASDAQ Stock Market Closing Cross that allows market participants to contribute order flow that will result in executions at the official closing price for the day in the NASDAQ listed security. A ''MOC Order'' is an order type entered without a price that may be executed only during the NASDAQ Closing Cross, which refers to the equity closing cross. A ''LOC Order'' is an order type entered with a price that may be executed only in the NASDAQ Closing Cross.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4) and (5).

broader forms that are most important to investors and listed companies.'' [13]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [14] (''NetCoalition'') the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[15] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [16]

Further, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . . . '' [17] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange notes that the purpose of the proposed rebates is to incentivize NOM Participants to transact greater volume on NOM and the NASDAQ Stock Market in order to qualify for a higher rebate on NOM. The Exchange believes that the amount of the rebate ($0.55 per contract for Penny Pilot Options and $1.05 per contract for Non-Penny Pilot Options) along with the various criteria for qualifying for the rebate ((a) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 1.45% of total industry customer equity and ETF option ADV contracts per day in a month, (b) execute greater than 0.04% of Consolidated Volume (''CV'') via Market-on-Close/Limit-on-Close (''MOC/LOC'') volume within the NASDAQ Stock Market Closing Cross within a month, and (c) add greater than 1.5 million shares per day of non-displayed within the NASDAQ Stock Market within a month) are reasonable. With respect to the rebate for Penny Pilot Options, the Exchange notes that the proposed $0.55 per contract rebate is higher than the currently highest rebate available ($0.53 per contract) to Customers and Professionals for adding liquidity in Penny Pilot Options.[18] The Exchange believes the proposed rebate of $0.55 per contract is reasonable because the proposed rebate requires three components ((a) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 1.45% of total industry customer equity and ETF option ADV contracts per day in a month, (b) execute greater than 0.04% of Consolidated Volume (''CV'') via Market-on-Close/Limit-on-Close (''MOC/LOC'') volume within the NASDAQ Stock Market Closing Cross within a month, and (c) add greater than 1.5 million shares per day of non-displayed volume within the NASDAQ Stock Market within a month) to be met by NOM Participants in order to qualify for that rebate. These requirements require more volume to be submitted on NOM than the current highest rebate requires today. Similarly, the Exchange believes the proposed $1.05 rebate per contract for Non-Penny Pilot Options is reasonable for similar reasons. The requirements to obtain this rebate require more volume to be submitted on NOM.

The Exchange believes that the requirement that a NOM Participant add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 1.45% of total industry customer equity and ETF option ADV contracts per day in a month, execute greater than 0.04% of Consolidated Volume (''CV'') via Market-on-Close/Limit-on-Close (''MOC/LOC'') volume within the NASDAQ Stock Market Closing Cross within a month, and add greater than 1.5 million shares per day of non-displayed volume within the NASDAQ Stock Market within a month is reasonable because the Exchange is offering to pay a rebate of $0.55 per contract, the highest rebate. These more stringent volume-based requirements bring a greater amount of volume to both NOM and the NASDAQ Stock Market. The first volume requirement, which requires volume to be added to NOM, is reasonable because it is similar to that required to qualify for certain NOM Market Maker discounted remove fees.[19] The second volume requirement

[13] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[14] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[15] *See NetCoalition,* at 534–535.

[16] *Id.* at 537.

[17] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[18] As noted above, a NOM Participant will receive a rebate of $0.48 per contract for adding liquidity as a Customer or Professional in Penny Pilot Options if it qualifies for Tier 8. In addition, as noted in footnote c of Chapter XV, Section 2, a NOM Participant may receive an additional rebate of up to $0.05 per contract in Penny Pilot Options, for a total rebate of $0.53 per contract. Specifically, Participants that: (1) Add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.15% or more of total industry customer equity and ETF option ADV contracts per day in a month will receive an additional $0.02 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month; or (2) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.30% or more of total industry customer equity and ETF option ADV contracts per day in a month will receive an additional $0.05 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month; or (3) (a) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.80% of total industry customer equity and ETF option ADV contracts per day in a month, (b) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Non-Penny Pilot Options above 0.15% of total industry customer equity and ETF option ADV contracts per day in a month, and (c) execute greater than 0.04% of Consolidated Volume (''CV'') via Market-on-Close/Limit-on-Close (''MOC/LOC'') volume within the NASDAQ Stock Market Closing Cross within a month will receive an additional $0.05 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in a month. Consolidated Volume shall mean the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of an equity member's trading activity, expressed as a percentage of or ratio to Consolidated Volume, the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity.

[19] *See* note ''2'' of Chapter XV, Section 2 of NOM Rules. The note ''2 ''rebate is offered to Non-NOM Market Makers and NOM Market Makers that add 1.30% of Customer, Professional, Firm, Broker-Dealer or Non-NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of total industry customer equity and ETF option ADV contracts per day in a month will be subject to the following pricing applicable to executions: A $0.48 per contract Penny Pilot Options Fee for Removing Liquidity when the Participant is (i) both the buyer and the seller or (ii) the Participant removes liquidity from another Participant under Common Ownership. In the alternative, Participants that add 1.50% of Customer, Professional, Firm, Broker-Dealer or Non-NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of total industry customer equity and ETF option ADV contracts per day in a month and meet or exceed the cap for the NASDAQ Stock Market Opening Cross during the month will be subject to the following pricing applicable to executions less than 10,000 contracts: A $0.32 per contract Penny Pilot Options Fee for Removing Liquidity when the Participant is (i) both the buyer and seller or (ii) the

to execute greater than 0.04% of Consolidated Volume (''CV'') via Market-on-Close/Limit-on-Close (''MOC/LOC'') volume within the NASDAQ Stock Market Closing Cross within a month is reasonable because it is one of the same requirements to qualify for note ''c'' in Chapter XV, Section 2 of NOM Rules.[20] The third volume requirement to add greater than 1.5 million shares per day of non-displayed volume within the NASDAQ Stock Market within a month is a new requirement, which must be met in addition to the first and second volume requirements. The Exchange believes that this requirement is reasonable because linking rebates on NOM to activity on the NASDAQ Stock Market is not novel. The Exchange believes that requiring Participants to add non-displayed volume within the NASDAQ Stock Market is reasonable because this type of liquidity benefits all market participants by way of interacting with that liquidity on the equity market.[21] By encouraging market participants to increase their participation on the equities market by delivering non-displayed volume, the Exchange is rewarding Participants with an opportunity to earn an additional options incentive, provided all requirements are met. The Exchange notes that previous and current rebates offered by NOM relate to activity on the NASDAQ Stock Market.[22] Similarly, the NASDAQ Stock Market offers enhanced rebates that are based on activity on NOM.[23] Moreover, the Exchange notes that any NOM Options Participant may trade equities on the NASDAQ Stock Market because they are approved members.[24]

Further, the Exchange believes it is reasonable to make this rebate exclusive of any other rebates in Tiers 1 through 8 or other rebate incentives on NOM for Customer and Professional order flow in Chapter XV, Section 2(1) of NOM Rules. As noted above, the proposed rebates are higher, and in some cases significantly higher, than the rebates that a NOM Participant may currently receive for adding liquidity in Penny Pilot and Non-Penny Pilot Options as a Customer or Professional. Given the size of the proposed rebates, the Exchange believes it is reasonable to make these rebates exclusive of other rebates on NOM for Customer and Professional order flow. Finally, the Exchange also believes the proposal is reasonable because the proposed rebates apply to both transactions in Penny Pilot and Non-Penny Pilot Options.

The Exchange believes that the amount of the rebate ($0.55 per contract for Penny Pilot Options and $1.05 per contract for Non-Penny Pilot Options) along with the various criteria for qualifying for the rebate ((a) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 1.45% of total industry customer equity and ETF option ADV contracts per day in a month, (b) execute greater than 0.04% of Consolidated Volume (''CV'') via Market-on-Close/Limit-on-Close (''MOC/LOC'') volume within the NASDAQ Stock Market Closing Cross within a month, and (c) add greater than 1.5 million shares per day of non-displayed within the NASDAQ Stock Market within a month) is equitable and not unfairly discriminatory because any Participant that qualifies for this rebate will be uniformly paid $0.55 per contract for Penny Pilot Options and $1.05 per contract for Non-Penny Pilot Options. The requirements for earning this rebate will be applied uniformly to all market participants. The Exchange believes that requiring Participants to add non-displayed volume is equitable and not unfairly discriminatory because the Exchange will pay the incentive, in a uniform manner, to Participants that have met all criteria required for the rebate.

The Exchange believes that the requirement that a NOM Participant add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 1.45% of total industry customer equity and ETF option ADV contracts per day in a month, execute greater than 0.04% of Consolidated Volume (''CV'') via Market-on-Close/Limit-on-Close (''MOC/LOC'') volume within the NASDAQ Stock Market Closing Cross within a month, and add greater than 1.5 million shares per day of non-displayed volume within the NASDAQ Stock Market within a month is equitable and not unfairly discriminatory because while the requirements for qualifying for the proposed rebates may be more stringent than other requirements for qualifying for other rebates currently offered by NOM, the Exchange believes that these requirements are proportionate to the amount of the proposed rebates and equitably reflect the purpose of the proposed rebates, which is to incentivize NOM Participants to transact greater volume on NOM and the NASDAQ Stock Market. Moreover, all similarly-situated NOM Participants, *e.g.,* those that add liquidity in either Penny Pilot or Non-Penny Pilot Options as either Customers or Professionals and also transact on the NASDAQ Stock

Participant removes liquidity from another Participant under Common Ownership. Finally, Participants that add 1.75% of Customer, Professional, Firm, Broker-Dealer or Non-NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of total industry customer equity and ETF option ADV contracts per day in a month will be subject to the following pricing applicable to executions less than 10,000 contracts: A $0.32 per contract Penny Pilot Options Fee for Removing Liquidity when the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership.

[20] Note ''c'' of Chapter XV, Section 2 pays an additional $0.05 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity, in addition to the Tier 8 rebate of $0.48 per contract if a Participant: (1) Adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.15% or more of total industry customer equity and ETF option ADV contracts per day in a month will receive an additional $0.02 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month; or (2) adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.30% or more of total industry customer equity and ETF option ADV contracts per day in a month will receive an additional $0.05 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month; or (3) (a) adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.80% of total industry customer equity and ETF option ADV contracts per day in a month, (b) adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Non-Penny Pilot Options above 0.15% of total industry customer equity and ETF option ADV contracts per day in a month, and (c) *executes greater than 0.04% of Consolidated Volume (''CV'') via Market-on-Close/Limit-on-Close (''MOC/LOC'') volume within the NASDAQ Stock Market Closing Cross within a month.*

[21] Orders that are non-displayed would not be disseminated on the NASDAQ Stock Market Order Book feed. A Participant may be incentivized to increase their participation on the NASDAQ Stock Market, which may result in interacting with such non-displayed volume. Increased order interaction benefits all market participants.

[22] *See* current note ''e'' of Chapter XV, Section IV [sic] of NOM Rules which provides a rebate to NOM Participants that transact in all securities through one or more of its Nasdaq Market Center MPIDs that represent 3.00% or more of Consolidated Volume in the same month on the NASDAQ Stock Market.

[23] For example, Nasdaq provides an enhanced rebate on the NASDAQ Stock Market of $0.00295 if the member adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.15% or more of total industry ADV in the customer clearing range for Equity and ETF option contracts per day in a month on NOM. *See* Nasdaq Rule 7018.

[24] Although a NOM Participant may incur additional labor and/or costs to establish connectivity to the NASDAQ Stock Market, there are no additional membership fees for NOM Participants that want to transact on the NASDAQ Stock Market.

Market, are equally capable of qualifying for the proposed rebates, and the same rebates will be paid to all NOM Participants that qualify for them. Further, the Exchange believes that it is equitable and not unfairly discriminatory to offer this rebate to NOM Participants that add liquidity as Customers or Professionals, and not to offer this rebate to NOM Participants that add liquidity as Firms,[25] NOM Market Makers,[26] Non-NOM Market Makers, or Broker-Dealers.[27] Nasdaq notes that Customer liquidity offers unique benefits to the market which benefits all market participants by providing more trading opportunities, which attracts Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The Exchange believes that encouraging Participants to add Professional liquidity is similarly beneficial, as the rebates may cause market participants to select NOM as a venue to send Professional order flow, increasing competition among the exchanges. As with Customer liquidity, the Exchange believes that increased Professional additional order flow should benefit other market participants.

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.

The Exchange does not believe that the proposed rebates will impose any burden on competition that is not necessary or appropriate. The Exchange notes that the purpose of the proposed rebate is to incentivize NOM Participants to transact on NOM and the NASDAQ Stock Market. All similarly-situated NOM Participants, *e.g.,* those that add liquidity in either Penny Pilot or Non-Penny Pilot Options as either Customers or Professionals and also transact the requisite volumes on the NASDAQ Stock Market, are equally capable of qualifying for the proposed rebates. Additionally, the Exchange will pay the same rebates, in a uniform manner, to all NOM Participants that qualify for them. The Exchange believes that Customer and Professional order flow provides unique benefits to all participants on the Exchange and may even facilitate inter-market competition, and is therefore offering the proposed rebates to NOM Participants that add liquidity as either a Customer or a Professional accordingly. With respect to linking the proposed rebates to a participant's activity on the NASDAQ Stock Market, NOM currently offers rebates that are based on activity on the NASDAQ Stock Market.[28] Similarly, the NASDAQ Stock Market currently offers reduced transaction fees that are based on activity on NOM.[29] Finally, because they are approved members, any NOM Options Participant may trade equities on the NASDAQ Stock Market and therefore attempt to qualify for the proposed rebates.[30]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[31]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2017–001 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–2017–001. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official

[25] The term ''Firm'' or (''F'') applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC.

[26] The term ''NOM Market Maker'' or (''M'') is a Participant that has registered as a Market Maker on NOM pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security.

[27] The term ''Broker-Dealer'' or (''B'') applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

[28] *See* note 22 above.

[29] *See* note 23 above.

[30] *See* note 24 above.

[31] 15 U.S.C. 78s(b)(3)(A)(ii).

business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2017–001 and should be submitted on or before February 14, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–01464 Filed 1–23–17; 8:45 am]

BILLING CODE 8011–01–P

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79812; File No. SR–BX–2016–063]

Self-Regulatory Organizations; NASDAQ BX, Inc.; Order Granting Approval of Proposed Rule Change To Amend the PRISM Price Improvement Auction in BX Chapter VI, Section 9 and To Make Pilot Program Permanent

January 17, 2017.

I. Introduction

On November 21, 2016, NASDAQ BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the eligibility requirements for its Price Improvement Auction mechanism (''PRISM'' or ''Auction'') and make permanent those aspects of the PRISM auction that are currently operating on a pilot basis. The proposed rule change was published for comment in the **Federal Register** on December 9, 2016.[3] The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange established PRISM in November 2015 as a price improvement mechanism.[4] Pursuant to Chapter VI, Section 9 of the BX Options Rules, a Participant (an ''Initiating Participant'') may electronically submit for execution an order it represents as agent on behalf of a Public Customer,[5] Professional customer, broker dealer, or any other entity (''PRISM Order'') against principal interest or against any other order it represents as agent (an ''Initiating Order''), provided it submits the PRISM Order for electronic execution into the Auction. Parts of PRISM are currently operating on a pilot basis (''Pilot''),[6] which is set to expire on January 18, 2017.[7] The Exchange proposes to make the Pilot permanent, and also proposes to amend the Auction eligibility requirements for certain PRISM Orders of less than 50 option contracts.

A. PRISM Eligibility Requirements for PRISM Orders of Fewer Than 50 Contracts

Currently, a PRISM Auction may be initiated if certain conditions are met. If the PRISM Order is for the account of a Public Customer, the Initiating Participant must stop the entire PRISM Order at a price that is equal to or better than the National Best Bid/Offer (''NBBO'') on the opposite side of the market from the PRISM Order, provided that such price must be at least one minimum trading increment (specified in Chapter VI, Section 5 of the BX Options Rules) better than any limit order on the limit order book on the same side of the market as the PRISM Order.[8] If the PRISM Order is for the account of a broker dealer or any other person or entity that is not a Public Customer, the Initiating Participant must stop the entire PRISM Order at a price that is the better of: (i) The BX BBO price improved by at least the minimum trading increment on the same side of the market as the PRISM Order, or (ii) the PRISM Order's limit price (if the order is a limit order), provided in either case that such price is at or better than the NBBO.[9]

BX proposes to amend the Auction eligibility requirements to require that, if the PRISM Order is for less than 50 option contracts, and if the difference between the NBBO is $0.01, the Initiating Participant must stop the entire PRISM Order at one minimum price improvement increment better than the NBBO on the opposite side of the market from the PRISM Order, and better than any limit order on the limit order book on the same side of the market as the PRISM Order. Thus, BX would require that the PRISM Order receive at least $0.01 price improvement if that PRISM Order is for less than 50 contracts and if the difference between the NBBO is $0.01. This requirement will apply regardless of whether the PRISM Order is for the account of a Public Customer, or where the PRISM Order is for the account of a broker dealer or any other person or entity that is not a Public Customer.

The Exchange will retain the current requirements for Auction eligibility in all other instances. Accordingly, if the PRISM Order is for the account of a Public Customer and such order is for 50 option contracts or more or if the difference between the NBBO is greater than $0.01, the Initiating Participant must stop the entire PRISM Order at a price that is equal to or better than the NBBO on the opposite side of the market from the PRISM Order, provided that such price must be at least one minimum trading increment better than any limit order on the limit order book on the same side of the market as the PRISM Order. If the PRISM Order is for the account of a broker dealer or any other person or entity that is not a Public Customer and such order is for 50 option contracts or more, or if the difference between the NBBO is greater than $0.01, the Initiating Participant must stop the entire PRISM Order at a price that is the better of: (i) The BX BBO price improved by at least the Minimum Increment on the same side of the market as the PRISM Order, or (ii) the PRISM Order's limit price (if the order is a limit order), provided in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 79465 (December 5, 2016), 81 FR 89167 (''Notice'').

[4] *See* Securities Exchange Release No. 76301 (October 29, 2015), 80 FR 68347 (November 4, 2015) (SR–BX–2015–032) (''PRISM Approval Order'').

[5] A Public Customer means a person that is not a broker or dealer in securities. *See* Chapter I, Section 1(a)(50) of the BX Options Rules. A ''Professional'' means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). A Participant or a Public Customer may, without limitation, be a Professional. All Professional orders shall be appropriately marked by Participants. *See* Chapter I, Section 1(a)(49) of the BX Options Rules. For purposes of PRISM rule, a Public Customer order does not include a Professional order. *See* Chapter VI, Section 9 of the BX Options Rules.

[6] Three components of PRISM were approved by the Commission on a pilot basis: (1) The early conclusion of the PRISM Auction; (2) the provision that an unrelated market or marketable limit order (against the BX BBO) on the opposite side of the market from the PRISM Order received during the Auction will not cause the Auction to end early and will execute against interest outside of the Auction; and (3) no minimum size requirement of orders.

[7] *See* Securities Exchange Act Release No. 78249 (July 7, 2016), 81 FR 45334 (July 13, 2016) (SR–BX–2016–038).

[8] *See* Chapter VI, Section 9(i)(A) of the BX Options Rules.

[9] *See* Chapter VI, Section 9(i)(B) of the BX Options Rules.

either case that such price is at or better than the NBBO.[10]

The Exchange believes that these changes to PRISM may provide additional opportunities for PRISM Orders of fewer than 50 option contracts to receive price improvement over the NBBO where the difference in the NBBO is $0.01 and therefore encourage the increased submission of orders of fewer than 50 option contracts.[11] The Exchange notes that the statistics for the current pilot, which include, among other things, price improvement for orders of fewer than 50 option contracts under the current auction eligibility requirements, show relatively small amounts of price improvement for such orders.[12] BX believes that the proposed requirements will therefore increase the price improvement that orders of fewer than 50 option contracts may receive in PRISM.[13] The Exchange also notes that NASDAQ PHLX LLC (''Phlx'') operates a similar price improvement mechanism, PIXL, which has been operating for a longer period of time and has generated similar pilot data.[14] Given the similarly between the two mechanisms, the Exchange expects that PRISM, if operated on a pilot basis over a longer period of time, would continue to generate data that is comparable to PIXL.[15]

B. Pilot Program

Three components of PRISM were approved by the Commission on a pilot basis: (1) The early conclusion of the PRISM Auction;[16] (2) the provision that an unrelated market or marketable limit order (against the BX BBO) on the opposite side of the market from the PRISM Order received during the Auction will not cause the Auction to end early and will execute against interest outside of the Auction;[17] and (3) no minimum size requirement of orders. The provisions were approved for a pilot period that currently expires on January 18, 2017.[18] The Exchange proposes to have the Pilot approved on a permanent basis.

During the Pilot period, the Exchange submitted certain data periodically as required by the Commission, to provide supporting evidence that, among other things, there is meaningful competition for all size orders, there is significant price improvement available through PRISM, and that there is an active and liquid market functioning on the Exchange outside of the Auction mechanism.[19]

1. No Minimum Size Requirement

Chapter VI, Section 9(vii) provides that, as part of the current Pilot, there will be no minimum size requirement for orders to be eligible for the Auction. The Exchange believes that the data gathered since the approval of the Pilot, which it discussed in the Notice, establishes that there is liquidity and competition both within PRISM and outside of PRISM, and that there are opportunities for significant price improvement within PRISM.[20]

The Exchange also has gathered information about activity in orders for less than 50 and 50 contracts or greater for PRISM auctions between January and June 2016. For auctions occurring during that period, 87.8% of auctions were for orders for less than 50 contracts, a percentage that remained stable over that time period. Auctions for orders of less than 50 contracts accounted for 30.0% of the contract volume traded in PRISM. Auctions of 50 contracts or more made up 12.2% of all PRISM auctions and accounted for 70.0% of contracts traded in PRISM.[21]

With respect to price improvement, 60.5% of PRISM auctions between January and June 2016 executed at a price that was better than the NBBO at the time the auction began.[22] For auctions of less than 50 contracts, 64.7% received price improvement, while 30.5% of auctions for 50 contracts or more received price improvement.[23]

BX believes that the data gathered during the Pilot period indicates that there is meaningful competition in PRISM auctions for all size orders, there is an active and liquid market functioning on the Exchange outside of the auction mechanism, and that there are opportunities for price improvement for orders executed through PRISM.[24] The Exchange therefore has requested that the Commission approve the no minimum size requirement on a permanent basis.

2. Early Conclusion of the PRISM Auction

Chapter VI, Section 9(ii)(B)(4) of the BX Options Rules provides that the PRISM Auction shall conclude at the earlier of (1) the end of the Auction period; (2) any time the BX BBO crosses the PRISM Order stop price on the same side of the market as the PRISM Order; or (3) any time there is a trading halt on the Exchange in the affected series.[25] The latter two conditions are operating as part of the current Pilot.

As with the no minimum size requirement, the Exchange has gathered data on these latter two conditions. Between January and June 2016, one auction terminated early because the BX BBO crossed the PRISM Order stop price. No auctions terminated early because of halts. The number of auctions that terminated early was less than 1/100th of 1% of all PRISM auctions over the period. The auctions that terminated early were less than 1/100th of 1% of contracts traded in PRISM auctions.[26]

Based on the data gathered during the pilot, the Exchange does not anticipate that either of these conditions will occur with significant frequency, or will otherwise disrupt the functioning of

[10] The Exchange also proposes to add language to Chapter VI, Section 9(i) of the BX Options Rules to clarify that, if any of the auction eligibility criteria are not met, the PRISM Order will be rejected. The Exchange will also add language to Chapter VI, Section 9(i) to clarify the treatment of paired Public Customer-to-Public Customer orders pursuant to subparagraph (vi) as a result of these proposed changes. Specifically, Exchange will allow a PRISM Order to trade on either the bid or offer, pursuant to subparagraph (vi), if the NBBO is $0.01 wide, provided (1) the execution price is equal to or within the NBBO, (2) there is no resting customer at the execution price, and (3) $0.01 is the Minimum Price Variation (MPV) of the option. The Exchange also proposes to add language that it will continue to reject a PRISM Order to buy (sell) if the NBBO is only $0.01 wide and the Agency order is stopped on the bid (offer) if there is a resting order on the bid (offer). These requirements are unchanged from the Exchange's current handling practices of paired Public Customer-to-Public Customer PRISM Orders per subparagraph (vi), and the Exchange's current practice of rejecting PRISM Orders to buy (sell) if the NBBO is only $0.01 wide and the Agency order is stopped on the bid (offer) if there is a resting order on the bid (offer).

[11] *See* Notice, *supra* note 3, at 89169.

[12] *See id.*

[13] *See id.*

[14] *See* Securities Exchange Act Release No. 63027 (October 1, 2010), 75 FR 62160 (October 7, 2010) (SR–Phlx–2010–108).

[15] *See* Notice, *supra* note 3, at 89169.

[16] *See* Chapter VI, Section 9(ii)(B)(4) of the BX Options Rules.

[17] *See* Chapter VI, Section 9(ii)(D) of the BX Options Rules.

[18] *See* PRISM Approval Order, *supra* note 4.

[19] *See* Chapter VI, Section 9(vii).

[20] *See* Notice, *supra* note 3, at 89169. *See also* Exhibit 3 to SR–BX–2016–063.

[21] *See* Notice, *supra* note 3, at 89369.

[22] *See id.*

[23] *See* Notice, *supra* note 3, at 89170.

[24] *See id.*

[25] If the situations described in either of the two latter conditions occur, the entire PRISM Order will be executed at: (1) In the case of the BX BBO crossing the PRISM Order stop price, the best response price(s) or, if the stop price is the best price in the Auction, at the stop price, unless the best response price is equal to or better than the price of a limit order resting on the Order Book on the same side of the market as the PRISM Order, in which case the PRISM Order will be executed against that response, but at a price that is at least the Minimum Increment better than the price of such limit order at the time of the conclusion of the Auction; or (2) in the case of a trading halt on the Exchange in the affected series, the stop price, in which case the PRISM Order will be executed solely against the Initiating Order. Any unexecuted PAN responses will be cancelled.

[26] *See* Notice, *supra* note 3, at 89170.

PRISM auctions.[27] The Exchange therefore has requested that the Commission approve this aspect of the Pilot on a permanent basis.

3. Unrelated Market or Marketable Limit Order

Chapter VI, Section 9(ii)(D) of the BX Options Rules provides that an unrelated market or marketable limit order (against the BX BBO) on the opposite side of the market from the PRISM Order received during the Auction will not cause the Auction to end early and will execute against interest outside of the Auction. If contracts remain from such unrelated order at the time the auction ends, they will be considered for participation in the order allocation process described elsewhere in the Rule.

The Exchange states that the provision is based on a similar provision in the Phlx PIXL mechanism.[28] In approving this feature on PIXL, also on a pilot basis, the Commission found that ''allowing the PIXL auction to continue for the full auction period despite receipt of unrelated orders outside the Auction would allow the auction to run its full course and, in so doing, will provide a full opportunity for price improvement to the PIXL Order. Further, the unrelated order would be available to participate in the PIXL order allocation.'' [29] The Exchange does not believe that this provision has had a significant impact on either the unrelated order or the PRISM auction process.[30] The Exchange therefore has requested that the Commission approve this aspect of the Pilot on a permanent basis.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b) of the Act.[31] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[32] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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 customers, issuers, brokers and dealers.

As part of its proposal, the Exchange provided summary data on Exhibit 3 of its filing for the period January through June 2016, which the Exchange and Commission both publicly posted on their respective Web sites. Among other things, this data is useful in assessing the level of price improvement in the auction, in particular for orders for fewer than 50 contracts; the degree of competition for order flow in such auctions; and a comparison of liquidity in the auctions with liquidity on the Exchange generally.[33] Based on the data provided by the Exchange, the Commission believes that the Exchange's price improvement auction generally delivers a meaningful opportunity for price improvement to orders, including orders for fewer than 50 contracts, when the spread in the option is $0.02 or more. At the same time, as the Exchange has recognized, the data do not demonstrate that such orders have realized significant price improvement when the NBBO has a bid/ask differential of $0.01.[34] Recognizing this, the Exchange has proposed to amend the auction eligibility requirements to require price improvement of at least one minimum price improvement increment over the NBBO for PRISM Orders of less than 50 option contracts where the difference in the NBBO is $0.01.

The Exchange's proposal to modify the auction eligibility requirements for orders of fewer than 50 contracts and seek permanent approval of the Pilot, as amended with the new provision, will, in the Commission's view, promote opportunities for price improvement for such orders when the NBBO is $0.01 wide, while continuing to provide opportunities for price improvement when spreads are wider than $0.01.

In addition, the Commission has carefully evaluated the PRIME Pilot data and has determined that it would be beneficial to customers and to the options market as a whole to approve on a permanent basis the provisions concerning early conclusion of the PRISM Auction, and the receipt of an unrelated market or marketable limit order (against the BX BBO) on the opposite side of the market from the PRISM Order during the Auction. The Commission notes that there have been few instances of early termination of the PRISM. The Commission further notes that permitting the PRISM Auction to continue despite receipt of unrelated orders outside the Auction would allow the Auction to run its full course and provide a full opportunity for price improvement to the PRISM Order, while allowing the unrelated order to seek an execution, including in the Auction's order allocation.

The Commission believes that, particularly for auctions for fewer than 50 contracts when the bid/ask differential is wider than $0.01, the data provided by the Exchange support its proposal to make the Pilot permanent. The data demonstrate that the auction generally provides price improvement opportunities to orders, including orders of retail customers and particularly when the bid/ask differential is wider than $0.01, that there is meaningful competition for orders on the Exchange; and that there exists an active and liquid market functioning on the Exchange outside of the auction.[35] The Commission further believes that the proposed revisions to the eligibility requirements for PRISM Orders of fewer than 50 contracts with respect to circumstances when the NBBO is $0.01 wide should help to enhance the operation of the auction by providing meaningful opportunities for price improvement in such circumstances, and should benefit investors and others in a manner that is consistent with the Act. Thus, the Commission has determined to approve the Exchange's proposed revisions to Chapter VI, Section 9(i) of the BX Options Rules and to approve the Pilot, as proposed to be modified, on a permanent basis.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[36] that the proposed rule change (SR–BX–2016–063), be and hereby is approved.

[27] *See id.*

[28] *See* Phlx Rule 1080(n)(ii)(D).

[29] *See* Securities Exchange Act Release No. 63027 (October 1, 2010), 75 FR 62160 (October 7, 2010) (SR–PHLX–2010–108).

[30] *See* Notice, *supra* note 3, at 89170.

[31] 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[32] 15 U.S.C. 78f(b)(5).

[33] *See* Exhibit 3 to SR–BX–2016–063.

[34] *See* Notice, *supra* note 3, at 89169.

[35] *See* Exhibit 3 to SR–BX–2016–063.

[36] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–01467 Filed 1–23–17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79807; File No. SR–C2–2017–002]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule To Amend the Fees Schedule

January 17, 2017.

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 January 3, 2017, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.c2exchange.com/Legal/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule. The Exchange is adding fees for functionality related to its PULSe workstation. The Exchange is also making minor formatting updates to organize the footnotes in PULSe workstation section of its Fees Schedule.[3] The fees herein will be effective on January 3, 2017.

By way of background, the PULSe workstation is a front-end order entry system designed for use with respect to orders that may be sent to the trading systems of the Exchange. Exchange Trading Permit Holders (''TPHs'') may also make workstations available to their customers, which may include TPHs, non-broker dealer public customers and non-TPH broker dealers.

Drop Copies

Financial Information eXchange (''FIX'') language-based connectivity, upon request, provides customers (both TPH and non-TPH) of TPHs that are brokers and PULSe users (''PULSe brokers'') with the ability to receive ''drop-copy'' order fill messages from their PULSe brokers. These fill messages allow customers to update positions, risk calculations and streamline back-office functions.

The Exchange is proposing a monthly fee to be assessed on TPHs who are either receiving or sending drop copies via a PULSe workstation. This fee will allow for the recoupment of costs of maintaining and supporting drop copy functionality. Whether the drop copy sender or receiver is assessed the fee is dependent upon whether the customer receiving the drop copies is a TPH or non-TPH.

If a customer receiving drop copies is a TPH, that TPH customer (the receiving TPH) will be charged a fee of $1000 per month, per PULSe broker from whom it receives drop copies via PULSe. For example, if TPH customer A receives drop copies from each of PULSe broker A, PULSe broker B, and PULSe broker C (all of which are TPHs), TPH A (the receiving TPH) will be charged a fee of $3000 per month for receiving drop copies via PULSe from PULSe brokers A, B and C (the sending TPHs).

If a customer receiving drop copies is a non-TPH, the PULSe broker (the sending TPH) who sends drop copies via PULSe to that customer will be charged a fee of $500 per month. If that PULSe broker sends drop copies via PULSe to multiple non-TPH customers, the PULSe broker will be charged the fee for each customer. For example, if PULSe broker A sends drop copies via its PULSe workstation to each of non-TPH customer A, non-TPH customer B and non-TPH customer C, PULSe broker A (the sending TPH) will be charged a fee of $1500 per month for drop copies it sends via PULSe to non-TPH customers A, B and C (the receiving non-TPHs).

Non-PULSe-to-PULSe Routing

Upon request, the Exchange provides customers, both TPH and non-TPH, of PULSe brokers with the ability to transmit orders electronically to PULSe brokers' PULSe workstations using order management systems other than PULSe (*i.e.,* non-PULSe-to-PULSe).[4] These customers utilize the existing infrastructure of such systems to send orders to their PULSe brokers electronically.

The Exchange is proposing a monthly fee payable by TPH customers who request non-PULSe-to-PULSe functionality. This fee will allow for the recoupment of costs of maintaining and supporting non-PULSe-to-PULSe routing functionality. A TPH customer sending orders electronically to PULSe brokers through these non-PULSe systems will be charged a fee of $500 a month per PULSe broker to which the customer sends orders. For example, if TPH customer A transmits orders electronically through a non-PULSe order management terminal to PULSe workstations of each of PULSe broker A, PULSe broker B, and PULSe broker C, TPH customer A (the sending TPH) will be charged a fee of $1500 per month for the ability to send orders electronically to the PULSe workstations of PULSe brokers A, B and C.[5] The Exchange does not assess any fee, to the PULSe broker or otherwise, for a non-TPH customer electing to use non-PULSe-to-PULSe routing functionality.

FIX Integration Drop Copy Start-Up/Cancellation Fees

The Exchange is proposing fees for both the start-up and cancellation of the FIX integration needed to send and

[37] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The footnotes in the PULSe workstation section have been changed from asterisks to numerical footnotes to account for the increased volume of footnotes.

[4] Non-PULSe-to-PULSe routing is an ''add-on'' feature to drop copy connectivity. If a TPH or non-TPH customer of a PULSe brokers elects to send orders through its third-party order management system to its broker's PULSe workstations, it must also elect to have the drop copy connectivity.

[5] In addition, the TPH customer would be charged $3,000/month for receiving drop copies from the three PULSe brokers, as discussed above.

receive drop copies from PULSe workstations. The Exchange is proposing a one-time fee of $500 to recoup the costs required to connect a new drop copy customer to workstations of its PULSe broker(s) and add the drop copy functionality for that customer. Additionally, the Exchange is proposing a one-time fee of $500 for cancellation of the drop copy functionality to recoup the costs required to disconnect the cancelling drop copy customer from workstations of its PULSe broker(s) and remove the drop copy functionality for that customer. In the case of both start-up and cancellation, the fees are charged to the TPH who is charged for the drop copy connectivity (in the case of a TPH customer, the TPH customer that receives drop copies from PULSe broker; in the case of a non-TPH customer, the PULSe broker that sends drop copies to the non-TPH customer). If the TPH customer is charged these fees, each fee is $500 for each PULSe broker to which the TPH customer requests to start or cancel drop copy functionality, as applicable. If the PULSe broker is charged these fees, each fee is $500 for each non-TPH customer that requests to start or cancel drop copy functionality from that PULSe broker.

Routing Intermediary Certification and Inactivity Fees

Routing intermediaries route orders entered into PULSe to away markets and to route orders from non-TPH PULSe workstations to TPHs for entry and execution on the Exchange. Routing intermediaries are currently charged routing intermediary transactional fees for away market routing from any PULSe workstation for which it serves as the routing intermediary. The Exchange is proposing a $5000 one-time fee for certification of a new PULSe routing intermediary. This fee will allow for the recoupment of costs of adding connectivity for the new routing intermediary, including connectivity to away-market routing technology, and testing necessary to support the new order routing features.

The Exchange is also proposing a routing intermediary inactivity fee of up to $5000. The fees currently charged to routing intermediaries allow for the recoupment of costs of developing, maintaining, and supporting routing intermediary functionality, including away-market routing technology. If the Exchange is unable to collect sufficient fees in a year from a routing intermediary to cover theses costs, the inactivity fee allows for sufficient recoupment of these costs for that year. The fee will be charged to a routing intermediary each calendar year in which the routing intermediary has been charged Away-Market Routing Intermediary and Exchange Routing fees in the aggregate of less than $5000. The inactivity fee will be reduced by the amount of any of these fees charged to the routing intermediary during a calendar year. For example, if a routing intermediary was charged an aggregate of $4500 in Away-Market Routing Intermediary and Exchange Routing fees in the calendar year 2017, that routing intermediary would be assessed a $500 routing intermediary inactivity fee. The routing intermediary inactivity fee may first be charged in the calendar year following the year in which the routing intermediary was charged the routing intermediary certification fee. A TPH that withdraws as a routing intermediary will not be charged an inactivity fee for the calendar year in which they withdrew.

OATS Reporting Fees

The Exchange is proposing a $250 per month Order Audit Trail System (''OATS'') reporting fee. The fee will be charged to any PULSe customer (TPH or non-TPH) who elects to receive daily transmission of OATS reports for its orders submitted through PULSe. This fee will allow for the recoupment of costs of developing, maintaining and supporting OATS reporting functionality.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[8] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes that assessing a $1000 per month fee on a TPH receiving drop copies from PULSe is reasonable because the Exchange incurs costs to monitor, develop and implement upgrade, maintain and customize PULSe to ensure the TPH customer receives timely and accurate drop copies. The Exchange believes the fee is equitable and not unfairly discriminatory because the monthly fee is assessed to any TPH electing to receive drop copies from a PULSe broker. Use of the drop copy functionality by a TPH customer is voluntary.

The Exchange believes that assessing a $500 per month fee on a TPH sending drop copies from PULSe to a non-TPH customer is reasonable because the Exchange incurs costs to monitor, develop and implement upgrades, maintain and customize PULSe to ensure a non-TPH customer receives timely and accurate drop copies. The Exchange believes the fee is equitable and not unfairly discriminatory because the monthly fee is assessed equally to any TPH sending drop copies to its non-TPH customers. The Exchange believes that assessing a TPH sending drop copies to a non-TPH a monthly fee of $500, as opposed to the $1000 per month rate assessed to TPH customers receiving drop copies from PULSe, is reasonable, equitable, and not unfairly discriminatory. Specially, the lower rates are designed to encourage non-TPH market participants to interact with the Exchange, which will accordingly attract more volume and liquidity to the Exchange and benefit all Exchange participants through increased opportunities to trade. Use of the drop copy functionality by a non-TPH customer is voluntary.

The Exchange believes that assessing a $500 per month fee for a TPH customer electing to use non-PULSe-to-PULSe routing functionality (in addition to receiving drop copies) is reasonable because the Exchange incurs costs to monitor, develop and implement upgrades, maintain and customize PULSe to ensure a reliable connection between a TPH customer and its PULSe broker through which the customer's orders reach the PULSe broker in a timely and accurate manner. The Exchange believes the fee is equitable and not unfairly discriminatory because the monthly fee is assessed equally to any TPH electing to use the non-PULSe-to-PULSe routing functionality. The

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(4).

Exchange does not assess any fee, to the PULSe broker or otherwise, for a non-TPH customer electing to use non-PULSe-to-PULSe routing functionality. The Exchange believes not assessing a fee for a non-TPH customer electing to use non-PULSe-to-PULSe routing functionality is reasonable, equitable, and not unfairly discriminatory in that it is designed to encourage non-TPH market participants to interact with the Exchange, which will accordingly attract more volume and liquidity to the Exchange and benefit all Exchange participants through increased opportunities to trade. Use of non-PULSe-to-PULSe routing functionality is voluntary.

The Exchange believes that assessing a TPH sending drop copies to a non-TPH a monthly $500, as opposed to the $1,000 per month rate assessed to TPH customers receiving drop copies from PULSe, is reasonable, equitable, and not unfairly discriminatory. The lower rates are designed to encourage non-TPH market participants to interact with the Exchange, which will accordingly attract more volume and liquidity to the Exchange and benefit all Exchange participants through increased opportunities to trade.

The Exchange believes that assessing a $500 one-time fee for FIX integration necessary to receive or send drop copies from PULSe is reasonable because the Exchange incurs costs in the setup of a new FIX connection to allow the receiving and sending of drop copies via PULSe. The Exchange believes the fee is equitable and not unfairly discriminatory as it is assessed equally to any TPH electing to receive drop copies from PULSe brokers or to any TPH electing to send drop copies to a non-TPH customer.

The Exchange believes that assessing a $500 one-time fee for the cancellation of a FIX connection necessary to receive or send drop copies from PULSe is reasonable because the Exchange incurs costs in the shutting down of a FIX connection. The Exchange believes the fee is equitable and not unfairly discriminatory as it is assessed equally to any TPH electing to cancel a FIX connection to a PULSe broker or to a PULSe broker electing to cancel a connection to a non-TPH customer.

The Exchange believes that assessing a $5000 one-time fee for the certification of a new PULSe routing intermediary is reasonable because the Exchange incurs costs to develop connectivity for the routing intermediary and test the routing functionality to Exchange and away marketplaces. The Exchange believes the fee is equitable and not unfairly discriminatory as it is assessed to every TPH who elects to become a routing intermediary on PULSe. Becoming a routing intermediary is voluntary.

The Exchange believes that assessing a routing intermediary inactivity fee of up to $5000 in years in which a routing intermediary pays less than that amount in fees is reasonable because the Exchange incurs costs to maintain, monitor, upgrade and test routing intermediary connections. The fees are assessed to cover those Exchange costs in the event the costs are not recovered via routing intermediary transaction fees. The Exchange believes the fee is equitable and not unfairly discriminatory as it will be assessed to any routing intermediary and only to the extent the TPH's routing intermediary transaction fees are less than $5000 in a calendar year.

The Exchange believes that assessing a $250 a month fee for the daily transmission of OATS reports from PULSe is reasonable because the Exchange incurs costs to monitor, develop and implement upgrades, maintain and customize PULSe to allow sending and receiving of OATS reports. The Exchange believes the fee is equitable and not unfairly discriminatory as it is assessed to all customers electing to receive daily OATS reports.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burdens on competition that are not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed PULSe-related fees relate to optional reports and/or functionality and are assessed equally on PULSe users or TPH electing to use the functionality and/or receive the reports. The Exchange does not believe that the proposed change will cause any unnecessary burden on intermarket competition because the proposed relate to use of an Exchange-provided order entry system. To the extent that any proposed change makes the Exchange a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become Exchange market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and paragraph (f) of Rule 19b–4 [10] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov. Please include File Number SR–C2–2017–002 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–C2–2017–002. 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

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2017–002 and should be submitted on or before February 14, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–01462 Filed 1–23–17; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79805; File No. SR–Phlx–2016–82]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing of Amendment No. 1, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt a New Exception in Phlx Rule 1000(f) for Sub-MPV Split-Price Orders

January 17, 2017.

I. Introduction

On August 3, 2016, NASDAQ PHLX LLC (the ''Exchange'' or ''Phlx'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide an additional exception to the mandatory use of the Exchange's Floor Broker Management System (''FBMS'') pursuant to Rule 1000(f)(iii) to permit Floor Brokers to execute certain sub-minimum price variation (''sub-MPV'') split-price orders in the trading crowd. The proposed rule change was published for comment in the **Federal Register** on August 22, 2016.[3] On October 3, 2016, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to November 20, 2016.[4] On November 17, 2016, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the proposed rule change.[5] On December 9, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.[6] The Commission received no comments on the proposed rule change. This order provides notice of filing of Amendment No. 1 and approves the proposal, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposal[7]

A. Background

Currently, Phlx Rule 1000(f) requires that all Exchange options transactions be executed in one of the following three ways: ''(i) [a]utomatically by the Exchange Trading System pursuant to Rule 1080 and other applicable options rules; (ii) by and among members in the Exchange's options trading crowd none of whom is a Floor Broker; or (iii) through the Options [FBMS] for trades involving at least one Floor Broker.''[8] Although a Floor Broker may represent orders in the trading crowd, a Floor Broker is not permitted to execute an order in the trading crowd unless one of three exceptions applies.[9] The exceptions to the mandatory use of the FBMS[10] are set forth in Phlx Rule 1000(f)(iii). These exceptions allow a Floor Broker to execute a transaction in the trading crowd (rather than through the FBMS) if: (i) There is a problem with Exchange's systems; (ii) the Floor Broker is executing the trade pursuant to Phlx Rule 1059 (''Accommodation Transactions'') or Phlx Rule 1079 (''Flex Index, Equity and Currency Options''); or (iii) the transaction involves a multi-leg order with more than 15 legs.[11]

B. Split-Price Order Exception Proposal

Phlx Rule 1014(g)(i)(B) provides a priority rule regarding open outcry split-price transactions in equity options and options overlying ETFs to permit a member who is responding to an order for at least 100 contracts who buys (sells) at least 50 contracts at a particular price to have priority over all others in purchasing (selling) up to an equivalent number of contracts of the same order at the next lower (higher) price without being required to yield to existing customer interest in the limit order book.[12] Absent Phlx Rule 1014(g)(i)(B), such orders would be required to yield priority. The Exchange states that ''[t]he purpose behind the split-price priority exception was 'to bring about the execution of large orders, which by virtue of their size and the need to execute them at multiple

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 78593 (August 16, 2016), 81 FR 56724 (''Notice'').

[4] *See* Securities Exchange Act Release No. 79023 (October 3, 2016), 81 FR 69877 (October 7, 2016).

[5] *See* Securities Exchange Act Release No. 79345 (November 17, 2016), 81 FR 84629 (November 23, 2016).

[6] Amendment No. 1 updated the original filing to: (1) Reflect the implementation of the Exchange's new Floor Broker Management System (''FBMS 3'') on November 3, 2016; (2) modify proposed Rule 1000(f)(iii)(D) to provide additional detail regarding how certain split-price orders will be rounded; and (3) offer three examples to illustrate how split-price orders will be handled pursuant to the proposed exception. Amendment No. 1 replaced the original proposed rule change in its entirety. To promote transparency of its proposed amendment, when Phlx filed Amendment No. 1 with the Commission, it also submitted Amendment No. 1 as a comment letter to the file, which the Commission posted on its Web site and placed in the public comment file for SR–Phlx–2016–82 (available at *https://www.sec.gov/comments/sr=phlx-2016-82/phlx201682-1.pdf https://www.sec.gov/comments/sr-cboe-2016-071/cboe2016071.shtml*). The Exchange also posted a copy of its Amendment No. 1 on its Web site (*http://nasdaqphlx.cchwallstreet.com/NASDAQPHLX/pdf/phlx-filings/2016/SR-Phlx-2016-82_Amendment_1.pdf*) when it filed Amendment No.1 with the Commission.

[7] A more detailed description of the proposal appears in the Notice and in Amendment No. 1.

[8] *See* Phlx Rule 1000(f).

[9] *See* Phlx Rule 1000(f)(iii).

[10] The original FBMS (''FBMS 1'') began operating in 2005. The Exchange retired FBMS 1 on March 31, 2016 after operating it concurrently with the Exchange's enhanced FBMS (''FBMS 2''), which was made available on March 7, 2014. As of April 1, 2016, the Exchange only operated FBMS 2. *See* Notice, *supra* note 3, at 56725. On November 3, 2016, the Exchange implemented FBMS 3 and retired FBMS 2. According to the Exchange, FBMS 3 is currently the sole operating version of FBMS on the Exchange. *See* Amendment No. 1, *supra* note 6, at 3 and 8–10. References throughout this Order to ''FBMS'' refer to FBMS 3.

[11] *See* Notice, *supra* note 3, at 56726. *See also* Phlx Rule 1000(f)(iii)(A)–(C). According to the Exchange, each time a Floor Broker uses one of the current exceptions to Phlx Rule 1000(f)(iii), the Floor Broker is required by Phlx Rule 1063(e)(ii), to record the information required by Phlx Rule 1063(e)(i) on paper trade tickets. The Exchange further represents that a Floor Broker may only represent an order for execution that has been timestamped with the time of entry on the trading floor. In addition, according to the Exchange, once an execution occurs, the trade ticket must be stamped with the time of execution of such order. *See* Notice, *supra* note 3, at 56726 and Amendment No. 1, *supra* note 6, at 11.

[12] *See* Notice, *supra* note 3, at 56726 (citing Securities Exchange Act Release No. 51820 (June 10, 2005), 70 FR 35759 (June 21, 2005) (SR–Phlx–2005–28)) (approving pilot). *See also* Securities Exchange Act Release No. 55993 (June 29, 2007), 72 FR 37301 (July 9, 2007) (SR–Phlx–2007–44) (permanent approval)).

prices may be difficult to execute without a limited exception to the priority rules.' ''[13]

According to the Exchange, split-price orders are currently processed using either FBMS or paper tickets. The use of FBMS or paper tickets depends on whether the split-price order can be evenly split using simple calculations or whether the split-price order involves non-even integers and sub-MPV price points, which requires a more complicated computation to determine the number of contracts to trade at two different price points.[14] The Exchange represents that FBMS does not have the capability to calculate specific volumes at two different MPV prices for split-price orders placed in a sub-MPV price.[15] To compensate for this system limitation, the Exchange is proposing to amend Phlx Rule 1000(f)(iii) to add a new exception from the mandatory use of the FBMS that would allow Floor Brokers to execute certain split-price orders in the trading crowd that would be validated by Phlx surveillance staff for compliance with applicable priority and trade-through rules.

Accordingly, the Exchange is proposing in Phlx Rule 1000(f)(iii)(D) to allow the following split-price orders to be executed in the trading crowd: (1) Simple orders not expressed in the applicable sub-MPV and that cannot be evenly split into two whole numbers to create a price at the midpoint of the MPV; and (2) complex and multi-leg orders with at least one option leg with an odd-numbered volume that must trade at a sub-MPV price or one leg that qualifies under (1) above.[16]

The Exchange represents that this exception ''is anticipated to be implemented infrequently and in the following [three] ways.''[17] Under the first scenario, a Floor Broker knows that, due to a system limitation, a sub-MPV split-price order cannot be handled by FBMS.[18] In this case, the Floor Broker would comply with Phlx Rule 1063(e), expose the order in the trading crowd, and request the use of the proposed exception from the Options Exchange Official (''Official'').[19] The Official would confirm his or her understanding of the order and the availability of the exemption, and if the Floor Broker's request is determined to be valid based on the split-price calculation, announce to application of the exemption to the Floor Broker and the trading crowd.[20] After the Floor Broker negotiates and consummates the trade in the trading crowd, the Floor Broker would timestamp the paper ticket at the time the trade is consummated in the trading crowd, which would become the time of execution for the trade.[21] The consummated trade would then be submitted to the Official to validate for compliance with priority and trade-through rules. If compliant, the Official would permit the Floor Broker to submit the manual split-price trade, via paper ticket, for trade reporting.[22]

The second scenario involves a situation in which a Floor Broker submits a split-price order to FBMS, but the Floor Broker does not realize that FBMS cannot handle the order because the price is outside the MPV.[23] In this case, the Floor Broker would comply with Phlx Rule 1063(e), expose the order in the trading crowd, and, upon consummation of the transaction, submit the order to FBMS for execution. Because FBMS cannot calculate the split-price for the order, FBMS would reject the submission and the Floor Broker would receive a rejection message.[24] Upon the receipt of this message, the Floor Broker would inform the Official that FBMS rejected the split-price order. The Official would then review the terms of the consummated trade and, using the timestamp captured by the Floor Broker or Official,[25] validate the consummated trade for compliance with priority and trade-through.[26] If the consummated trade is compliant, the Official would permit the Floor Broker to submit the manual split-price trade, via paper ticket reflecting the timestamp captured by the Floor Broker (or Official), for trade reporting.[27]

The third scenario is similar to the second scenario; however, neither the Floor Broker nor the Official captures a reliable time that the consummated trade was submitted to FBMS for execution.[28] In this case, the Official would require the Floor Broker to ''re-trade'' the order using a paper ticket in the sequence described in the first scenario above.[29]

The Exchange also proposes that, in addition to split-price orders executed pursuant to proposed Phlx Rule 1000(f)(iii)(D), Phlx surveillance staff would approve all executions submitted under Phlx Rule 1000(f)(iii) to validate that such executions abide by applicable priority and trade-through rules.[30] The Exchange also proposes to round prices if necessary to execute the trade at the MPV, but only to the benefit of a customer order, or, where multiple customer orders are involved, for the customer order that is earliest in time.[31] Where no customer order is involved, the rounding of prices will be applied to the non-customer order that is earliest in time.[32]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of Section 6 of the Act[33] and the rules and regulations thereunder applicable to a national securities exchange.[34] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[35] which requires, among other things, that the rules of a national securities exchange

[13] *See* Notice, *supra* note 3, at 56726. Floor Brokers that avail themselves of the split-price priority rule are obligated to ensure compliance with Section 11(a) of the Exchange Act. *See* Amendment No. 1, *supra* note 6, at 12.

[14] *See* Notice, *supra* note 3, at 56726. Today, when the computation is more complicated, surveillance staff allows a Floor Broker to execute split-price orders involving non-even integers and sub-MPV price points in open outcry using paper tickets pursuant to Phlx Rule 1000(f)(iii)(A). *See id.*

[15] *See id.* at 56727. *See* Amendment No. 1, *supra* note 6, at 20.

[16] *See* Notice, *supra* note 3, at 56724.

[17] *See* Amendment No. 1, *supra* note 6, at 13.

[18] *See id.*

[19] *See id.*

[20] *See id.* at 13–14.

[21] *See id.* at 14. The Exchange notes that, typically, the Official captures a timestamp reflecting the time the Official observed that the trade was consummated in the trading crowd and may, in its discretion, substitute this timestamp for the timestamp recorded by the Floor Broker at the time of consummation. *See id.*

[22] *See* Amendment No. 1, *supra* note 6, at 14–15. According to the Exchange, the paper ticket will reflect the timestamp captured by the Floor Broker or (as described above) the Official, which will reflect the time the trade was consummated in the trading crowd. *See id.*

[23] *See id.* at 15.

[24] *See id.* According to the Exchange, this might occur if the order is not priced in the minimum price increment and consequently FBMS would reject the trade. *See id.*

[25] According to the Exchange, the Floor Broker captures a timestamp for the time that the Floor Broker submitted the proposed execution in FBMS. The Exchange further represents that, as in scenario 1, the Official also would typically capture a timestamp reflecting the time that the Official observed the Floor Broker's attempt to execute the transaction in FBMS. Surveillance staff may, in its discretion, substitute this timestamp for the timestamp recorded by the Floor Broker as the time that the trade was consummated. *See* Amendment No. 1, *supra* note 6, at 15. *See also supra* note 21.

[26] *See id.* at 15–16.

[27] *See id.* at 16.

[28] *See id.*

[29] *See id.*

[30] *See* proposed Phlx Rule 1000(f)(iii).

[31] *See* proposed Phlx Rule 1000(f)(iii); *see also* Notice, *supra* note 3, at 56727.

[32] *See* Amendment No. 1, *supra* note 6, at 3 and 7.

[33] 15 U.S.C. 78f.

[34] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[35] 15 U.S.C. 78f(b)(5).

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission notes that the Exchange is proposing a new exception in Phlx Rule 1000(f)(iii)(D) that is designed to enable Floor Brokers to execute two types of split-price orders in the trading crowd that cannot be processed by FBMS because of a system limitation.[36] The Exchange represents that its surveillance staff will oversee Floor Brokers' use of the proposed Phlx Rule 1000(f)(iii)(D) exception, which they do today for current exceptions provided under Phlx Rule 1000(f)(iii).[37] The Exchange further represents that for each execution pursuant to Phlx Rule 1000(f)(iii): (1) Exchange surveillance staff will verify that the conditions of the exception under Phlx Rule 1000(f)(iii) are met and will ensure that the proposed exception for split-price orders will be used only rarely; [38] (2) Exchange surveillance staff will approve executions pursuant to Phlx Rule 1000(f)(iii) and validate compliance with applicable priority rules of the Exchange and trade-through rules of the Options Order Protection and Locked/Crossed Market Plan; [39] and (3) all relevant trade data resulting from executions pursuant to Phlx Rule 1000(f)(iii) will be recorded on both paper tickets and in FBMS to ensure a proper audit trail for timely surveillance.[40] The Commission notes that the activities of Phlx Surveillance under Rule 1000(f)(iii), including the substitution of timestamps, should be carried out in an objective manner and with due regard to the Exchange's obligations under the Act.[41]

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act and the rules and regulations thereunder applicable to national securities exchanges.

IV. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 1 to 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 No. SR–Phlx–2016–82 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 No. SR–Phlx–2016–82. 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 No. SR–Phlx–2016–82 and should be submitted on or before February 14, 2017.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the amended proposal in the **Federal Register.** As described above, in Amendment No. 1, Phlx updated its proposal to reflect the implementation of FBMS 3 and the retirement of FBMS 2; clarified how prices may be rounded for non-customer split-price orders; and provided three examples that explain how split-price orders will be handled by the Exchange under the proposed exception.[42] The Commission believes that Amendment No. 1 provided additional specificity regarding the operation of the new proposed exception in Phlx Rule 1000(f)(iii)(D). Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[43] to approve the proposed rule change, as

[36] The Commission notes that the exception for split-price orders is similar in purpose to the current exceptions provided in Phlx Rule 1000(f)(iii)(B) and (C). *See* Securities Exchange Act Release No. 68960 (February 20, 2013), 78 FR 13132 (February 26, 2013) (SR–Phlx–2013–09) (recognizing exceptions for certain executions to occur manually in the trading crowd and not through FBMS. ''[ ] FLEX orders will continue to be executable by Floor Brokers in the trading crowd pursuant to Rule 1079 and 1079A, rather than through FBMS. This is because FBMS will not be able to accept FLEX orders, which have varied and complicated terms. Similarly, accommodation transactions (also known as cabinet trades) will continue to be executable by Floor Brokers in the trading crowd pursuant to Rule 1059. Neither FLEX nor accommodation transactions are executed through Exchange systems today. Floor Brokers will also be permitted to execute orders in the trading crowd if they are handling an order with more than 15 legs, because the Exchange determined to limit the complexity of FBMS functionality and does not believe that many orders fall into this category or that Floor Brokers will be adversely affected.'').

[37] *See* Notice, *supra* note 3, at 56726. *See also* Amendment No. 1, *supra* note 6, at 17. The Exchange notes its belief that it is ''necessary and appropriate for the surveillance Staff to exercise independent judgment with respect to the proper timestamp for the consummation of trades on the floor of the Exchange.'' *See* Amendment No. 1, *supra* note 6, at 14, n.17. According to the Exchange, ''[t]he surveillance Staff is trained to observe objectively the conduct of floor participants, to detect conduct that improperly advantages floor participants, and to enforce Exchange rules.'' *Id.* Finally, the Exchange notes that it believes that ''[t]he absence of engaged and empowered surveillance Staff would undermine the integrity of the trading floor on the Exchange.'' *Id.*

[38] *See* Notice, *supra* note 3, at 56728. *See also* Amendment No. 1, *supra* note 6, at 23.

[39] *See* Notice, *supra* note 3, at 56727. *See also* Amendment No. 1, *supra* note 6, at 22. The Options Order Protection and Locked/Crossed Market Plan is available at *http://www.optionsclearing.com/components/docs/clearing/services/options_order_protection_plan.pdf.*

[40] *See* Notice, *supra* note 3, at 56727. *See also* Amendment No. 1, *supra* note 6, at 22.

[41] The Commission notes that Phlx surveillance staff might substitute the timestamp it captures for the timestamp captured by a Floor Broker if necessary to prevent conduct that would improperly advantage floor participants or to enforce compliance with the Exchange's rules. It is the Commission's understanding that such a substitution would happen only rarely and only if consistent with the authority conferred upon surveillance staff by the Exchange's rules. *See* Amendment No. 1., *supra* note 6, at 14, n.17.

[42] *See* Amendment No. 1, *supra* note 6, at 3–4.

[43] 15 U.S.C. 78s(b)(2)

modified by Amendment No. 1, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[44] that the proposed rule change (SR–Phlx–2016–82), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[45]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–01460 Filed 1–23–17; 8:45 am]

BILLING CODE 8011–01–P

[44] *See id.*

[45] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79810; File No. SR–NASDAQ–2016–161]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Adopt a New Extended Life Priority Order Attribute Under Rule 4703, and To Make Related Changes to Rules 4702, 4752, 4753, 4754, and 4757

January 17, 2017.

On November 17, 2016, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a new Extended Life Priority Order Attribute. The proposed rule change was published for comment in the **Federal Register** on December 5, 2016.[3] The Commission has received six comment letters on the proposal.[4]

Section 19(b)(2) of the Act[5] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is January 19, 2017.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the Exchange's proposal, the comments received, and any response to the comments by the Exchange.

Accordingly, pursuant to Section 19(b)(2) of the Act[6] and for the reasons stated above, the Commission designates March 5, 2017, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NASDAQ–2016–161).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–01465 Filed 1–23–17; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 79428 (November 30, 2016), 81 FR 87628.

[4] *See* Letters to Brent J. Fields, Secretary, Commission, from Joseph Saluzzi and Sal Arnuk, Partners, Themis Trading LLC, dated December 19, 2016; Eric Swanson, EVP, General Counsel and Secretary, Bats Global Markets, Inc., dated December 22, 2016; Adam Nunes, Head of Business Development, Hudson River Trading LLC, dated December 22, 2016; Joanna Mallers, Secretary, FIA Principal Traders Group, dated December 23, 2016; Adam C. Cooper, Senior Managing Director and Chief Legal Officer, Citadel Securities, dated December 27, 2016; and Andrew Stevens, General Counsel, IMC Financial Markets, dated December 28, 2016.

[5] 15 U.S.C. 78s(b)(2).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79811; File No. SR–ISE–2017–01]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees

January 17, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 3, 2017, the International Securities Exchange, LLC (''ISE'' or ''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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Schedule of Fees as described in more detail below.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.ise.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 the Exchange's Schedule of Fees to eliminate, for all symbols other than FX symbols, the $0.20 per contract fee applicable to Professional Customers[3] for the initiating or contra side of Qualified Contingent Cross (''QCC'') orders or orders executed in the Solicitation Mechanism (''Solicitation'' orders). The proposed rule change will lower the rebates that the Exchange provides to members acting as agent when Professional Customers trade with other Professional Customers and when they trade with Priority Customers for QCC and other solicited crossing orders[4] to the same per contract rates and volume tiers that the Exchange presently provides to members acting as agent

[3] A ''Professional Customer'' is a person or entity that is not a broker/dealer and is not a Priority Customer. *See* ISE Rule 100(37C).

[4] As used herein, the phrase ''other solicited crossing orders'' refers to solicited crossing orders executed in the Solicitation, Facilitation, and Price Improvement Mechanisms.

when Priority Customers [5] trade with other Priority Customers for such orders.

As set forth in ISE Rule 715(j), a QCC is an option order type that allows members to cross at least 1,000 contracts without exposure, as long as: (i) the agency/originating side of the trade consists of an order of at least 1,000 contracts and (ii) the order is part of a Qualified Contingent Trade (''QCT''). As is further set forth in the Supplementary Material to ISE Rule 715, a QCT is a transaction consisting of two or more component orders, executed as agent or principal, where: (a) At least one component is an NMS Stock, as defined in Rule 600 of Regulation NMS under the Exchange Act of 1934; (b) all the components are effected with a product or price contingency that either has been agreed to by all respective counterparties or arranged for by a broker-dealer as principal or agent; (c) the execution of one component is contingent upon the execution of all other components at or near the same time; (d) the specific relationship between the component orders (*e.g.,* the spread between the prices of the component orders) is determined by the time the contingent order is placed; (e) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or cancelled; and (f) the transaction is fully hedged (without regard to any prior existing position) as a result of other components of the contingent trade. The Commission first approved the QCC order type for ISE on February 24, 2011.[6]

Today, the Exchange assesses a fee of $0.20 per contract to Professional Customers for QCC and other solicited crossing orders.[7] It does not assess a fee for such orders to Priority Customers.[8] The Exchange proposes to eliminate the fee it charges to Professional Customers for QCC and Solicitation orders.

The Exchange also pays rebates on QCC and other solicited crossing orders once specified volume thresholds are met during each month.[9] The existing rebate schedule and corresponding explanatory notes are as follows:

A. QCC and Solicitation Rebate

➢Members using the Qualified Contingent Cross (QCC) and/or other solicited crossing orders, including solicited orders executed in the Solicitation, Facilitation or Price Improvement Mechanisms, will receive rebates according to the table below for each originating contract side in all symbols traded on the Exchange. Once a Member reaches a certain volume threshold in QCC orders and/or solicited crossing orders during a month, the Exchange will provide rebates to that Member for all of its QCC and solicited crossing order traded contracts for that month. The applicable rebates will be applied on QCC and solicited crossing order traded contracts once the volume threshold is met. Members will receive the Non-''Customer to Customer'' rebate for all QCC and/or other solicited crossing orders except for QCC and solicited orders between two Priority Customers. QCC and solicited orders between two Priority Customers will receive the ''Customer to Customer'' rebate or ''Customer to Customer'' Rebate PLUS, respectively. The volume threshold and corresponding rebates are as follows:

➢Non-''Customer to Customer'' and ''Customer to Customer'' volume will be aggregated in determining the applicable volume tier.

Originating contract sides	Non-''Customer to Customer'' rebate	''Customer to Customer'' rebate	''Customer to Customer'' rebate PLUS*
0 to 99,999	0.00	0.00	0.00
100,000 to 199,999	(0.05)	(0.01)	(0.05)
200,000 to 499,999	(0.07)	(0.01)	(0.05)
500,000 to 699,999	(0.08)	(0.03)	(0.05)
700,000 to 999,999	(0.09)	(0.03)	(0.05)
1,000,000+	(0.11)	(0.03)	(0.05)

* PLUS rebate is for Members with total monthly unsolicited originating Facilitation contract side volume of 175,000 or more.

As set forth in this schedule, the Exchange presently provides rebates to members acting as agents for QCC trades involving Professional Customers (both Professional-to-Professional and Professional-to-Priority trades) in accordance with the ''Non-'Customer to Customer' '' schedule for all qualifying executed QCC and solicited crossing orders, while it provides rebates to members acting as agents for such trades involving all Priority Customers (Priority-to-Priority trades) in accordance with the ''Customer to Customer'' or ''Customer to Customer Rebate Plus'' schedules.[10] The Exchange proposes to modify its rebate schedule to state that QCC and other solicited crossing orders between Professional Customers or between Professional Customers and Priority Customers will qualify for rebates in accordance with the ''Customer to Customer'' or ''Customer to Customer Rebate Plus'' schedules.

The proposed changes would treat Professional Customers and Priority Customers the same with respect to fees for QCC and Solicitation orders. It would also treat QCC and other solicited crossing orders involving all Professional Customers, all Priority Customers, and a mix of Priority and Professional Customers the same with respect to rebates. The Exchange believes that it is not necessary to differentiate Professional Customers and Priority Customers for these purposes because QCC and Solicitation orders are not executed pursuant to a priority scheme.[11] Moreover, because of the size

[5] Under ISE Rule 100(37A), a ''Priority Customer'' is a person or entity that: (i) is not a broker or dealer in securities; and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). Pursuant to ISE Rule 713, Priority Customer orders are executed before other trading interest at the same price.

[6] *See* Securities Exchange Act Release No. 63955 (Feb. 24, 2011), 76 FR 11533 (Mar. 2, 2011) (SR–ISE–2010–73).

[7] *See* ISE Schedule of Fees, updated Nov. 1, 2016, at 6, available at *https://www.ise.com/assets/documents/OptionsExchange/legal/fee/ISE_fee_schedule.pdf* (''ISE Fee Schedule'').

[8] *See id.*

[9] *See id.* at 12.

[10] *See id.*

[11] ISE Rules provide that if, at the time a QCC or Solicitation order is entered, a Priority Customer order exists on the Exchange's order book, then in certain instances, the QCC or Solicitation order will be cancelled or the order will be executed against the Priority Customer order. *See* Rules 716(e) & 721. These Rules do not suggest that in this instance, the Priority Customer would receive execution priority

Continued

of these orders, the sophistication of the investors involved, and the complexity of the transactions, there is little practical difference between Priority Customers and Professional Customers with respect to QCC and Solicitation orders.

The Exchange also proposes to eliminate transaction fees for Professional Customers engaged in QCC and Solicitation orders as a means of attracting more such orders to the Exchange and to retain the business of Professional Customers vis-à-vis competing exchanges that do not presently charge Professional Customers such fees.[12] The Exchange notes that a recent modification to the ISE Rules caused many of its Priority Customers to be re-classified as Professional Customers.[13] Whereas these Customers, as Priority Customers, previously incurred no fees for executing QCC and Solicitation orders, they will incur such fees going forward as Professional Customers absent the proposed rule change.

To the extent that the Exchange proposes to eliminate fees for its Professional Customers that execute QCC and Solicitation orders, the rationale for providing rebates is diminished for QCC and other solicited crossing orders involving Professional Customers trading with other Professional Customers and with Priority Customers. Accordingly, the Exchange proposes to reduce the levels of rebates it provides for QCC and other solicited crossing orders involving Professional Customers trading with other Professional Customers and with Priority Customers to the same levels as it provides to such trades involving two Priority Customers.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[15] 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [16]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission* (''NetCoalition''),[17] the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[18] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [19]

Further, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [20] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

It is reasonable to no longer assess a transaction fee for Professional Customer QCC and Solicitation orders and to pay a reduced rebate on Professional Customer orders because the distinction that necessitated the differentiation as between Priority Customer and Professional Customer orders is not meaningful with respect to QCC and Solicitation orders.

QCC orders are orders to buy or sell at least 1,000 contracts.[21] These large-sized contingent orders are complex in nature and have a stock-tied component, which requires the option leg to be executed at the NBBO or better. The parties to a contingent trade are focused on the spread or ratio between the transaction prices for each of the component instruments (*i.e.,* the net price of the entire contingent trade), rather than on the absolute price of any single component. Also, no Priority Customer priority exists with respect to QCC Orders as with orders transacted within the order book. Permitting Professional Customer orders to be treated similar to Priority Customer orders with respect to this order type may attract more QCC and Solicitation orders to the Exchange because the Exchange would no longer assess a QCC or Solicitation order transaction fee for Professional Customer orders.

Further, the Exchange recently amended its definition of a Professional Customer to add specificity with respect to the manner in which the volume threshold will be calculated to determine if orders should be treated as Professional Customer.[22] Currently, members are required to review their Customers' activity on at least a quarterly basis to determine whether orders that are not for the account of a broker-dealer should be represented as Priority Customer orders or Professional Customer orders.[23] The Exchange anticipates that the specificity added to the Professional Customer definition may cause current market participants that mark orders as ''Priority Customer'' to be required to mark those orders as

because such a trade would be executed outside of the QCC or Solicitation Mechanism. We also note that the transaction fee schedule applicable to QCC and Solicitation orders would not apply to this trade.

[12] *See* NYSE AMEX Options Fee Schedule, effective Dec. 15, 2016, at *https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE_Amex_Options_Fee_Schedule.pdf;* NYSE Arca Options Fees and Charges, effective Nov. 3, 2016, at *https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf;* NASDAQ PHLX LLC Pricing Schedule, at *http://www.nasdaqtrader.com/Micro.aspx?id=phlxpricing.*

[13] *See* Securities Exchange Act Release No. 34–78788 (Sept. 8, 2016), 81 FR 63252 (Sept. 14, 2016) (SR–ISE–2016–19).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4) and (5).

[16] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37497, 37499 (June 29, 2005).

[17] *See id.* at 534–535.

[18] *See id.* at 534.

[19] *See id.* at 537.

[20] *See id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca-2006–21).

[21] *See* ISE Rule 715(j).

[22] *See supra* note 13.

[23] Orders for any customer that had an average of more than 390 orders per day during any month of a calendar quarter must be represented as Professional Orders for the next calendar quarter. Members will be required to conduct a quarterly review and make any appropriate changes to the way in which they are representing orders within five days after the end of each calendar quarter. While Members only will be required to review their accounts on a quarterly basis, if during a quarter the Exchange identifies a customer for which orders are being represented as Priority Customer Orders but that has averaged more than 390 orders per day during a month, the Exchange will notify the Member and the Member will be required to change the manner in which it is representing the customer's orders within five days. *See* 81 FR at 63253, n.4.

''Professional Customer'' instead as the calendar quarter comes to a close. Thus, orders that these market participants would have marked as ''Priority Customer,'' and that would not have been subject to a QCC transaction fee, would, in absence of this proposal, be marked ''Professional Customer'' and incur a QCC transaction fee. With this proposal, such Professional Customer orders would not be assessed a QCC transaction fee.

The Exchange believes that no longer assessing a QCC transaction fee for Professional Customer orders and paying a reduced QCC rebate on Professional Customer-to-Professional Customer and Professional Customer-to-Priority Customer orders is equitable and not unfairly discriminatory because QCC and Solicitation orders are distinctive from transactions executed within the order book. Whereas orders executed within the order book grant Priority Customers execution priority over other market participants, QCC and Solicitation orders do not grant execution priority.[24] Insofar as the rationale for distinguishing between Priority Customers and Professional Customers was to prevent market professionals, which have access to sophisticated trading systems with functionality unavailable to retail Customers, from taking advantage of retail Customers' execution priority over non-retail Customer orders,[25] this rationale does not apply to QCC or Solicitation orders. As the Commission noted when it approved the QCC order type on the Exchange:

> The Commission believes that those customers participating in QCC Orders will likely be sophisticated investors who should understand that, without a requirement of exposure for QCC Orders, their order would not be given an opportunity for price improvement on the Exchange. These customers should be able to assess whether the net prices they are receiving for their QCC Order are competitive, and who will have the ability to choose among broker-dealers if they believe the net price one broker-dealer provides is not competitive. Further, broker-dealers are subject to a duty of best execution for their customers' orders, and that duty does not change for QCC Orders.[26]

Thus, because of the size of the orders, the sophistication of the investors involved, and the complexity of the transactions, pricing differentiation between Priority Customer and Professional Customer orders is unnecessary with respect to QCC and Solicitation orders.

With respect to distinguishing Professional Customer orders from other Non-Customer participant orders, the Exchange notes that these other market participants are distinct from Professional Customers for purposes of assessing QCC transaction fees. With respect to Firm Proprietary and Non-ISE Market Makers, for example, these market participants are eligible for a Crossing Fee Cap of $75,000 per month.[27] These participants are not subject to QCC transaction fees once the Crossing Fee Cap is met in a given month.[28] Market Makers are eligible for fee discounts, on a tiered basis, for regular orders in non-select symbols.[29]

Insofar as the Exchange proposes to eliminate the fees it charges to Professional Customers for QCC and Solicitation orders, the Exchange believes that it would no longer be equitable to pay rebates at existing levels to members acting as agent when Professional Customers trade with Priority Customers and other Professional Customers for QCC and other solicited crossing orders. Thus, the Exchange proposes to reduce these rebates to the same levels as those it pays for QCC orders involving Priority Customers trading with other Priority Customers.

Finally, the Exchange notes that the Commission recently approved a similar proposal by Phlx to eliminate its QCC transactions fees and rebates for its professional customers.[30]

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, that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The initial purpose of the distinction between a Priority Customer order and a Professional Customer order was to prevent market professionals, which have access to sophisticated trading systems that contain functionality not available to retail Customers, from taking advantage of Priority Customer priority, where retail Customer orders are given execution priority over Non-Customer orders. Professional Customer orders are identified based upon the average number of orders entered for a beneficial account.[31]

QCC orders are by definition large-sized contingent orders that have a stock-tied component. The parties to a contingent trade are focused on the spread or ratio between the transaction prices for each of the component instruments (*i.e.,* the net price of the entire contingent trade), rather than on the absolute price of any single component. Treating Priority Customer orders and Professional Customer orders in the same manner in terms of pricing with respect to QCC and Solicitation orders does not provide any advantage to a Professional Customer. The distinction does not create an opportunity to burden competition, for the reasons stated herein with respect to execution priority as well as the reasons below.

With respect to distinguishing Professional Customer orders from other Non-Customer participant orders, the Exchange notes that these other market participants are distinct from Professional Customers for purposes of assessing QCC transaction fees. With respect to Firm Proprietary and Non-ISE Market Makers, for example, these market participants are eligible for a Crossing Fee Cap of $75,000 per month.[32] These participants are not subject to QCC transaction fees once the Crossing Fee Cap is met in a given month.[33] Market Makers are eligible for fee discounts, on a tiered basis, for regular orders in non-select symbols.[34] Also, Priority Customer-to-Professional Customer orders do not impose an undue burden on intra-market

[24] *See supra* note 11.

[25] *See* Securities Exchange Act Release No. 57254 (Feb. 1, 2008), 73 FR 7345, 7346 n.7 (Feb. 7, 2008).

[26] See Securities and Exchange Act Release No. 63955 (February 24, 2011), 76 FR 11533 (March 2, 2011) (SR–ISE–2010–73).

[27] *See* ISE Fee Schedule, *supra* note 7, at 17.

[28] *See id.*

[29] *See id.* at 6–7, 12–13.

[30] *See* Securities Exchange Act Release No. 34–77673 (Apr. 14, 2016), 81 FR 249009 (Apr. 21, 2016) (SR–Phlx–2016–51).

[31] *See supra* note 25.

[32] *See* ISE Fee Schedule, *supra* note 7, at 17.

[33] *See id.*

[34] *See id.* at 6–7, 12–13.

competition for the reasons explained herein.

The Exchange's proposal does not place on undue burden on inter-market competition because the QCC order type is similar on other options exchanges and these exchanges may also file to eliminate the distinction between Priority Customers and Professionals for the QCC order type.[35] The Exchange notes that the Commission recently approved a similar proposal by Phlx to eliminate both its QCC transactions fees and its rebates for its professional customers.[36]

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, 20 and subparagraph (f)(2) of Rule 19b–4 thereunder,21 [sic] because it establishes a due, fee, or other charge imposed by ISE. 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 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–ISE–2017–01 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–ISE–2017–01.* This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2017–01 and should be submitted by February 14, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–01466 Filed 1–23–17; 8:45 am]

BILLING CODE 8011–01–P

[35] *See supra* note 12.

[36] *See supra* note 30.

[37] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–664, OMB Control No. 3235–0740]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Revision:

Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies.

ACTION: Notice.

SUMMARY: The SEC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a revised information collection, as required by the PRA. The SEC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The SEC previously received OMB approval for a voluntary information collection in the Joint Standards. The SEC now is soliciting comments on a revised information collection which adds a Diversity Assessment Report as an instrument to facilitate completion of the self-assessment described in the Joint Standards.

DATES: Comments must be submitted on or before March 27, 2017.

ADDRESSES: Please direct your written comments to Pamela Dyson, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or send an email to *PRA_Mailbox@sec.gov,* and include ''SEC File No. 270–664—OMWI Diversity Assessment Report'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: For further information about the information collection discussed in this revised notice, please contact Pamela A. Gibbs, Director, Office of Minority and Women Inclusion, (202) 551–6046, or Audrey B. Little, Senior Counsel, Office of Minority and Women Inclusion, (202) 551–6086, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), certain Federal agencies must obtain approval from OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) (and 5 CFR 1320.3(c) of the PRA implementing regulations) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The PRA (44 U.S.C. 3506(c)(2)(A)) directs these Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, the SEC

is publishing this notice of a proposed revision to the previously approved collection of information.

Description: The SEC previously received OMB approval for a voluntary information collection with respect to the Joint Standards, pursuant to which entities regulated by the SEC voluntarily self-assess their diversity policies and practices.[1] This proposed revision to the previously approved collection would add a form entitled ''Diversity Assessment Report for Entities Regulated by the SEC'' (Diversity Assessment Report) to assist with collection of information regarding regulated entities' policies and practices relating to diversity and inclusion. The Diversity Assessment Report (1) asks for general information about a respondent; (2) includes a checklist and questions relating to the standards set forth in the Joint Standards; (3) seeks data related to workforce diversity and supplier diversity; and (4) provides an opportunity for comments. The SEC estimates that use of the Diversity Assessment Report would reduce the average response time for this collection per respondent from 12 hours to 10 hours. A draft of this Diversity Assessment Report can be viewed at *https://www.sec.gov/omwi/sec-entity-diversity-assessment-report-draft.pdf.*

The SEC may use the information submitted by the entities it regulates to monitor progress and trends in the financial services industry with regard to diversity and inclusion in employment and contracting activities and to identify and highlight those policies and practices that have been successful. The SEC will continue to reach out to the regulated entities and other interested parties to discuss diversity and inclusion in the financial services industry and share leading practices. The SEC may also publish information disclosed by the entity, such as any identified leading practices, in any form that does not identify a particular institution or disclose confidential business information. The SEC will *not* publish diversity and inclusion information that identifies any particular regulated entity unless the regulated entity consents in writing to such use.

Type of Review: Revision.

Frequency of Response: Annually.

Burden Estimates:

Revised Number of Respondents: 1,300.[2]

Revised Annual Burden Per Respondent for the Diversity Assessment Report and Joint Standards: 10 hours.

Revised Total Annual Burden: 13,000 hours.

Obligation to Respond: Voluntary.

Request for Comments: The comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the SEC, including whether the information has practical utility;

(b) The accuracy of the SEC's estimate of the information collection burden, including the validity of the methods and the assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information proposed to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 18, 2017.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–01566 Filed 1–23–17; 8:45 am]

BILLING CODE 8011–01–P

[1] 80 FR 33016 (June 10, 2015).

[2] This number has been modified to account for the ever changing number of entities regulated by the SEC. It still, however, represents about 5% of regulated entities, as set forth in the original PRA notice for the Joint Standards.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79806; File No. SR–NSX–2017–01]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 11.26 Regarding the Data Collection Requirements of the Regulation NMS Plan To Implement a Tick Size Pilot Program January 17, 2017

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 January 6, 2017, National Stock Exchange, Inc. (''NSX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change, as described in Items I, and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as a non-controversial proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii)[4] thereunder, which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend NSX Rule 11.26(b) and Rule 11.26, Interpretations and Policies .08 to modify certain data collection requirements of the Regulation NMS Plan to Implement a Tick Size Pilot Program (the ''Plan''). The proposed rule change is the same as proposed rule changes recently approved or published by the Commission for Bats BZX Exchange f/k/a BATS Exchange, Inc. (''BZX'') to amend BZX Rule 11.27 which also sets forth amendments to the requirements for the Web site data publication requirements pursuant to Appendices B and C of the Plan.[5]

The text of the proposed rule change is available on the Exchange's Web site at *www.nsx.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 the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and statutory basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self -Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 25, 2014, NYSE Group, Inc., on behalf of BZX, Bats BYX Exchange, Inc., f/k/a BATS–Y Exchange,

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] See Securities Exchange Act Release No. 79533 (December 13, 2016), 81 FR 91990 (December 19, 2016) (SR–BatsBZX–2016–82).

Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc. (''FINRA''), NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, New York Stock Exchange LLC (''NYSE''), NYSE MKT LLC, and NYSE Arca, Inc. (collectively ''Participants''), filed with the Commission, pursuant to Section 11A of the Act[6] and Rule 608 of Regulation NMS thereunder,[7] the Plan to Implement a Tick Size Pilot Program (''Pilot'').[8] The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.[9] The Plan[10] was published for comment in the **Federal Register** on November 7, 2014 and was thereafter approved by the Commission, as modified, on May 6, 2015.[11] On November 6, 2015, the Commission granted the Participants an exemption from implementing the Plan until October 3, 2016.[12] On March 3, 2016, the Commission published an amendment to the Plan adding NSX as a Participant.[13] On September 13, 2016, the Commission exempted the Plan Participants from the requirement to fully implement the Pilot on October 3, 2016, to permit the Plan Participants to implement the pilot on a phased-in basis, as described in the Plan Participants' exemptive request.[14]

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan.

The Exchange adopted rule amendments to implement the requirements of the Plan, including relating to the Plan's data collection requirements and requirements relating to Web site data publication.[15] Specifically, with respect to the Web site data publication requirements pursuant to Section VII and Appendices B and C to the Plan, Exchange Rule 11.26(b)(2)(B) provides, among other things, that the Exchange shall make the data required by Items I and II of Appendix B to the Plan, and collected pursuant to paragraph (b)(2) of Rule 11.26, publicly available on the Exchange's Web site on a monthly basis at no charge and shall not identify the Trading Center that generated the data. Exchange Rule 11.26(b)(3)(C), provides, among other things, that the Exchange shall make the data required by Item IV of Appendix B to the Plan, and collected pursuant to paragraph (b)(3)(A) of Rule 11.26, publicly available on the Exchange Web site on a monthly basis at no charge and shall not identify the Trading Center [sic] that generated the data. Exchange Rule 11.26(b)(5) provides, among other things, that the Exchange shall collect and transmit to the Commission data described in Item III of Appendix B of the Plan relating to daily Market Maker registration statistics, but does not currently include a provision requiring the Exchange to publish such data to its Web site. Rule 11.26, Interpretation and Policy .08 provides, among other things, that the requirement that the Exchange or the Designated Examining Authority (''DEA'') make certain data publicly available on the Exchange's or the DEA's Web site pursuant to Appendix B and C to the Plan shall commence at the beginning of the Pilot Period.

The Exchange is proposing amendments to Rule 11.26(b)(2)(B) (regarding Appendix B.I and B.II data) and Rule 11.26(b)(3)(C) (regarding Appendix B.IV data) to provide that data required to be made available on the Exchange's Web site be published within 120 calendar days following month end. The Exchange also proposes to add a provision to Rule 11.26(b)(5) to state that the Exchange shall make data collected under Appendix B.III publicly available on the Exchange's Web site within 120 calendar days following month end at no charge.[16] In addition, the proposed amendments to Rule 11.26, Interpretations and Policies .08 would provide that, notwithstanding the provisions of paragraphs (b)(2)(B), (b)(3)(C), and (b)(5), the Exchange or the DEA shall make data for the Pre-Pilot period publicly available on the Exchange's or the DEA's Web site pursuant to Appendix B and C to the Plan by February 28, 2017.[17] The purpose of delaying the publication of the Web site data is to address confidentiality concerns by providing for the passage of additional time between the market information reflected in the data and the public availability of such information.[18]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[19] in general, and furthers the objectives of Section 6(b)(5) of the Act[20] 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 this proposal is consistent with the Act because it is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan and is

[6] 15 U.S.C. 78k–1.

[7] 17 CFR 242.608.

[8] *See* Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

[9] *See* Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[10] Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

[11] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (File No. 4–657) (''Approval Order'').

[12] *See* Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (November 13, 2015) (File No. 4–657) (Order Granting Exemption From Compliance With the National Market System Plan To Implement a Tick Size Pilot Program).

[13] *See* Securities Exchange Act Release No. 77277 (March 3, 2016), 81 FR 12162 (March 8, 2016).

[14] *See* Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Eric Swanson, EVP, General Counsel and Secretary, Bats Global Markets, Inc., dated September 13, 2016; see also Letter from Eric Swanson, EVP, General Counsel and Secretary, Bats Global Markets, Inc., to Brent J. Fields, Secretary, Commission, dated September 9, 2016.

[15] *See* Securities Exchange Act Release No. 77483 (March 31, 2016), 81 FR 20040 (April 6, 2016) (File No. SR–NSX–2016–01); *see also* Securities Exchange Act Release No. 78960 (September 28, 2016), 81 FR 68476 (October 4, 2016) (File No. SR–NSX–2016–12).

[16] The Exchange notes that it does not currently have any Market Makers and, therefore, does not currently collect Market Maker registration statistics.

[17] With respect to data for the Pilot Period, the requirement that the Exchange or the DEA make data publicly available on the Exchange's or the DEA's Web site pursuant to Appendix B and C to the Plan shall continue to commence at the beginning of the Pilot Period. Thus, the first Web site publication date for Pilot Period data (covering October 2016) would be published on the Exchange's or the DEA's Web site by February 28, 2017, which is 120 days following the end of October 2016.

[18] On November 30, 2016, the Commission granted each Participant a limited exemption from the requirement to publish certain Pilot data on a monthly basis. For each Participants that is the DEA of a Market Maker, the Commission granted a limited exemption to allow FINRA to aggregate and publish certain data on the FINRA Web site, rather than each Participant that is a DEA of a Market Maker publishing such data on its respective Web site. The exemptions were granted to the Participants so long as each Participant submits proposed rule changes to reflect the exemptions. *See* Letter dated November 30, 2016 from David S. Shillman, Associate Directors, Division of Trading and Markets to Ms. Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA.

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

in furtherance of the objectives of the Plan, as identified by the SEC. The Exchange further believes that the instant proposal is consistent with the Act in that it is designed to address confidentiality concerns by permitting the Exchange to delay Web site publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan.

The proposal is intended to address confidentiality concerns that may adversely impact competition by permitting the Exchange to delay Web site publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information. The proposal also does not alter the information required to be submitted to the Commission.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From ETP Holders, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) [21] of the Exchange Act and Rule 19b–4(f)(6) thereunder.[22]

A proposed rule change filed under paragraph (f)(6) of Rule 19b–4 [23] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[24] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing so that it may become operative immediately.

The Exchange notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan. The proposal is intended to address confidentiality concerns by permitting the Exchange to delay Web site publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information. The proposal does not alter the information required to be submitted to the SEC.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to implement proposed changes that are intended to address confidentiality concerns. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative as of 6 January, 2017.[25]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: necessary or appropriate in the public interest, for the protection of investors, otherwise in furtherance of the purposes of the Act.[26] 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–NSX–2017–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NSX–2017–01. This file number should be included in the subject line if email is used. To help the Commission process and review comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the 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–NSX–2017–01 and should be submitted on or before February 14, 2017.

[21] 15 U.S.C. 78(s)(b)(3)(A).

[22] 17 CFR 240.19b–4(f)(6). *See* Securities Exchange Act Release No. 58092 (July 3, 2008), 73 FR 40144 (July 11, 2008) (''Commission Guidance and Amendment to the Rule Relating to Organization and Program Management Concerning Proposed Rule Changes by Self-Regulatory Organizations'') (the ''Streamlining Release''). As set forth in the Streamlining Release, Rule 19b–4(f)(6) permits a proposed rule change to become immediately effective to the extent such proposal is a proposed rule change to implement provisions of an approved national market system plan or a Commission rule. *Id.* at 40148.

[23] 17 CFR 240.19b–4(f)(6)(iii).

[24] 17 CFR 240.19b–4(f)(6)(iii).

[25] For purposes of only waiving the operative delay for this rule proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[26] 15 U.S.C. 78s(b)(3)(C).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–01461 Filed 1–23–17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79808; File No. SR–CBOE–2017–004]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

January 17, 2017.

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 January 3, 2017, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule. The Exchange is adding fees for functionality related to its PULSe workstation. The fees herein will be effective on January 3, 2017.

By way of background, the PULSe workstation is a front-end order entry system designed for use with respect to orders that may be sent to the trading systems of the Exchange. Exchange Trading Permit Holders (''TPHs'') may also make workstations available to their customers, which may include TPHs, non-broker dealer public customers and non-TPH broker dealers.

Drop Copies

Financial Information eXchange (''FIX'') language-based connectivity, upon request, provides customers (both TPH and non-TPH) of TPHs that are brokers and PULSe users (''PULSe brokers'') with the ability to receive ''drop-copy'' order fill messages from their PULSe brokers. These fill messages allow customers to update positions, risk calculations and streamline back-office functions.

The Exchange is proposing a monthly fee to be assessed on TPHs who are either receiving or sending drop copies via a PULSe workstation. This fee will allow for the recoupment of costs of maintaining and supporting drop copy functionality. Whether the drop copy sender or receiver is assessed the fee is dependent upon whether the customer receiving the drop copies is a TPH or non-TPH.

If a customer receiving drop copies is a TPH, that TPH customer (the receiving TPH) will be charged a fee of $1000 per month, per PULSe broker from whom it receives drop copies via PULSe. For example, if TPH customer A receives drop copies from each of PULSe broker A, PULSe broker B, and PULSe broker C (all of which are TPHs), TPH A (the receiving TPH) will be charged a fee of $3000 per month for receiving drop copies via PULSe from PULSe brokers A, B and C (the sending TPHs).

If a customer receiving drop copies is a non-TPH, the PULSe broker (the sending TPH) who sends drop copies via PULSe to that customer will be charged a fee of $500 per month. If that PULSe broker sends drop copies via PULSe to multiple non-TPH customers, the PULSe broker will be charged the fee for each customer. For example, if PULSe broker A sends drop copies via its PULSe workstation to each of non-TPH customer A, non-TPH customer B and non-TPH customer C, PULSe broker A (the sending TPH) will be charged a fee of $1500 per month for drop copies it sends via PULSe to non-TPH customers A, B and C (the receiving non-TPHs).

Non-PULSe-to-PULSe Routing

Upon request, the Exchange provides customers, both TPH and non-TPH, of PULSe brokers with the ability to transmit orders electronically to PULSe brokers' PULSe workstations using order management systems other than PULSe (*i.e.,* non-PULSe-to-PULSe).[3] These customers utilize the existing infrastructure of such systems to send orders to their PULSe brokers electronically.

The Exchange is proposing a monthly fee payable by TPH customers who request non-PULSe-to-PULSe functionality. This fee will allow for the recoupment of costs of maintaining and supporting non-PULSe-to-PULSe routing functionality. A TPH customer sending orders electronically to PULSe brokers through these non-PULSe systems will be charged a fee of $500 a month per PULSe broker to which the customer sends orders. For example, if TPH customer A transmits orders electronically through a non-PULSe order management terminal to PULSe workstations of each of PULSe broker A, PULSe broker B, and PULSe broker C, TPH customer A (the sending TPH) will be charged a fee of $1500 per month for the ability to send orders electronically to the PULSe workstations of PULSe brokers A, B and C.[4] The Exchange does not assess any fee, to the PULSe broker or otherwise, for a non-TPH customer electing to use non-PULSe-to-PULSe routing functionality.

FIX Integration Drop Copy Start-Up/Cancellation Fees

The Exchange is proposing fees for both the start-up and cancellation of the FIX integration needed to send and receive drop copies from PULSe workstations. The Exchange is proposing a one-time fee of $500 to recoup the costs required to connect a new drop copy customer to workstations of its PULSe broker(s) and add the drop copy functionality for that customer. Additionally, the Exchange is

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Non-PULSe-to-PULSe routing is an ''add-on'' feature to drop copy connectivity. If a TPH or non-TPH customer of a PULSe brokers elects to send orders through its third-party order management system to its broker's PULSe workstations, it must also elect to have the drop copy connectivity.

[4] In Addition, the TPH customer would be charged $3,000/month for receiving drop copies from the three PULSe brokers, as discussed above.

proposing a one-time fee of $500 for cancellation of the drop copy functionality to recoup the costs required to disconnect the cancelling drop copy customer from workstations of its PULSe broker(s) and remove the drop copy functionality for that customer. In the case of both start-up and cancellation, the fees are charged to the TPH who is charged for the drop copy connectivity (in the case of a TPH customer, the TPH customer that receives drop copies from PULSe broker; in the case of a non-TPH customer, the PULSe broker that sends drop copies to the non-TPH customer). If the TPH customer is charged these fees, each fee is $500 for each PULSe broker to which the TPH customer requests to start or cancel drop copy functionality, as applicable. If the PULSe broker is charged these fees, each fee is $500 for each non-TPH customer that requests to start or cancel drop copy functionality from that PULSe broker.

Routing Intermediary Certification and Inactivity Fees

Routing intermediaries route orders entered into PULSe to away markets and to route orders from non-TPH PULSe workstations to TPHs for entry and execution on the Exchange. Routing intermediaries are currently charged routing intermediary transactional fees for away market routing from any PULSe workstation for which it serves as the routing intermediary. The Exchange is proposing a $5000 one-time fee for certification of a new PULSe routing intermediary. This fee will allow for the recoupment of costs of adding connectivity for the new routing intermediary, including connectivity to away-market routing technology, and testing necessary to support the new order routing features.

The Exchange is also proposing a routing intermediary inactivity fee of up to $5000. The fees currently charged to routing intermediaries allow for the recoupment of costs of developing, maintaining, and supporting routing intermediary functionality, including away-market routing technology. If the Exchange is unable to collect sufficient fees in a year from a routing intermediary to cover theses costs, the inactivity fee allows for sufficient recoupment of these costs for that year. The fee will be charged to a routing intermediary each calendar year in which the routing intermediary has been charged Away-Market Routing Intermediary and Exchange Routing fees in the aggregate of less than $5000. The inactivity fee will be reduced by the amount of any of these fees charged to the routing intermediary during a calendar year. For example, if a routing intermediary was charged an aggregate of $4500 in Away-Market Routing Intermediary and Exchange Routing fees in the calendar year 2017, that routing intermediary would be assessed a $500 routing intermediary inactivity fee. The routing intermediary inactivity fee may first be charged in the calendar year following the year in which the routing intermediary was charged the routing intermediary certification fee. A TPH that withdraws as a routing intermediary will not be charged an inactivity fee for the calendar year in which they withdrew.

OATS Reporting Fees

The Exchange is proposing a $250 per month Order Audit Trail System (''OATS'') reporting fee. The fee will be charged to any PULSe customer (TPH or non-TPH) who elects to receive daily transmission of OATS reports for its orders submitted through PULSe. This fee will allow for the recoupment of costs of developing, maintaining and supporting OATS reporting functionality.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[7] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes that assessing a $1000 per month fee on a TPH receiving drop copies from PULSe is reasonable because the Exchange incurs costs to monitor, develop and implement upgrade, maintain and customize PULSe to ensure the TPH customer receives timely and accurate drop copies. The Exchange believes the fee is equitable and not unfairly discriminatory because the monthly fee is assessed to any TPH electing to receive drop copies from a PULSe broker. Use of the drop copy functionality by a TPH customer is voluntary.

The Exchange believes that assessing a $500 per month fee on a TPH sending drop copies from PULSe to a non-TPH customer is reasonable because the Exchange incurs costs to monitor, develop and implement upgrades, maintain and customize PULSe to ensure a non-TPH customer receives timely and accurate drop copies. The Exchange believes the fee is equitable and not unfairly discriminatory because the monthly fee is assessed equally to any TPH sending drop copies to its non-TPH customers. The Exchange believes that assessing a TPH sending drop copies to a non-TPH a monthly fee of $500, as opposed to the $1000 per month rate assessed to TPH customers receiving drop copies from PULSe, is reasonable, equitable, and not unfairly discriminatory. Specially, the lower rates are designed to encourage non-TPH market participants to interact with the Exchange, which will accordingly attract more volume and liquidity to the Exchange and benefit all Exchange participants through increased opportunities to trade. Use of the drop copy functionality by a non-TPH customer is voluntary.

The Exchange believes that assessing a $500 per month fee for a TPH customer electing to use non-PULSe-to-PULSe routing functionality (in addition to receiving drop copies) is reasonable because the Exchange incurs costs to monitor, develop and implement upgrades, maintain and customize PULSe to ensure a reliable connection between a TPH customer and its PULSe broker through which the customer's orders reach the PULSe broker in a timely and accurate manner. The Exchange believes the fee is equitable and not unfairly discriminatory because the monthly fee is assessed equally to any TPH electing to use the non-PULSe-to-PULSe routing functionality. The Exchange does not assess any fee, to the PULSe broker or otherwise, for a non-TPH customer electing to use non-PULSe-to-PULSe routing functionality. The Exchange believes not assessing a fee for a non-TPH customer electing to use non-PULSe-to-PULSe routing functionality is reasonable, equitable,

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(4).

and not unfairly discriminatory in that it is designed to encourage non-TPH market participants to interact with the Exchange, which will accordingly attract more volume and liquidity to the Exchange and benefit all Exchange participants through increased opportunities to trade. Use of non-PULSe-to-PULSe routing functionality is voluntary.

The Exchange believes that assessing a TPH sending drop copies to a non-TPH a monthly $500, as opposed to the $1000 per month rate assessed to TPH customers receiving drop copies from PULSe, is reasonable, equitable, and not unfairly discriminatory. The lower rates are designed to encourage non-TPH market participants to interact with the Exchange, which will accordingly attract more volume and liquidity to the Exchange and benefit all Exchange participants through increased opportunities to trade.

The Exchange believes that assessing a $500 one-time fee for FIX integration necessary to receive or send drop copies from PULSe is reasonable because the Exchange incurs costs in the setup of a new FIX connection to allow the receiving and sending of drop copies via PULSe. The Exchange believes the fee is equitable and not unfairly discriminatory as it is assessed equally to any TPH electing to receive drop copies from PULSe brokers or to any TPH electing to send drop copies to a non-TPH customer.

The Exchange believes that assessing a $500 one-time fee for the cancellation of a FIX connection necessary to receive or send drop copies from PULSe is reasonable because the Exchange incurs costs in the shutting down of a FIX connection. The Exchange believes the fee is equitable and not unfairly discriminatory as it is assessed equally to any TPH electing to cancel a FIX connection to a PULSe broker or to a PULSe broker electing to cancel a connection to a non-TPH customer.

The Exchange believes that assessing a $5000 one-time fee for the certification of a new PULSe routing intermediary is reasonable because the Exchange incurs costs to develop connectivity for the routing intermediary and test the routing functionality to Exchange and away marketplaces. The Exchange believes the fee is equitable and not unfairly discriminatory as it is assessed to every TPH who elects to become a routing intermediary on PULSe. Becoming a routing intermediary is voluntary.

The Exchange believes that assessing a routing intermediary inactivity fee of up to $5000 in years in which a routing intermediary pays less than that amount in fees is reasonable because the Exchange incurs costs to maintain, monitor, upgrade and test routing intermediary connections. The fees are assessed to cover those Exchange costs in the event the costs are not recovered via routing intermediary transaction fees. The Exchange believes the fee is equitable and not unfairly discriminatory as it will be assessed to any routing intermediary and only to the extent the TPH's routing intermediary transaction fees are less than $5000 in a calendar year.

The Exchange believes that assessing a $250 a month fee for the daily transmission of OATS reports from PULSe is reasonable because the Exchange incurs costs to monitor, develop and implement upgrades, maintain and customize PULSe to allow sending and receiving of OATS reports. The Exchange believes the fee is equitable and not unfairly discriminatory as it is assessed to all customers electing to receive daily OATS reports.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burdens on competition that are not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed PULSe-related fees relate to optional reports and/or functionality and are assessed equally on PULSe users or TPH electing to use the functionality and/or receive the reports. The Exchange does not believe that the proposed change will cause any unnecessary burden on intermarket competition because the proposed relate to use of an Exchange-provided order entry system. To the extent that any proposed change makes the Exchange a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become Exchange market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and paragraph (f) of Rule 19b–4 [9] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2017–004 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–CBOE–2017–004. 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

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f).

Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2017–004 and should be submitted on or before February 14, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–01463 Filed 1–23–17; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice To Rescind Notice of Intent To Prepare an Environmental Impact Statement: Lone Star Regional Rail Project, Williamson, Travis, Bastrop, Hays, Caldwell, Comal Guadalupe and Bexar Counties, State of Texas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Rescind Notice of Intent to prepare an Environmental Impact Statement (EIS) for the Lone Star Rail Project in Central Texas.

SUMMARY: The FHWA is issuing this notice to advise the public that the Notice of Intent to prepare an EIS for the proposed Lone Star Rail transportation project to construct and operate a regional passenger rail service system along the IH–35 corridor connecting the greater Austin and San Antonio metropolitan areas is rescinded. The Texas Department of Transportation (TxDOT) will no longer prepare an EIS for the Lone Star Rail Project.

FOR FURTHER INFORMATION CONTACT: Michael T. Leary, Director of Planning and Program Development, Federal Highway Administration, 300 E. 8th Street, Room 826, Austin, Texas 78701, by telephone (512)536–5940.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the TxDOT and the Lone Star Rail District (LSRD), published a Notice of Intent in the **Federal Register** on October 6, 2014 (Document Number 2014–23711, Pages 60232 to 60323) to prepare an EIS for the proposed project to construct and operate the Lone Star Rail Project, a regional passenger rail service system along the IH–35 corridor connecting the greater Austin and San Antonio metropolitan areas anticipated to be operated by the LSRD. The proposed EIS was to evaluate the reasonable corridor alternatives.

The LSRD conducted numerous studies and held public meetings to gather input from the public and other stakeholders to consider in the development of the DEIS. A Notice of Availability (NOA) for a DEIS was never published in the **Federal Register**. In October 2016, TxDOT requested preparation of the EIS be stopped and the Notice of Intent be rescinded. In January 2017 TxDOT provided information supporting their request to rescind the NOI.

The request is based on a number of issues first being the decision by Union Pacific Railroad Company to cancel the UP/LSRD agreement for the possible use MOPAC corridor (the locally preferred alternative) which renders the alternate using of UP right of way nonviable. This action caused a cascade of additional actions by other entities. One of which was the removal the proposed project from the Capital Area Metropolitan Planning Organization (CAMPO—Austin MPO) metropolitan transportation plan (MTP) and an ongoing effort to remove the project in the Alamo Area Metropolitan Planning Organization (AAMPO—San Antonio MPO) MTP. As per current transportation planning regulations 23 CFR450 the project could not advance to a NEPA decision without being in both MPO's metropolitan transportation plans. Further, TxDOT analyzed the other remaining initially reasonable alternatives and determined that:

—the use of I 35 corridor would not be financial feasible due to ROW constraints and ongoing I–35 improvements .

—the use of the State Highway 130 corridor as per LSRD 2008 fatal flaw analysis concluded the corridor would not support a commuter rail line and ridership and connectivity would make the corridor nonviable.

—other alternative combinations such as I 35 and UP rail line and a hybrid option lack viability.

Further with an estimated cost of between $2 to $3 billion, funding anticipated by LSRD such as the State's Rail Relocation and Improvement Fund, Federal Railroad Administration grants and private investment have not been capitalized or funded at levels necessary needed to complete the project.

Due to the request made by the lead State sponsor (TxDOT) and based on the above information with the UP rail line alternative no longer feasible, lack of viability of other reasonable alternatives, removal of the project from the CAMPO transportation plan and a lack of a capitalized financial plan to move the project forward, the further development of the DEIS is not warranted at this time. As a result, the above mentioned original Notice of Intent is rescinded.

The FHWA concurs with the TxDOT that the information gathered during the LSRD EIS project can be used in future efforts to determine viable transportation options for the Austin San Antonio corridor.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on January 13, 2017.

Michael T. Leary,

Director Planning and Program Development, FHWA, Texas Division.

[FR Doc. 2017–01544 Filed 1–23–17; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2016–0110]

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated November 8, 2016, Nevada Northern Railway Foundation d.b.a. Nevada Northern Railway Museum (NN) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 215. FRA assigned the petition Docket Number FRA–2016–0110.

Specifically, NN requests waiver from the requirements of 49 CFR 215.303, *Stenciling of restricted cars,* and § 224.101, *Reflectorization of Rolling Stock,* for five freight cars. These five freight cars are one caboose (car number NN 3) and four box cars (car numbers NN 2021, NN 1023, NN 1024, and NN 1025).

NN states in its petition that these cars are used in tourist, historic, and/or excursion operations. The cars always remain on NN track. NN is a non-insular tourist railroad that is not connected to the general system. The purpose of this waiver petition is to maintain the historic integrity of this railroad, which has been recognized by the Secretary of the Interior as a national Historic Landmark.

NN further states that the subject cars will not carry freight but rather will be photographed by photographers from around the world. The cars will be operated at no more than 25 mph. The cars would be operated over 30 miles of track. Each car will be inspected to ensure safe operation of the car. These cars will not and cannot leave NN property.

As information, NN concurrently requests to continue in service these 5 cars in accordance with 49 CFR 215.203(c), as they are all over 50 years of age, measured from the date of original construction.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by March 10, 2017 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. 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 *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of regulations.gov.

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2017–01504 Filed 1–23–17; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Limitation on Claims Against Proposed Public Transportation Projects

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: This notice announces final environmental actions taken by the Federal Transit Administration (FTA) for projects in Phoenix, Arizona and New York, New York. The purpose of this notice is to announce publicly the environmental decisions by FTA on the subject projects and to activate the limitation on any claims that may challenge these final environmental actions.

DATES: By this notice, FTA is advising the public of final agency actions subject to Section 139(l) of Title 23, United States Code (U.S.C.). A claim seeking judicial review of FTA actions announced herein for the listed public transportation projects will be barred unless the claim is filed on or before June 23, 2017.

FOR FURTHER INFORMATION CONTACT: Nancy-Ellen Zusman, Assistant Chief Counsel, Office of Chief Counsel, (312) 353–2577 or Meghan Kelley, Environmental Protection Specialist, Office of Environmental Programs, (202) 366–6098. FTA is located at 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 9:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FTA has taken final agency actions by issuing certain approvals for the public transportation projects listed below. The actions on the projects, as well as the laws under which such actions were taken, are described in the documentation issued in connection with the projects to comply with the National Environmental Policy Act (NEPA) and in other documents in the FTA administrative record for the projects. Interested parties may contact either the project sponsor or the relevant FTA Regional Office for more information. Contact information for FTA's Regional Offices may be found at *https://www.fta.dot.gov.*

This notice applies to all FTA decisions on the listed projects as of the issuance date of this notice and all laws under which such actions were taken, including, but not limited to, NEPA [42 U.S.C. 4321–4375], Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303], Section 106 of the National Historic Preservation Act [16 U.S.C. 470f], and the Clean Air Act [42 U.S.C. 7401–7671q]. This notice does not, however, alter or extend the limitation period for challenges of project decisions subject to previous notices published in the **Federal Register**. The projects and actions that are the subject of this notice are:

1. *Project name and location:* South Central Light Rail Extension Project, Phoenix, AZ. *Project sponsor:* Valley Metro. *Project description:* The proposed project would extend light rail service approximately five miles south from the existing Valley Metro light rail line in Downtown Phoenix to Baseline Road, serving South Phoenix neighborhoods and activity centers and providing a direct link to Central Station in Downtown Phoenix. The project would connect with the existing Valley Metro light rail line in the northbound direction at Central Avenue and Washington Street and in the southbound direction at 1st Avenue and Jefferson Street. The project also includes the McKinley Street/Central Avenue and McKinley Street/1st Avenue turnaround loops and improvements to the Operation and Maintenance Center. *Final agency actions:* Section 4(f) *de minimis* impact determination; a Section 106

Memorandum of Agreement, dated January 3, 2017; project-level air quality conformity; and a Finding of No Significant Impact, dated January 6, 2017. *Supporting Documentation:* Environmental Assessment, dated May 2016.

2. *Project name and location:* 68th Street/Hunter College Station Improvement Project, New York, NY. *Project sponsor:* Metropolitan Transportation Authority (MTA). *Project description:* The proposed project would reconfigure the 68th Street/Hunter College Subway Station located at Lexington Avenue and East 68th Street in Manhattan to provide Americans with Disabilities Act (ADA) accessibility and improve passenger circulation. The project would make changes at the street, mezzanine, and platform levels, including new street stairs, new mezzanines, and new platform stairs near the north end of the station. *Final agency actions:* Section 4(f) *de minimis* impact determination; Section 106 finding of no adverse effect; and a Finding of No Significant Impact, dated July 28, 2016. *Supporting Documentation:* Environmental Assessment, dated February 2016.

Lucy Garliauskas,

Associate Administrator Planning and Environment.

[FR Doc. 2017–01449 Filed 1–23–17; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2016–0163; PDA–39(R)]

Hazardous Materials: Oregon Hazardous Waste Management Regulation

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Public Notice and Invitation to comment.

SUMMARY: Interested parties are invited to comment on an application by NORA, An Association of Responsible Recyclers (NORA) for an administrative determination as to whether Federal hazardous material transportation law preempts a hazardous waste regulation of the State of Oregon that imposes a strict liability standard on transporters.

DATES: Comments received on or before March 10, 2017 and rebuttal comments received on or before April 24, 2017 will be considered before an administrative determination is issued by PHMSA's Chief Counsel. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: NORA's application and all comments received may be reviewed in the Docket Operations Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The application and all comments are available on the U.S. Government *Regulations.gov* Web site: *http://www.regulations.gov.*

Comments must refer to Docket No. PHMSA–2016–0163 and may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Operations Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Docket Operations Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

A copy of each comment must also be sent to (1) Scott D. Parker, Executive Director, NORA, An Association of Responsible Recyclers, 7250 Heritage Village Plaza, Suite 201, Gainesville, VA 20155, and (2) Ellen Rosenblum, Attorney General, Justice Building, 1162 Court Street NE., Salem OR 97301. A certification that a copy has been sent to these persons must also be included with the comment. (The following format is suggested: ''I certify that copies of this comment have been sent to Mr. Parker and Ms. Rosenblum at the addresses specified in the Federal Register.'')

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing a comment submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://www.regulations.gov.*

A subject matter index of hazardous materials preemption cases, including a listing of all inconsistency rulings and preemption determinations, is available through PHMSA's home page at *http://phmsa.dot.gov.* From the home page, click on ''Hazardous Materials Safety,'' then on ''Standards & Rulemaking,'' then on ''Preemption Determinations'' located on the right side of the page. A paper copy of the index will be provided at no cost upon request to Mr. Lopez, at the address and telephone number set forth in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Vincent Lopez, Office of Chief Counsel (PHC–10), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone No. 202–366–4400; facsimile No. 202–366–7041.

SUPPLEMENTARY INFORMATION:

I. Application for a Preemption Determination

NORA has applied to PHMSA for a determination whether Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.,* preempts the State of Oregon's Administrative Rule (OAR), OAR 340–100–0002(1) [1], as it is applied to transporters. Specifically, NORA states that the Oregon Environmental Quality Commission (OEQC) interprets the Oregon regulation, which adopts the United States Environmental Protection Agency's regulation, 40 CFR 263.20(a)(1), as imposing a strict liability standard on transporters of hazardous waste.[2] According to NORA, under Oregon law, ''the transporter exercising reasonable care may not rely on the information provided by the generator and instead must be held to a strict liability standard.'' (emphasis omitted).

NORA presents three main arguments for why it believes Oregon's hazardous waste regulation should be preempted. First, NORA contends that it is not possible to comply with both the Oregon rule and the federal requirements because the ''HMTA regulation requires the transporter to exercise reasonable care'' while Oregon's strict liability interpretation does not. Next, NORA argues that

[1] The Oregon regulation adopts by reference the United States Environmental Protection Agency's rules and regulations governing the management of hazardous waste, including its generation, transportation, treatment, storage, recycling and disposal, as prescribed in 40 CFR parts 260 to 268, 270, and 273, and subparts A and B of part 124. *See* OAR 340–100–0002(1).

[2] NORA states that this issue is being litigated and is presently under consideration by the Oregon Supreme Court.

Oregon's strict liability standard creates an obstacle for interstate transporters. Furthermore, NORA opines that the State's inconsistent strict liability standard will encourage the misclassification of hazardous material. Last, NORA states ''a strict liability standard is not 'substantively the same' as a reasonable care liability standard.'' NORA notes that ''under Oregon's interpretation, a transporter who satisfies the reasonable care standard in section 171.2(f) would nonetheless be strictly liable for the generator's waste mischaracterization.''

In summary, NORA contends the State of Oregon's Administrative Rule, OAR 340–100–0002(1), should be preempted because:

- It is not possible to comply with both the Oregon rule and the federal requirements;
- It creates an obstacle to carrying out the federal requirements; and
- A strict liability standard is not substantively the same as the federal requirements.

II. Federal Preemption

Section 5125 of 49 U.S.C. contains express preemption provisions relevant to this proceeding. As amended by Section 1711(b) of the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2319), 49 U.S.C. 5125(a) provides that a requirement of a State, political subdivision of a State, or Indian tribe is preempted—unless the non-Federal requirement is authorized by another Federal law or DOT grants a waiver of preemption under section 5125(e)—if (1) complying with the non-Federal requirement and the Federal requirement is not possible; or (2) the non-Federal requirement, as applied and enforced, is an obstacle to accomplishing and carrying out the Federal requirement.

These two sentences set forth the ''dual compliance'' and ''obstacle'' criteria that PHMSA's predecessor agency, the Research and Special Programs Administration, had applied in issuing inconsistency rulings prior to 1990, under the original preemption provision in the Hazardous Materials Transportation Act (HMTA). Public Law 93–633 § 112(a), 88 Stat. 2161 (1975). The dual compliance and obstacle criteria are based on U.S. Supreme Court decisions on preemption. *Hines* v. *Davidowitz,* 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul,* 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield, Inc.,* 435 U.S. 151 (1978).

Subsection (b)(1) of 49 U.S.C. 5125 provides that a non-Federal requirement concerning any of the following subjects is preempted—unless authorized by another Federal law or DOT grants a waiver of preemption—when the non-Federal requirement is not ''substantively the same as'' a provision of Federal hazardous material transportation law, a regulation prescribed under that law, or a hazardous materials security regulation or directive issued by the Department of Homeland Security. The five subject areas include: The designation, description, and classification of hazardous material; the packing, repacking, handling, labeling, marking, and placarding of hazardous material; the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents; the written notification, recording, and reporting of the unintentional release in transportation of hazardous material and other written hazardous materials transportation incident reporting involving State or local emergency responders in the initial response to the incident; and the designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.

To be ''substantively the same,'' the non-Federal requirement must conform ''in every significant respect to the Federal requirement. Editorial and other similar *de minimis* changes are permitted.'' 49 CFR 107.202(d).[3]

The 2002 amendments and 2005 reenactment of the preemption provisions in 49 U.S.C. 5125 reaffirmed Congress's long-standing view that a single body of uniform Federal regulations promotes safety (including security) in the transportation of hazardous materials. More than thirty years ago, when it was considering the HMTA, the Senate Commerce Committee ''endorse[d] the principle of preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation.'' S. Rep. No. 1102, 93rd Cong. 2nd Sess. 37 (1974). When Congress expanded the preemption provisions in 1990, it specifically found that many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements. And because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable. Therefore, in order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.[4]

A United States Court of Appeals has found uniformity was the ''linchpin'' in the design of the Federal laws governing the transportation of hazardous materials. *Colorado Pub. Util. Comm'n* v. *Harmon,* 951 F.2d 1571, 1575 (10th Cir. 1991).

III. Preemption Determinations

Under 49 U.S.C. 5125(d)(1), any person (including a State, political subdivision of a State, or Indian tribe) directly affected by a requirement of a State, political subdivision or tribe may apply to the Secretary of Transportation for a determination whether the requirement is preempted. The Secretary of Transportation has delegated authority to PHMSA to make determinations of preemption, except for those concerning highway routing (which have been delegated to the Federal Motor Carrier Safety Administration). 49 CFR 1.97(b).

Section 5125(d)(1) requires notice of an application for a preemption determination to be published in the **Federal Register**. Following the receipt and consideration of written comments, PHMSA publishes its determination in the **Federal Register**. *See* 49 CFR 107.209(c). A short period of time is allowed for filing of petitions for reconsideration. 49 CFR 107.211. A petition for judicial review of a final preemption determination must be filed in the United States Court of Appeals

[3] Additional standards apply to preemption of non-Federal requirements on highway routes over which hazardous materials may or may not be transported and fees related to transporting hazardous material. *See* 49 U.S.C. 5125(c) and (f). *See also* 49 CFR 171.1(f) which explains that a ''facility at which functions regulated under the HMR are performed may be subject to applicable laws and regulations of state and local governments and Indian tribes.''

[4] Public Law 101–615 § 2, 104 Stat. 3244. (In 1994, Congress revised, codified and enacted the HMTA ''without substantive change,'' at 49 U.S.C. Chapter 51. Public Law 103–272, 108 Stat. 745 (July 5, 1994).)

for the District of Columbia or in the Court of Appeals for the United States for the circuit in which the petitioner resides or has its principal place of business, within 60 days after the determination becomes final. 49 U.S.C. 5127(a).

Preemption determinations do not address issues of preemption arising under the Commerce Clause, the Fifth Amendment or other provisions of the Constitution, or statutes other than the Federal hazardous material transportation law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law, or whether a fee is ''fair'' within the meaning of 49 U.S.C. 5125(f)(1). A State, local or Indian tribe requirement is not authorized by another Federal law merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm'n* v. *Harmon,* above, 951 F.2d at 1581 n.10.

In making preemption determinations under 49 U.S.C. 5125(d), PHMSA is guided by the principles and policies set forth in Executive Order No. 13132, entitled ''Federalism'' (64 FR 43255 (Aug. 10, 1999)), and the President's May 20, 2009 memorandum on ''Preemption'' (74 FR 24693 (May 22, 2009)). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other clear evidence Congress intended to preempt State law, or the exercise of State authority directly conflicts with the exercise of Federal authority. The President's May 20, 2009 memorandum sets forth the policy ''that preemption of State law by executive departments and agencies should be undertaken only with full consideration of the legitimate prerogatives of the States and with a sufficient legal basis for preemption.'' Section 5125 contains express preemption provisions, which PHMSA has implemented through its regulations.

IV. Public Comments

All comments should be directed to whether 49 U.S.C. 5125 preempts a hazardous waste regulation of the State of Oregon that imposes a strict liability standard on transporters. Comments should specifically address the preemption criteria discussed in Part II above.

Issued in Washington, DC, on January 10, 2017.

Vasiliki Tsaganos,

Acting Chief Counsel.

[FR Doc. 2017–00788 Filed 1–23–17; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Appraisals for Higher-Priced Mortgage Loans

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning the renewal of its information collection titled ''Appraisals for Higher-Priced Mortgage Loans.'' The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be submitted on or before February 23, 2017.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0313, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *prainfo@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0313, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503 or by email to: *oira submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, (202) 649–5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The OCC requests that OMB extend its approval of the following collection:

Title: Appraisals for Higher-Priced Mortgage Loans.

OMB Control No.: 1557–0313.

Type of Review: Regular.

Frequency of Response: On occasion.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 1,399.

Estimated Total Annual Burden: 19,946 hours.

Description:

This information collection relates to section 1471 of the Dodd-Frank Act, which added a new section 129H to the Truth in Lending Act (TILA) establishing special appraisal requirements for ''higher-risk mortgages.'' For certain mortgages with an annual percentage rate that exceeds the average prime offer rate by a specified percentage, creditors must obtain an appraisal or appraisals meeting certain specified standards, provide applicants with a notification regarding the use of the appraisals, and give applicants a copy of the written appraisals used. The statute permits the OCC to issue a rule to include exemptions from these requirements. The OCC implemented these

requirements and exemptions thereto in 2013.[1]

The information collection requirements are found in 12 CFR 34.203(c) through (f). This information is required to protect consumers and promote the safety and soundness of creditors making higher-priced mortgage loans (HPMLs) subject to 12 CFR part 34, subpart G. This information is used by creditors to evaluate real estate collateral securing HPMLs subject to 12 CFR 1026.35(c) and by consumers entering these transactions. The collections of information are mandatory for creditors making HPMLs subject to 12 CFR part 34, subpart G.

Under 12 CFR 34.203(e) and (f), a creditor must, no later than the third business day after the creditor receives a consumer's application for an HPML, provide a disclosure to the consumer that informs the consumer of the purpose of the appraisal, that the creditor will provide the consumer with a copy of any appraisal, and that the consumer may choose to have a separate appraisal conducted at the expense of the consumer (Initial Appraisal Disclosure). If a loan is an HPML subject to 12 CFR 1026.35(c), then the creditor is required to obtain a written appraisal prepared by a certified or licensed appraiser who conducts a physical visit of the interior of the property that will secure the transaction (Written Appraisal) and provide a copy of the Written Appraisal to the consumer. Under 12 CFR 34.203(d)(1), a creditor is required to obtain an additional appraisal (Additional Written Appraisal) for an HPML that is subject to 12 CFR part 34, subpart G if: (1) The seller acquired the property securing the loan 90 or fewer days prior to the date of the consumer's agreement to acquire the property and the resale price exceeds the seller's acquisition price by more than 10 percent; or (2) the seller acquired the property securing the loan 91 to 180 days prior to the date of the consumer's agreement to acquire the property and the resale price exceeds the seller's acquisition price by more than 20 percent.

Under 12 CFR 34.203(d)(3) and (4), the Additional Written Appraisal must meet the requirements described in 12 CFR 34.203(c)(1) and also include an analysis of: (1) The difference between the price at which the seller acquired the property and the price the consumer agreed to pay; (2) changes in market conditions between the date the seller acquired the property and the date the consumer agreed to acquire the property; and (3) any improvements made to the property between the date the seller acquired the property and the date on which the consumer agreed to acquire the property. Under 12 CFR 34.203(f), a creditor is required to provide a copy of any Additional Written Appraisal to the consumer.

Comments: On November 4, 2016, the OCC issued a 60-day notice soliciting comment on the information collection, 81 FR 77001. No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 17, 2017.

Karen Solomon,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2017–01436 Filed 1–23–17; 8:45 am]

BILLING CODE 4810–33–P

[1] 78 FR 10368 (February 13, 2013) and 78 FR 78519 (December 26, 2013).

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Sanctions Actions Pursuant to Executive Orders 13382, 13572, 13573, and 13582.

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of seven persons whose property and interests in property are blocked pursuant to Executive Order (E.O.) 13382, five persons whose property and interests in property are blocked pursuant to E.O. 13572, five persons whose property and interests in property are blocked pursuant to E.O. 13573, one person whose property and interests in property are blocked pursuant to E.O. 13582, and five entities identified as the Government of Syria pursuant to E.O. 13582.

DATES: OFAC's actions described in this notice were effective on January 12, 2017, as further specified below.

FOR FURTHER INFORMATION CONTACT: The Department of the Treasury's Office of Foreign Assets Control: Assistant Director for Licensing, tel.: 202–622–2480, Assistant Director for Regulatory Affairs, tel.: 202–622–4855, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; or the Department of the Treasury's Office of the Chief Counsel (Foreign Assets Control), Office of the General Counsel, tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's Web site (*www.treas.gov/ofac*).

Notice of OFAC Actions

On January 12, 2017, OFAC blocked the property and interests in property of the following seven persons pursuant to E.O. 13382, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters'':

Individuals

1. ABBAS, Ghassan; DOB 10 Mar 1960; Scientific Studies and Research Center Brigadier General (individual) [NPWMD] (Linked To: SCIENTIFIC STUDIES AND RESEARCH CENTER).
2. AHMAD, Firas; DOB 21 Jan 1967; Scientific Studies and Research Center Colonel (individual) [NPWMD] (Linked To: SCIENTIFIC STUDIES AND RESEARCH CENTER).
3. DABUL, Samir; DOB 04 Sep 1965; Scientific Studies and Research Center Brigadier General (individual) [NPWMD] (Linked To: SCIENTIFIC STUDIES AND RESEARCH CENTER).
4. HAWRANI, Habib; DOB 25 Mar 1969; Scientific Studies and Research Center Colonel (individual) [NPWMD] (Linked To: SCIENTIFIC STUDIES AND RESEARCH CENTER).
5. HAYDAR, Zuhayr; DOB 18 Dec 1965; Scientific Studies and Research Center Colonel (individual) [NPWMD] (Linked To: SCIENTIFIC STUDIES AND RESEARCH CENTER).
6. WANUS, Ali; DOB 05 Feb 1964; Scientific Studies and Research Center Brigadier General (individual) [NPWMD] (Linked To: SCIENTIFIC STUDIES AND RESEARCH CENTER).
7. BITAR, Bayan (a.k.a. AL–BITAR, Bayan), PO Box 11037, Damascus, Syria; DOB 08 Mar 1947; Managing Director of the Organization for Technological Industries (individual) [NPWMD] (Linked To: ORGANIZATION FOR TECHNOLOGICAL INDUSTRIES).

On January 12, 2017, OFAC additionally blocked the property and interests in property of the following five persons pursuant to E.O. 13572, ''Blocking Property of Certain Persons With Respect to Human Rights Abuses in Syria'':

Individuals

1. AL–HASAN, Suhayl Hasan (a.k.a. HASSAN, Suheil), Syria; DOB 1964; Gender Male; Syrian Air Force Intelligence Colonel (individual) [SYRIA] (Linked To: SYRIAN AIR FORCE INTELLIGENCE).
2. BILAL, Muhammad Nafi (a.k.a. BILAL, Muhammad), Syria; DOB 25 May 1971; alt. DOB 1971; Gender Male; Syrian Air Force Intelligence Colonel (individual) [SYRIA] (Linked To: SYRIAN AIR FORCE INTELLIGENCE).
3. DAHI, Yasin Ahmad, Syria; DOB 1960; Gender Male; Brigadier General (individual) [SYRIA] (Linked To: SYRIAN MILITARY INTELLIGENCE).
4. MAHALLA, Muhammad Mahmud (a.k.a. MAHALA, Muhammad), Syria; DOB 04 Jun 1959; Gender Male; Major General, Director of Syrian Military Intelligence (individual) [SYRIA] (Linked To: SYRIAN MILITARY INTELLIGENCE).
5. RAHMUN, Muhammad Khalid, Syria; DOB 01 Apr 1957; Gender Male; Major General; Chief of the Political Security Directorate (individual) [SYRIA] (Linked To: POLITICAL SECURITY DIRECTORATE).

On January 12, 2017, OFAC additionally blocked the property and interests in property of the following five persons pursuant to E.O. 13573, ''Blocking Property of Senior Officials of the Government of Syria'':

Individuals

1. BALLUL, Ahmad (a.k.a. BALLUL, Ahmad Muhammad; a.k.a. BALLUL, Ahmed); DOB 10 Oct 1954; Major General, Syrian Air Force and Air Defense Forces Commander (individual) [SYRIA] (Linked To: SYRIAN AIR FORCE; Linked To: SYRIAN ARAB AIR DEFENSE FORCES).
2. DARWISH, Saji Jamil, Syria; DOB 11 Jan 1957; Gender Male; Major General, Syrian Air Force (individual) [SYRIA] (Linked To: SYRIAN AIR FORCE).
3. IBRAHIM, Muhammad; DOB 05 Aug 1964; Brigadier General (individual) [SYRIA] (Linked To: SYRIAN AIR FORCE).
4. MAKHLUF, Talal Shafiq (a.k.a. MAKHLOUF, Talal), Syria; DOB 01 Dec 1958; Gender Male; Major General, Syrian Republican Guard (individual) [SYRIA] (Linked To: SYRIAN ARAB REPUBLICAN GUARD).
5. MUALLA, Badi (a.k.a. MUALLA, Badi Sulayman), Syria; DOB 1961; alt. DOB 05 Apr 1961; POB Bistuwir, Jablah, Syria; Gender Male; Brigadier General, Syrian Air Force (individual) [SYRIA] (Linked To: SYRIAN AIR FORCE).

On January 12, 2017, OFAC blocked the property and interests in property of the following person pursuant to E.O. 13582, ''Blocking Property of the Government of Syria and Prohibiting Certain Transactions with Respect to Syria'':

Individual

1. SHIHADAH, Rafiq (a.k.a. SHAHADAH, Rafiq; a.k.a. SHEHADEH, Rafik; a.k.a. SHIHADA, Rafiq; a.k.a. SHIHADAH, Wafiq), Syria; DOB 1954; Gender Male; Major General (individual) [SYRIA].

In addition, on January 12, 2017, OFAC identified the following five entities as falling within the definition of the Government of Syria as set forth in section 8(d) of E.O. 13582 and section 542.305 of the Syrian Sanctions Regulations, 31 CFR part 542:

Entities

1. SYRIAN AIR FORCE, Damascus, Syria [SYRIA].
2. SYRIAN ARAB AIR DEFENSE FORCES, Damascus, Syria [SYRIA].
3. SYRIAN ARAB ARMY, Damascus, Syria [SYRIA].
4. SYRIAN ARAB NAVY, Damascus, Syria [SYRIA].
5. SYRIAN ARAB REPUBLICAN GUARD, Damascus, Syria [SYRIA].

Dated: January 17, 2017.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2017–01442 Filed 1–23–17; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Sanctions Actions Pursuant to Executive Orders 13382, 13572, 13573, and 13582

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of two persons whose property and interests in property are blocked pursuant to Executive Order (E.O.) 13382, three persons whose property and interests in property are blocked pursuant to E.O. 13572, seven persons whose property and interests in property are blocked pursuant to E.O. 13573, and 11 persons whose property and interests in property are blocked pursuant to E.O. 13582.

DATES: OFAC's actions described in this notice were effective on December 23, 2016, as further specified below.

FOR FURTHER INFORMATION CONTACT: The Department of the Treasury's Office of Foreign Assets Control: Assistant Director for Licensing, tel.: 202–622–2480, Assistant Director for Regulatory Affairs, tel.: 202–622–4855, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; or the Department of the Treasury's Office of the Chief Counsel (Foreign Assets Control), Office of the General Counsel, tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's Web site (*www.treas.gov/ofac*).

Notice of OFAC Actions

On December 23, 2016, OFAC blocked the property and interests in property of the following two persons pursuant to E.O. 13382, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters'':

Individual

1. ALLOUCH, Aziz (a.k.a. 'ALLUSH, 'Aziz Ahmad); DOB 26 Oct 1977; General Director, Technolab (individual) [NPWMD] (Linked To: NATIONAL STANDARDS AND CALIBRATION LABORATORY; Linked To: HIGHER INSTITUTE OF APPLIED SCIENCE AND TECHNOLOGY; Linked To: TECHNOLAB; Linked To: SCIENTIFIC STUDIES AND RESEARCH CENTER).

Entity

1. TECHNOLAB (a.k.a. ''TECHNO LAB''), Trabolsi Bldg, 2nd Floor, Main Road, Deir El Zahrani, Nabatieh, Lebanon; Registration ID 6000845 Nabatieh (Lebanon) [NPWMD] (Linked To: SCIENTIFIC STUDIES AND RESEARCH CENTER; Linked To: NATIONAL STANDARDS AND CALIBRATION LABORATORY; Linked To: HIGHER INSTITUTE OF APPLIED SCIENCE AND TECHNOLOGY).

On December 23, 2016, OFAC additionally blocked the property and interests in property of the following three persons pursuant to E.O. 13572, ''Blocking Property of Certain Persons With Respect to Human Rights Abuses in Syria'':

Individual

1. MUHANNA, Adib (a.k.a. MHANNA, Adib; a.k.a. MOUHANNA, Adib; a.k.a. MUHANA, Adib); DOB 1983; POB Syria; nationality Syria; Passport 3141732 (Syria) (individual) [SYRIA] (Linked To: MAKHLUF, Rami).

Entities

1. AL–HISN (a.k.a. AL–HISN FIRM; a.k.a. AL–HISN FIRM FOR SECURITY PROTECTION AND GUARD SERVICES; a.k.a. AL–HUSN), Jurmana, Damascus, Syria [SYRIA] (Linked To: MAKHLUF, Rami).
2. AL–QASIUN (a.k.a. AL–QASIUN FIRM; a.k.a. AL–QASIUN SECURITY SERVICES LLC; a.k.a. QASIYUN; a.k.a. QASIYUN SECURITY COMPANY), Jurmana, Damascus,

Syria [SYRIA] (Linked To: MAKHLUF, Rami).

On December 23, 2016, OFAC additionally blocked the property and interests in property of the following seven persons pursuant to E.O. 13573, ''Blocking Property of Senior Officials of the Government of Syria.''

Individuals

1. AL–HAMO, Ahmad (a.k.a. AL–HAMU, Ahmad; a.k.a. HAMOU, Ahmed); DOB 1947; Minister of Industry (individual) [SYRIA].
2. AL–ZAFIR, Ali (a.k.a. AL–DAFEER, Ali); DOB 1962; POB Tartous, Syria; Minister of Communications and Technology; Minister of Telecommunication and Technology (individual) [SYRIA].
3. DURGHAM, Dureid (a.k.a. DERGHAM, Douraid; a.k.a. DERGHAM, Duraid); DOB 1964; Governor of the Central Bank of Syria (individual) [SYRIA].
4. GHANEM, Ali; DOB 1963; POB Damascus, Syria; Minister of Oil; Minister of Petroleum and Mineral Wealth; Minister of Petroleum and Mineral Resources (individual) [SYRIA].
5. HAMDAN, Mamun (a.k.a. HAMDAN, Dr. Maamoun; a.k.a. HAMDAN, Dr. Mamoun); DOB 1958; POB Damascus, Syria; Minister of Finance (individual) [SYRIA].
6. HAMMUD, Ali (a.k.a. HAMMOUD, Ali; a.k.a. HAMOUD, Ali); DOB 1964; POB Tartous, Syria; Minister of Transport (individual) [SYRIA].
7. TURJUMAN, Muhammad Ramiz (a.k.a. TARJAMAN, Ramez; a.k.a. TORGAMAN, Mohammed Ramez; a.k.a. TOURJMAN, Mohammed Ramez; a.k.a. TOURJUMAN, Mohamed Ramez; a.k.a. TURGEMAN, Mohammed Ramez); DOB 1966; POB Damascus, Syria; Minister of Information (individual) [SYRIA].

On December 23, 2016, OFAC blocked the property and interests in property of the following 11 persons pursuant to E.O. 13582, ''Blocking Property of the Government of Syria and Prohibiting Certain Transactions with Respect to Syria'':

Individuals

1. AKHLOMOV, Nikolay (a.k.a. AKHLOMOV, Nikolay Vasilyevich); DOB 25 Apr 1960; Deputy Chairman, Executive Board, Tempbank (individual) [SYRIA] (Linked To: TEMPBANK).
2. APANASENKO, Elena (a.k.a. APANASENKO, Elena Mikhailovna); DOB 19 Sep 1970; Deputy Chairman, Executive Board, Tempbank (individual) [SYRIA] (Linked To: TEMPBANK).
3. DUBINYAK, Andrey (a.k.a. DUBINYAK, Andrey Grigoryevich); DOB 19 Apr 1948; Chairman of Supervisory Board, Tempbank (individual) [SYRIA] (Linked To: TEMPBANK).
4. GAGLOEV, Vladimir (a.k.a. GAGLOYEV, Vladimir Georgiyevich; a.k.a. GAGLOEV, Vladimir Georgyevich); DOB 14 Jan 1974; Supervisory Board Member, Tempbank (individual) [SYRIA] (Linked To: TEMPBANK).
5. KOZHENKOVA, Irina (a.k.a. KOZHENKOVA, Irina Vyacheslavovna); DOB 16 Nov 1973; Deputy Chairman, Executive Board, Tempbank (individual) [SYRIA] (Linked To: TEMPBANK).
6. MITYAEV, Dmitriy (a.k.a. MITYAEV, Dmitriy Arkadyevich); DOB 20 May 1966; Supervisory Board Member, Tempbank (individual) [SYRIA] (Linked To: TEMPBANK).
7. RESHETNIKOV, Leonid (a.k.a. RESHETNIKOV, Leonid Petrovich); DOB 06 Feb 1947; Supervisory Board Member, Tempbank (individual) [SYRIA] (Linked To: TEMPBANK).
8. VAINSHTEIN, Arkadiy (a.k.a. VAINSHTEIN, Arkadiy Mikhailovich); DOB 30 Dec 1941; Supervisory Board Member, Tempbank (individual) [SYRIA] (Linked To: TEMPBANK).
9. ZHIROVA, Elena (a.k.a. ZHIROVA, Elena Borisnova); DOB 1963; Supervisory Board Member, Tempbank (individual) [SYRIA] (Linked To: TEMPBANK).

Entities

1. CHAM WINGS AIRLINES (Arabic: أجنحة الشام للطيران) (a.k.a. AJNEHAT AL SHAM; a.k.a. AL-SHAM WINGS; a.k.a. CHAM WINGS (Arabic: أجنحة الشام); f.k.a. SHAM WING AIRLINES), Al Fardous Street, Damascus, Syria; Saadoon Street, Baghdad, Iraq; 8 March Street, Lattakia, Syria; Hai Al Gharbi-Alraees Street, Kamishli, Syria; P.O. Box 1620 Tal-Kurdi, Adra, Damascus, Syria; Registration ID 14683 [SYRIA] (Linked To: SYRIAN ARAB AIRLINES).

2. SYRISS (a.k.a. GUANGZHOU SYRISS LOGISTICS & SERVICES; a.k.a. SYRISS GROUP LIMITED; a.k.a. SYRISS LOGISTICS AND SERVICE COMPANY), Head Office, Suite 707, Oriental Finance Building, 140 Dong Feng Xi Road, Guangzhou 510000, China; Marine Logistics Office, Suite 912, Nan You Building, 142 Dongfeng Xi Road, Guangzhou, China; Air Logistics Office, Suite 419, Nan You Building, 142 Dongfeng Xi Road, Guangzhou, China; Marine Warehouse, Baiyun Area, ShiJing Town, 20 Qingfeng Qinglong Road, Guangzhou, China; Baramkeh Free Zone, Damascus, Syria; Jebel Ali Free Zone, W.H. # WF06, Jebel Ali, United Arab Emirates; Ras Al Khor Industrial 3, Warehouse # 2, Al Aweer, United Arab Emirates; Exit 19 Al Manakh area , W.H. # 364, Riyadh, Saudi Arabia [SYRIA] (Linked To: YONA STAR INTERNATIONAL).

Dated: December 23, 2016.

Gregory T. Gatjanis,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2017–01443 Filed 1–23–17; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Sanctions Actions Pursuant to Executive Order 13304

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (OFAC) is publishing the name of one person whose property and interests in property are blocked pursuant to the following authorities: Executive Order (E.O.) E.O. 13304.

DATES: OFAC's actions described in this notice were effective on January 17, 2017, as further specified below.

FOR FURTHER INFORMATION CONTACT: The Department of the Treasury's Office of Foreign Assets Control: Assistant

Director for Licensing, tel.: 202–622–2480, Assistant Director for Regulatory Affairs, tel.: 202–622–4855, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; or the Department of the Treasury's Office of the Chief Counsel (Foreign Assets Control), Office of the General Counsel, tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's Web site (*www.treas.gov/ofac*).

Notice of OFAC Actions

On January 17, 2017, OFAC blocked the property and interests in property of the following person pursuant to E.O. 13304, ''Termination of Emergencies With Respect to Yugoslavia and Modification of Executive Order 13219 of June 26, 2001'':

Individuals

1. DODIK, Milorad, Republic of Srpska, Bosnia and Herzegovina; DOB 12 Mar 1959; Gender Male (individual) [BALKANS].

Dated: January 17, 2017.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2017–01441 Filed 1–23–17; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Disability Compensation, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the Advisory Committee on Disability Compensation (Committee) will meet on March 6–7, 2017. The Committee will meet at 1800 G Street NW., 8th Floor, Conference Room 870, Washington, DC 20006. The The sessions will begin at 8:30 a.m. and end at 4:30 p.m. EST each day. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities. The Committee is to assemble and review relevant information relating to the nature and character of disabilities arising during service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule, and give advice on the most appropriate means of responding to the needs of Veterans relating to disability compensation.

The Committee will receive briefings on issues related to compensation for Veterans with service-connected disabilities and on other VA benefits programs. Time will be allocated for receiving public comments. Public comments will be limited to three minutes each. Individuals wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis. Individuals who speak are invited to submit 1–2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record.

The public may submit written statements for the Committee's review to Dr. Ioulia Vvedenskaya, Department of Veterans Affairs, Veterans Benefits Administration, Compensation Service, Policy Staff (211C), 810 Vermont Avenue NW., Washington, DC 20420 or via email at *Ioulia.Vvedenskaya@va.gov.* Because the meeting is being held in a government building, a photo I.D. must be presented at the Guard's Desk as a part of the screening process. Due to an increase in security protocols, you should allow an additional 30 minutes before the meeting begins. Routine escort will be provided until 9:00 a.m. each day. Any member of the public wishing to attend the meeting or seeking additional information should email Dr. Vvedenskaya or call her at (202) 461–9882.

Dated: January 18, 2017.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2017–01567 Filed 1–23–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Cost-of-Living Adjustments Effective December 1, 2016

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As required by law, the Department of Veterans Affairs (VA) is hereby giving notice of cost-of-living adjustments (COLAs) in certain benefit rates. These COLAs affect the dependency and indemnity compensation (DIC) program. The rate of the adjustment is tied to the increase in Social Security benefits effective December 1, 2016, as announced by the Social Security Administration (SSA). SSA has announced an increase of 0.3%.

DATES: The COLAs are effective December 1, 2016.

FOR FURTHER INFORMATION CONTACT: Daniel McCargar, Pension Analyst, Pension and Fiduciary Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (612–713–8911).

SUPPLEMENTARY INFORMATION: The provisions of Public Law 114–197, ''Veterans' Compensation COLA Act of 2016,'' require VA to increase the benefit rates of DIC programs by the same percentage, and effective the same date, as increases in the benefit amounts payable under title II of the Social Security Act, effective December 1, 2016. VA must also publish the increased rates in the **Federal Register**.

SSA has announced a 0.3% COLA increase in Social Security benefits effective December 1, 2016. Therefore, applying the same percentage, the following increased rates and income limitations for the DIC program will be effective December 1, 2016:

Dependency and Indemnity Compensation Monthly Payment Rates

DIC Payable to a Surviving Spouse—Veteran Death On or After January 1, 1993

Basic Monthly Rate: $1,257.95.

If, at the time of the Veteran's death, the Veteran was in receipt of or entitled to receive compensation for a service-connected disability rated totally disabling (including a rating based on individual unemployability) for a continuous period of at least eight years immediately preceding death AND the surviving spouse was married to the Veteran for those same eight years, add: $267.12.

For each dependent child under the age of 18, add: $311.64.

If the surviving spouse is entitled to aid and attendance benefits, add $311.64.

If the surviving spouse is entitled to housebound benefits, add $145.99.

If the surviving spouse has one or more children under the age of 18 on the award, add the 2-year transitional benefit of $270.00 (no change to this rate as a result of the round-down in 38 U.S.C. 1311(f)(4)).

DIC Payable to a Surviving Spouse—Veteran Death Prior to January 1, 1993

Veteran paygrade	Amount payable (d, e)
E–1(f)	$1,257.95
E–2(f)	1,257.95
E–3(a,f)	1,257.95
E–4(f)	1,257.95

Veteran paygrade	Amount payable (d, e)
E–5(f)	1,257.95
E–6(f)	1,257.95
E–7(g)	1,301.44
E–8(g)	1,373.92
E–9(g)	1,432.93
E–9(b)	1,546.82
W–1(g)	1,328.36
W–2(g)	1,381.16
W–3(g)	1,421.54
W–4(g)	1,504.37
O–1(g)	1,328.36
O–2(g)	1,373.92
O–3(g)	1,468.13
O–4	1,556.13
O–5	1,712.47
O–6	1,930.94
O–7	2,084.16
O–8	2,289.17
O–9	2,448.61
O–10	2,685.70
O–10(c)	2,882.42

(a) Surviving spouse of Aviation Cadet or other service not covered by this table is paid the DIC rate for enlisted E–3.

(b) Veteran who served as Sergeant Major of the Army or Marine Corps, Senior Enlisted Advisor of the Navy, Chief Master Sergeant of the Air Force, or Commandant of the Marine Corps, or as Commandant of the Coast Guard.

(c) Veteran served as Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army or Air Force, Chief of Naval Operations, Commandant of the Marine Corps, or as Commandant of the Coast Guard.

(d) If surviving spouse entitled to aid and attendance, add $311.64; if entitled to housebound, add $145.99.

(e) Add $311.64 for each child under 18.

(f) Add $267.12 if Veteran was rated totally disabled for eight continuous years prior to death and surviving spouse was married to Veteran those same eight years.

(g) Base rate is $1,525.07 if Veteran was rated totally disabled eight continuous years prior to death and surviving spouse was married to Veteran those same eight years.

DIC Payable to Children

Surviving Spouse Entitled

For each child over the age of 18 who is attending an approved course of education, the rate is $264.02.

For each child over the age of 18 who is helpless, the rate is $531.14.

No Surviving Spouse Entitled

Number of children	Total payable	Each child's share
1	$531.14	$531.14
2	764.09	382.04
3	997.05	332.35

For each additional child, add $189.48 to the total payable.

For each additional helpless child over 18, add $311.64 to the total payable.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document, for publication.

Dated: January 12, 2017.

Jeffrey Martin,

Office Program Manager, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2017–01458 Filed 1–23–17; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 82 Tuesday,

No. 14 January 24, 2017

Part II

Federal Reserve System

12 CFR Part 252

Total Loss-Absorbing Capacity, Long-Term Debt, and Clean Holding Company Requirements for Systemically Important U.S. Bank Holding Companies and Intermediate Holding Companies of Systemically Important Foreign Banking Organizations; Final Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 252

[Docket No. R–1523]

RIN 7100–AE37

Total Loss-Absorbing Capacity, Long-Term Debt, and Clean Holding Company Requirements for Systemically Important U.S. Bank Holding Companies and Intermediate Holding Companies of Systemically Important Foreign Banking Organizations

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Final rule.

SUMMARY: The Board is adopting a final rule to require a U.S. top-tier bank holding company identified under the Board's rules as a global systemically important bank holding company (covered BHC) to maintain outstanding a minimum amount of loss-absorbing instruments, including a minimum amount of unsecured long-term debt. In addition, the final rule prescribes certain additional buffers, the breach of which would result in limitations on the capital distributions and discretionary bonus payments of a covered BHC. The final rule applies similar requirements to the top-tier U.S. intermediate holding company of a global systemically important foreign banking organization with $50 billion or more in U.S. non-branch assets (covered IHC). The final rule also imposes restrictions on other liabilities that a covered BHC or covered IHC may have outstanding in order to improve their resolvability and resiliency; these restrictions are referred to in the final rule as ''clean holding company requirements.''

DATES: The final rule is effective on March 27, 2017.

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I. Introduction

A. Background

In October 2015, the Board invited public comment on a notice of proposed rulemaking (proposal) to require the largest domestic and foreign banks operating in the United States to maintain a minimum amount of total loss-absorbing capacity (TLAC), consisting of a minimum amount of long-term debt (LTD) and tier 1 capital.[1] In addition, the proposed rule prescribed certain buffers, the breach of which would result in limitations on the capital distributions and discretionary bonus payments of the firm. The proposal also included a separate requirement that these companies maintain a minimum amount of LTD. The TLAC and LTD requirements in the proposal had two overall objectives: Improving the resiliency of these companies and improving their resolvability in the event of their failure or material financial distress. Both objectives help to reduce risks to financial stability, as provided in section 165 of the Dodd-Frank Act.[2]

Improving the resiliency of banking organizations, and in particular large banking organizations, has long been a goal of the Board. The Board has had a long-standing practice of requiring large bank holding companies to maintain minimum amounts of regulatory capital in order to absorb losses.[3] Banking organizations subject to the Board's regulatory capital rules (Regulation Q) must maintain a minimum amount of regulatory capital and maintain a capital buffer above the minimum capital requirements in order to avoid restrictions on capital distributions and discretionary bonus payments.[4] The largest and most complex banking organizations are subject to additional capital buffers because of their greater systemic risk.[5]

The minimum capital requirements in Regulation Q take the form of minimum ratios of different forms of regulatory capital to risk-based and total-leverage-based measures of assets.[6] The risk-based ratios are the common equity tier 1 ratio (common equity tier 1 capital to risk-weighted assets), the tier 1 risk-based capital ratio (tier 1 capital to risk-weighted assets), and the total risk-based capital ratio (tier 1 capital plus tier 2 capital to risk-weighted assets).[7] Regulation Q also includes a leverage ratio that relates a company's tier 1 capital to its total assets.[8]

[1] *See* 80 FR 74926 (November 30, 2015).

[2] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111– 203, 124 Stat. 1376. (2010); 12 U.S.C. 5365.

[3] *See* 12 CFR part 225, Appendix A (superseded as of January 1, 2015, by 12 CFR part 217).

[4] 12 CFR 217.11(a). The capital conservation buffer is composed entirely of common equity tier 1 capital.

[5] These are the countercyclical capital buffer and the buffer in the Board's risk-based capital surcharge for global systemically important bank holding companies.

[6] *See* 12 CFR 217.10.

[7] *See* 12 CFR 217.10(a)(1) through (3).

[8] *See* 12 CFR 217.10(a)(4). In addition, certain internationally active banking organizations are subject to a supplementary leverage ratio, which incorporates certain off-balance sheet exposures into the measure of total assets. 12 CFR 217.10(a)(5).

The TLAC and LTD requirements in the final rule build on, and serve as a complement to, the regulatory capital requirements in Regulation Q. While regulatory capital requirements are intended to ensure that a banking organization has sufficient capital to remain a going concern, the objective of the TLAC and LTD requirements in the final rule is to reduce the financial stability impact of a failure by requiring companies to have sufficient loss-absorbing capacity on both a going concern and a gone-concern basis.

A company's gone-concern loss-absorbing capacity is different from the company's going-concern capacity in a few fundamental respects. Although regulatory capital theoretically can absorb losses after a firm has entered resolution, the firm's regulatory capital, and especially its equity capital, is likely to be significantly or completely depleted in the lead up to a bankruptcy or resolution. Thus, if the ultimate goal is to have a failed firm re-emerge from resolution with sufficient capital to successfully operate as a going concern, there will need to be a new source of capital for the firm. In this regard, debt instruments, which count in regulatory capital in limited amounts and are subject to restrictions on their terms, are capable of absorbing losses in resolution. This is because the debt holders' claim on a company's assets may be reduced in a resolution or bankruptcy proceeding. This would increase the size of a company's assets relative to the size of its liabilities and thereby increase the company's equity. Certain debt instruments are better able to absorb losses in a resolution proceeding and only these eligible debt instruments count toward the TLAC and LTD requirement in the final rule.

As in the proposal, the TLAC and LTD requirements in the final rule focus on the largest and most systemic U.S. banking organizations and the U.S. operations of the largest and most systemic foreign banking organizations, because, as shown in the recent financial crisis, the failure or material financial distress of these companies has the greatest potential to disrupt U.S. financial stability.

The TLAC requirements in the final rule are based on many of the same measures as those that are in Regulation Q. For example, the TLAC requirements include both risk-based and leverage-based measures and include buffer requirements on top of the minimum TLAC requirements that function in a manner similar to the capital conversation buffer in Regulation Q. The risk-based measures of TLAC help to ensure that the amount of TLAC held by a company would be commensurate with its overall risks, while the leverage-based measures of TLAC act as a backstop to the risk-based measures. Companies that do not meet a TLAC buffer face limitations on capital distributions and discretionary bonus payments (in a manner similar to the restrictions in Regulation Q).

Improving resolvability was also an important goal of the proposal, and remains an important goal of the final rule. Efforts to ensure the orderly resolution of firms subject to the rule enhances financial stability. To further this objective, the largest domestic and foreign banks operating in the United States will be required to maintain a minimum amount of outstanding LTD instruments. This LTD also will count toward the TLAC requirements in the final rule. In the event that a company had significant losses such that it was experiencing significant financial distress or had depleted its equity capital, the LTD that the company had outstanding could be used to replenish the company's equity. This could occur in a resolution proceeding, or, in the case of the U.S. operations of certain foreign banks, by order of the Board.[9] Like the minimum TLAC requirements and for the same reasons as noted above, the minimum LTD requirements include both risk-based and leverage-based measures.

If a company subject to the final rule experiences losses, the losses would be passed on first to shareholders of the parent company and, if the losses exceed the parent company's equity, to the holders of the parent company's debt. In this way, the TLAC and LTD requirements would increase market discipline for banking organizations subject to the requirements by making them bear the costs of issuing a minimum amount of LTD instruments that are capable of absorbing losses in a manner that would enhance the resiliency and resolvability of the organization.

Foreign jurisdictions have been pursuing similar approaches to the approach adopted by the Board in the final rule since the 2007–2009 financial crisis.[10] In November 2015, the Financial Stability Board (FSB) finalized an internationally negotiated minimum standard for the total loss-absorbing capacity of global systemically important banks (GSIBs) (the FSB standard).[11]

The final rule also is generally consistent with the FSB standard, although the final rule adopts a minimum LTD requirement, unlike the FSB standard.[12] Several commenters noted that the proposed rule deviated from the FSB standard in various respects. These comments are addressed in greater detail below in the description of the requirements of the final rule, including those aspects of the final rule that were modified in response to issues raised by commenters. As described further below, the final rule requires full compliance by January 1, 2019.

The Board is issuing the final rule under section 165 of the Dodd-Frank Act. Section 165 authorizes the Board to impose enhanced prudential standards on bank holding companies with total consolidated assets of $50 billion or more ''[i]n order to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected financial institutions.'' [13] These enhanced prudential standards must increase in stringency based on the systemic footprint and risk characteristics of individual covered firms.[14] In addition, section 165 authorizes the Board to establish such other prudential standards as the Board of Governors, on its own or pursuant to a recommendation made by the Council, determines are appropriate.[15]

In implementing other portions of the Dodd-Frank Act, the Board has taken important steps to protect U.S. financial stability by making major financial companies more resolvable—that is, to take measures so that a failed firm could be dealt with in an orderly manner, without the destructive effects on other

[9] *See, e.g.,* 80 FR 74928–30 (November 30, 2015).

[10] These efforts have been coordinated through the Basel Committee on Banking Supervision (BCBS) and the Financial Stability Board (FSB), at the direction of the Heads of State of the Group of Twenty (G20 Leaders). Representatives of the United States have taken an active role in these efforts.

[11] Principles on Loss-absorbing and Recapitalisation Capacity of G–SIBs in Resolution, Total Loss-absorbing Capacity (TLAC) Term Sheet, November 9, 2015 (hereinafter ''FSB Standard''), *available at http://www.fsb.org/wp-content/uploads/TLAC-Principles-and-Term-Sheet-for-publication-final.pdf.*

[12] Under the FSB standard, GSIBs would be subject to a minimum TLAC requirement equal to 16 percent of the banking organization's risk weighted assets (risk-weighted assets) as of January 1, 2019 and 18 percent as of January 1, 2022 plus any applicable regulatory capital (Basel III) buffers, which must be met in addition to the TLAC risk-weighted assets minimum. Minimum TLAC must also be at least 6 percent of the Basel III leverage ratio denominator as of January 1, 2019, and at least 6.75 percent as of January 1, 2022. The FSB standard also contains an expectation that a GSIB would meet at least one-third of its TLAC requirement with eligible LTD rather than equity.

[13] 12 U.S.C. 5365(a)(1).

[14] 12 U.S.C. 5365(a)(1)(B), (b)(3).

[15] 12 U.S.C. 5365(b)(1)(B)(iv).

important financial firms that were caused by the failures and near-failures of major financial firms in 2008. These steps include heightened regulatory capital and capital planning requirements for large, systemically important banks holding companies and resolution planning requirements.[16] In addition, Title II of the Dodd-Frank Act established a new statutory resolution framework for major financial companies as an alternative to bankruptcy.[17] The enhanced prudential standards in the final rule are intended to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress, failure, or ongoing activities of a covered BHC or covered IHC. In particular, the final rule would improve the resolvability of a covered BHC under either the U.S. Bankruptcy Code or Title II of the Dodd-Frank Act and improve their resiliency.

Similarly, the final rule would improve the resiliency of covered IHCs and their subsidiaries, and thereby increase the likelihood that a failed foreign bank with significant U.S. operations could be successfully resolved without the failure of the U.S. subsidiaries or, failing that, that the U.S. operations could be separately resolved in an orderly manner.

In addition to the authority identified above, section 165 of the Dodd-Frank Act authorizes the Board to establish ''enhanced public disclosures'' and ''short-term debt limits.'' [18] The final rule includes disclosure requirements and limits on the ability of covered BHCs and covered IHCs to issue short-term debt.

Finally, as noted, the Board has tailored the final rule to apply to companies that, if resolved in a disorderly manner, would likely pose the greatest risk to the financial stability of the United States.[19]

B. Notice of Proposed Rulemaking and General Summary of Comments

As noted, the proposal contained requirements regarding LTD and TLAC for large, interconnected U.S. bank holding companies and the U.S. operations of large, interconnected foreign banking organizations.[20] The proposal included four interrelated requirements for these organizations.

First, the top-tier parent holding companies of U.S. GSIBs (covered BHCs) would be required to maintain outstanding minimum levels of total loss-absorbing capacity (external TLAC) and long-term unsecured debt (external LTD). In addition, the proposal included a related buffer on top of the risk-weighted asset component of external TLAC, the breach of which would result in limitations on a covered BHC's capital distributions and discretionary bonus payments. The proposal defined external LTD as unsecured debt that is issued directly by a covered BHC, is ''plain vanilla'' (that is, the debt instrument has no features that would interfere with a smooth resolution proceeding),[21] and is governed by U.S. law. External TLAC, under the proposal, was defined as the sum of the tier 1 regulatory capital issued directly by the covered BHC (excluding minority interests) and the external LTD of the covered BHC.

Second, under the proposal, the top-tier U.S. intermediate holding companies of foreign GSIBs (covered IHCs) would have been required to maintain outstanding minimum levels of total loss-absorbing capacity (internal TLAC) and long-term unsecured debt instruments (internal LTD) issued to their foreign parent company. In addition, the proposal included a related buffer on top of the risk-weighted asset component of internal TLAC, the breach of which would result in limitations on a covered IHC's capital distributions and discretionary bonus payments. The proposal defined internal TLAC and LTD for covered IHCs similarly to external TLAC and LTD for covered BHCs, with a few key differences for internal LTD. These included the requirements that internal LTD had to be issued to a parent foreign entity that controls the covered IHC, be contractually subordinated to all third-party liabilities of the covered IHC, and contain a contractual conversion trigger pursuant to which the Board could require the covered IHC to cancel the eligible internal LTD or convert or exchange it into common equity tier 1 capital under certain circumstances. In addition, the minimum amount of internal TLAC required under the proposal varied based on whether the covered IHC was expected to adopt either an SPOE or MPOE resolution strategy, though both types of firms were required to issue the same amounts of internal LTD.

Third, the operations of the covered BHCs and covered IHCs would have been subject to ''clean holding company'' limitations to further improve their resolvability and the resiliency of their operating subsidiaries. In particular, the proposal would have prohibited covered BHCs from issuing short-term debt instruments to third parties (including deposits); entering into ''qualified financial contracts'' (QFCs) with third parties; having liabilities that are subject to ''upstream guarantees'' from the covered BHC's subsidiaries or that are subject to contractual offset rights for its subsidiaries' creditors; or issuing guarantees of its subsidiaries' liabilities, if the guarantee provided that the covered BHC's insolvency or entry into resolution was an event of default on the part of the subsidiary. The proposal applied a similar prohibition to covered IHCs. Additionally, the proposal capped the value of a covered BHC's liabilities (other than those related to external TLAC and external LTD) that can be pari passu with or junior to its external LTD at 5 percent of the value of its external TLAC. This cap on liabilities was not relevant to covered IHCs under the proposal because the proposal required that a covered IHC's eligible internal LTD be contractually subordinated to all of the covered IHC's third-party liabilities.

Fourth and finally, banking organizations subject to the Board's capital requirements would have been required to make certain deductions from capital for holding of unsecured debt issued by covered BHCs to limit the potential for financial sector contagion in the event of the failure of a covered BHC.

The Board received approximately 50 comments on the proposed rule from banking organizations, trade associations, public interest advocacy groups, members of Congress, and private individuals. Board staff also met with some commenters at their request to discuss their comments on the proposal and summaries of these meetings may be found on the Board's public Web site.

Commenters generally supported the proposal, including the proposed minimum TLAC and LTD requirements. Certain commenters, however, argued that the calibration of the proposed TLAC and LTD requirements under the proposal was too high for both covered BHCs and covered IHCs. A number of these commenters encouraged the Board to reduce or eliminate certain proposed requirements. In particular, a number of commenters urged the Board to eliminate the separate LTD requirement

[16] *See, e.g.,* 12 CFR part 217, subpart H; 12 CFR 225.8; and 12 CFR part 243.

[17] *See* 12 U.S.C. 5381–5394.

[18] 12 U.S.C. 5365(b)(1)(B)(ii) and (iii).

[19] 12 U.S.C. 5365(a)(1)(B).

[20] 80 FR 74926 (November 30, 2015).

[21] ''Plain vanilla'' is described in detail in section II.E.3 and generally excludes exotic features that could impact the loss absorbing capacity of the LTD and thereby diminish the prospects for an orderly resolution of a covered BHC, such as structured notes and most instruments that contain derivative-linked features.

and allow covered BHCs and covered IHCs the option to meet the proposed TLAC requirements with equity or debt.

Commenters also expressed concerns about the eligibility requirements for LTD. These commenters urged the Board to permit a broader set of instruments to qualify as eligible long-term debt, including debt with various types of acceleration clauses, debt issued under foreign law, principal-protected structured notes, and trust preferred securities (''TruPS''). In the alternative, to mitigate the impact of the requirements, commenters urged the Board to grandfather as eligible LTD existing outstanding long-term debt, which often contains features that would cause disqualification as eligible LTD under the proposal. The Board also received comment requesting that the leverage component of external TLAC be reduced and include a buffer similar to that placed on the risk-weighted asset component.

Foreign bank commenters raised a number of concerns related to the proposed internal TLAC and LTD requirements. These commenters expressed general concerns about national treatment and competitive equality.[22] In particular, some commenters argued that, given their relative size, covered IHCs should not be subject to TLAC and LTD requirements under the proposed rule considering that similarly-sized U.S. institutions would not be subject to these requirements. Commenters also urged the Board to permit covered IHCs to issue debt externally on the same terms as covered BHCs. Commenters expressed particular concerns about additional costs resulting from certain features of internal LTD that the proposal would not require for external LTD. According to the commenters, these features would make internal LTD relatively more costly than external LTD. In particular, foreign bank commenters requested the removal of the acceleration clause prohibition, the contractual subordination requirement, and the contractual conversion trigger requirement. Commenters argued that these requirements for internal LTD could cause eligible LTD to be characterized as equity, rather than debt, for U.S. income tax purposes.

While commenters generally supported the proposed clean holding company requirements, certain commenters urged the Board to modify the proposal to allow certain types of guarantees that are subject to cross-default rights. Commenters also requested that the Board include a market-making exception from the proposed capital deduction and provide additional time for companies to come into compliance with the requirements of the final rule. Comments on the proposal and the changes in the final rule are described in more detail throughout the remainder of this **SUPPLEMENTARY INFORMATION**.

C. Overview of the Final Rule

The Board is adopting this final rule to improve the resiliency and resolvability of GSIBs and thereby reduce threats to financial stability. The Board has made a number of changes to the proposal in response to concerns raised by commenters, as further described below.

The final rule is intended to improve the resolvability of the most systemically important banking firms—global systemically important banking organizations (GSIBs) without extraordinary government support or taxpayer assistance by establishing ''total loss-absorbing capacity'' standards for the GSIBs and requiring them to issue a minimum amount of LTD.[23] The final rule requires the top-tier holding companies of U.S. GSIBs to maintain outstanding minimum levels of TLAC and eligible LTD. In addition, the final rule establishes a buffer on top of both the risk-weighted asset and leverage components of the external TLAC requirements, the breach of which would result in limitations on a covered BHC's capital distributions and discretionary bonus payments.

The final rule requires the top-tier U.S. intermediate holding companies of foreign GSIBs to maintain outstanding minimum levels of total loss-absorbing capacity and long-term unsecured debt. In addition, the final rule establishes a buffer on top of the risk-weighted asset component of the internal TLAC requirements, the breach of which would result in limitations on a covered IHC's capital distributions and discretionary bonus payments.

The final rule applies ''clean holding company'' limitations to the operations of the top-tier holding companies of U.S. GSIBs and the top-tier U.S. intermediate holding companies of foreign GSIBs to further improve their resolvability and the resiliency of their operating subsidiaries. The Board has decided to defer adoption of capital deduction requirements for Board-regulation institutions that hold unsecured LTD. The Board will work with the other federal banking agencies to adopt the deduction requirements on a coordinated basis as further described below.

After analyzing the expected impact of the final rule with the modifications adopted to address concerns of commenters, the Board has determined to establish an effective date of January 1, 2019, for the rule. While this provides a shorter transition period than originally proposed, the changes adopted by the Board, including grandfathering outstanding LTD and other changes discussed below, mitigate the actions firms must take to comply with the final rule.

1. External Total Loss-Absorbing Capacity and Long-Term Debt Requirements for Covered U.S. Bank Holding Companies

Under the final rule, a ''covered BHC'' is defined to mean a U.S. GSIB identified under the Board's rule establishing risk-based capital surcharges for global systemically important bank holding companies (GSIB surcharge rule).[24] A covered BHC will be required to maintain outstanding minimum levels of eligible TLAC and eligible external LTD beginning on January 1, 2019. Consistent with the proposal, a covered BHC's eligible external TLAC is defined to be the sum of the tier 1 regulatory capital issued directly by the covered BHC and the amount of the covered BHC's eligible external LTD that is due to be paid after one year or more.[25]

Also consistent with the proposal, eligible external LTD is defined under the final rule as debt that is issued directly by the covered BHC, is unsecured, is ''plain vanilla,'' and is governed by U.S. law. Only 50 percent of the amount of eligible external LTD that is due to be paid between one and two years can be used for purposes of the external LTD requirement (though such debt would count in full for purposes of the external TLAC requirement). The amount of eligible external LTD due to be paid in less than one year will not count toward the external TLAC requirement or the external LTD requirement.

In response to comments and to mitigate the impact of the requirements, the final rule differs from the proposal

[22] The Board is required to give due regard to the principle of national treatment and equality of competitive opportunity in developing enhanced prudential standards under the Dodd-Frank Act. 12 U.S.C. 5365(b)(2).

[23] Separately, the Board is continuing to work with the OCC and FDIC to mitigate the resolvability risks related to potential disorderly unwinds of financial contracts.

[24] 12 CFR 217.402; 80 FR 49106 (August 14, 2015).

[25] The proposal was based on the ''remaining maturity'' of the debt, while the final rule is based on the unpaid principal amount ''due to be paid'' for reasons discussed below.

by providing a grandfather for certain outstanding LTD of covered BHCs issued prior to December 31, 2016, to count towards the external LTD and external TLAC requirements in the final rule. The final rule also includes a provision that would allow the Board, after notice and an opportunity to respond, to order a global systemically important BHC to exclude from its outstanding eligible long-term debt amount any debt securities with features that would significantly impair the ability of such debt securities to take losses.

Under the external TLAC requirement of the final rule, a covered BHC is required to maintain outstanding eligible external total loss-absorbing capacity (''eligible external TLAC'') in an amount not less than the greater of 18 percent of the covered BHC's total risk-weighted assets and 7.5 percent of the covered BHC's total leverage exposure.[26] In addition, external TLAC buffers that are similar to the capital buffers in the Board's Regulation Q[27] will apply in addition to the risk-weighted asset component and leverage component of the external TLAC requirement. These requirements generally are the same as under the proposal, except the leverage component of the external TLAC requirement has been reduced from 9.5 percent under the proposal to 7.5 percent in the final rule, and the Board has adopted a 2 percent buffer on top of the leverage component of the external TLAC requirement to better align with the risk-weighted asset component and the Board's regulatory capital rules.

Under the external LTD requirement of the final rule, a covered BHC is required to maintain outstanding eligible external long-term debt instruments (eligible external LTD) in an amount not less than the greater of 6 percent plus the surcharge applicable under the GSIB surcharge rule (expressed as a percentage) of total risk-weighted assets and 4.5 percent of total leverage exposure. These requirements are the same as under the proposal. The external LTD requirement is calibrated by reference to a ''capital refill'' framework that helps to ensure that the covered BHC could be effectively recapitalized to the individual capital levels expected of each covered BHC to be sufficiently capitalized in the event that all or most of its capital were depleted. Because the capital requirements that apply to covered BHCs depend, in part, on idiosyncratic measures of a covered BHC's risks and, in part, on standardized measures of risk that are common across all bank holding companies, the LTD requirements that apply to a particular covered BHC will vary. To the extent that these capital requirements are updated over time, the Board would also expect to consider updating the associated external LTD requirement in an effort to preserve the general alignment between the Board's capital rules and the external LTD requirements.

2. Total Loss-Absorbing Capacity and Long-Term Debt Requirements for Covered U.S. Intermediate Holding Companies

The term ''covered IHC'' is defined in the final rule to include any U.S. IHC that (a) is required to be formed under the Board's enhanced prudential standards rule, and (b) is controlled by a foreign banking organization that has been designated as a GSIB or would be designated as a GSIB under the Board's capital rules.[28] Under the final rule, a ''covered IHC'' is required to maintain outstanding minimum levels of eligible total loss-absorbing capacity and eligible long-term debt beginning on January 1, 2019. A covered IHC's eligible TLAC generally is defined to be the sum of (a) the tier 1 regulatory capital issued from the covered IHC to a foreign parent entity that controls the covered IHC and (b) the covered IHC's eligible LTD, as defined below.

Under the final rule, the amount of eligible total loss-absorbing capacity (''eligible TLAC'') and long-term debt that a covered IHC is required to maintain outstanding, as well as whether the eligible long-term debt component may be issued externally, depends on whether the covered IHC (or any of its subsidiaries) is expected to enter resolution (resolution covered IHC) in a multiple-point-of-entry (MPOE) resolution strategy, or to continue to operate outside of resolution proceedings (non-resolution covered IHC) while a foreign parent entity is resolved under a single-point-of-entry (SPOE) resolution strategy.[29] A key modification to the proposal is that, under the final rule, a resolution covered IHC that adopts an MPOE resolution strategy would have the option to issue capital and LTD externally to third parties in a fashion similar to covered BHCs (and consistent with their resolution strategy) as described below. Non-resolution covered IHCs continue to be required under the final rule to issue LTD internally.

In particular, under the final rule, the capital and long-term debt of a non-resolution covered IHC will be required to be issued either to a foreign company that controls the covered IHC (a ''foreign parent'') or to a directly or indirectly wholly-owned foreign subsidiary of the top-tier foreign parent (internal TLAC and LTD) consistent with the SPOE resolution strategy. The proposal, by contrast, required a foreign parent to hold internal TLAC and LTD issued by covered IHCs. In response to comments, the final rule was changed from the proposal to allow any directly or indirectly wholly owned subsidiary of the top-tier foreign parent to hold eligible internal TLAC and LTD issued by covered IHCs. This change is consistent with the overall objectives of the proposal that a non-resolution

[26] Total leverage exposure is defined in 12 CFR 217.10(c)(4)(ii).

[27] 12 CFR part 217.

[28] The Board's enhanced prudential standards rule generally requires any foreign banking organization with total consolidated non-branch U.S. assets of $50 billion or more to form a single U.S. intermediate holding company over its U.S. subsidiaries. 12 CFR 252.153; 79 FR 17329 (May 27, 2014).

[29] In developing the TLAC and LTD requirements in the proposal and final rule, the Board considered the two scenarios under which large financial firms are likely to be resolved following failure. In one scenario, an SPOE resolution, only the top-tier holding company would enter a resolution proceeding. An SPOE resolution thus would avoid the need for separate proceedings for separate legal entities run by separate authorities across multiple jurisdictions and the associated destabilizing complexity. The losses that caused the banking organization to fail would be passed up from the subsidiaries that incurred the losses using one of several potential mechanisms and would then be imposed on the equity holders and unsecured creditors of the holding company, which would have the effect of recapitalizing the subsidiaries of the banking organization. An SPOE resolution could avoid losses to the third-party creditors of the subsidiaries and could thereby allow the subsidiaries to continue normal operations, without entering resolution or taking actions (such as asset fire sales) that could pose a risk to the financial stability of the United States. The expectation that the holding company's equity holders and unsecured creditors would absorb the banking organization's losses in the event of its failure would also help to maintain the confidence of the operating subsidiaries' creditors and counterparties, reducing their incentive to engage in potentially destabilizing funding runs. Most of the U.S. GSIBs, as well as most foreign GSIBs, are developing plans that facilitate an SPOE approach, including in their most recent resolution plans.

The other likely resolution scenario is an MPOE resolution. An MPOE resolution involves separate resolutions of different legal entities within a financial firm and could potentially be executed by multiple resolution authorities across multiple jurisdictions. The final rule would improve the prospects for a successful MPOE resolution of a GSIB by requiring U.S. GSIBs and the intermediate holding company of a foreign GSIBs to maintain substantially more loss-absorbing capacity. The final rule also includes certain features that would facilitate the resolution of a foreign GSIB under an MPOE resolution. Moreover, an MPOE resolution strategy involving the resolution of a covered IHC may often effectively be an SPOE resolution strategy of their U.S. operations.

covered IHC upstream any losses outside of the United States to a parent foreign banking organization. By contrast, under the final rule, a resolution covered IHC will have the option to issue its LTD internally to its foreign affiliates or externally to third-party investors consistent with an MPOE resolution strategy.

Under the final rule, beginning on January 1, 2019, non-resolution covered IHCs are required to maintain eligible internal TLAC in an amount not less than the greater of: (a) 16 percent of the covered IHC's total risk-weighted assets; (b) 6 percent of the covered IHC's total leverage exposure (for covered IHCs that are subject to the supplementary leverage ratio); [30] and (c) 8 percent of the covered IHC's average total consolidated assets, as computed for purposes of the U.S. tier 1 leverage ratio.[31] For all covered IHCs, a buffer that is similar to the capital conservation buffer in the Board's Regulation Q will apply in addition to the risk-weighted assets component of the TLAC requirement. These requirements for non-resolution covered IHCs are the same as under the proposal. In addition, under the final rule and as explained above, a non-resolution covered IHC is required to issue internal LTD to a foreign parent that controls the IHC as under the proposal, or to a directly or indirectly wholly owned foreign subsidiary of the top-tier foreign parent.

Under the final rule, beginning on January 1, 2019, resolution covered IHCs are required to maintain outstanding eligible TLAC in an amount not less than the greater of (a) 18 percent of the covered IHC's total risk-weighted assets; (b) 6.75 percent of the covered IHC's total leverage exposure (if applicable); and (c) 9 percent of the covered IHC's average total consolidated assets, as computed for purposes of the U.S. tier 1 leverage ratio. As noted above, for all covered IHCs, a TLAC buffer that is similar to the capital conservation buffer in the Board's Regulation Q applies in addition to the risk-weighted assets component of the TLAC requirement. These requirements are generally the same as under the proposal.

In response to comments, the minimum eligible LTD requirements have been adjusted downward to reflect the same balance-sheet depletion assumption afforded to the calibration of the eligible external LTD requirements of U.S. bank holding companies. Accordingly, all covered IHCs (whether or not a resolution entity) will be required under the final rule to maintain outstanding eligible LTD in an amount not less than the greater of (a) 6 percent of total risk-weighted assets; (b) 2.5 percent of the total leverage exposure (if applicable); and (c) 3.5 percent of average total consolidated assets, as computed for purposes of the U.S. tier 1 leverage ratio. As discussed in more detail below, the final rule also includes a provision that would allow the Board, after notice and an opportunity to respond, to order a covered IHC to exclude from its outstanding long-term debt amount any debt securities with features that would significantly impair the ability of such debt securities to take losses.

A covered IHC's eligible LTD generally is subject to the same requirements as the requirements that apply to eligible external LTD for U.S. GSIBs: The eligible LTD must be issued directly from the covered IHC, be unsecured, have only ''plain vanilla'' features, and be governed by U.S. law. The amount of eligible LTD that is due to be paid between one and two years is subject to a 50 percent haircut for purposes of the LTD requirement, and eligible LTD amounts due to be paid in less than one year will not count toward the LTD requirement.

In addition, the final rule has been modified to allow eligible LTD issued by covered IHCs, whether external or internal LTD, to have the same acceleration clauses that are permitted for eligible external LTD issued by covered BHCs. Moreover, under the final rule, covered IHCs will have the option to adopt contractual subordination or structural subordination for their eligible long-term debt; under the proposal covered IHCs were required to contractually subordinate their long-term debt. These modifications will allow covered IHCs to issue eligible long-term debt, whether internal or external, on similar terms as covered BHCs under the final rule and therefore reduce burden on covered IHCs and help ensure national treatment and competitive equality. In response to comments and to mitigate the impact of the requirements, the final rule differs from the proposal by providing a grandfather for certain outstanding eligible external LTD of resolution covered IHCs issued prior to December 31, 2016.

However, one key feature will continue to distinguish eligible internal LTD from eligible external LTD for covered IHC's (both for non-resolution covered IHCs and for resolution covered IHCs that exercise their option to issue their LTD internally). Eligible internal LTD must include a contractual trigger pursuant to which the Board could require the covered IHC to convert or exchange the LTD into common equity tier 1 capital without the covered IHC's entry into a resolution proceeding in certain circumstances. These circumstances are (a) the Board determines that the covered IHC is ''in default or in danger of default''; and (b) any of the following situations apply (i) the top-tier foreign banking organization or any subsidiary outside the United States is placed into resolution proceedings, (ii) the home country supervisory authority consents to the conversion, or does not object to the conversion following 24 hours' notice, or (iii) the Board makes a written recommendation to the Secretary of the Treasury that the Federal Deposit Insurance Corporation (FDIC) should be appointed as receiver of the covered IHC.

In response to comments, the final rule includes certain changes to the requirement that the Board must be able to cause a covered IHC to convert its LTD to equity. Under the proposed rule, the contractual conversion trigger would have allowed the Board to cancel or convert the covered IHC's LTD. The final rule includes only the requirement that LTD be convertible into equity and does not include the requirement that LTD be subject to cancellation. Thus, under the final rule, a covered IHC must include a contractual conversion provision in its LTD that would allow the Board to order the conversion of the long-term debt into equity. In addition, the final rule has been modified to allow the Board to convert all or part of a covered IHC's LTD into equity. The intended purpose of these changes, along with allowing certain acceleration clauses and structural subordination, is to provide flexibility consistent with the purposes of the rule and to respond to concerns raised by commenters regarding the contractual conversion trigger as further discussed below. The Board believes that these changes respond to comments on the proposed rule and serve to mitigate the costs of the conversion feature on covered IHCs.

[30] Under the IHC rule, U.S. intermediate holding companies with total consolidated assets of $250 billion or more or on-balance sheet foreign exposure equal to $10 billion or more are required to meet a minimum supplementary leverage ratio of 3 percent. 12 CFR 252.153(e)(2); 79 FR 17329 (March 27, 2014).

[31] The final rule imposes the same leverage capital requirements on U.S. intermediate holding companies as it does on U.S. bank holding companies. 12 CFR 252.153(e)(2); 79 FR 17329 (March 27, 2014). These leverage capital requirements include the generally applicable leverage ratio and the supplementary leverage ratio for U.S. intermediate holding companies that meet the scope of application for that ratio.

3. Clean Holding Company Requirements

The final rule prohibits or limits covered BHCs and covered IHCs from directly entering into certain financial arrangements that could impede an entity's orderly resolution. These prohibitions and limitations will enhance resiliency by reducing complexity and reliance on short-term funding and are intended to support the orderly resolution of a covered BHC and covered IHC.

Under the final rule, a covered BHC and covered IHC are prohibited from issuing short-term debt instruments to third parties (including deposits); entering into ''qualified financial contracts'' (QFCs) with third parties; having liabilities that are guaranteed by the covered BHC's subsidiaries or subject to contractual offset rights for its subsidiaries' creditors; or issuing certain guarantees of its subsidiaries' liabilities if the liability provides default rights based on the resolution of the covered BHC or covered IHC. This last prohibition has been revised from the proposal to exempt guarantees of liabilities that are subject to any future rule of the Board or another Federal banking agency restricting default rights.

Additionally, the final rule caps the amount of a covered BHC's third-party liabilities (other than those related to eligible external TLAC and eligible external LTD) that can be pari passu with or junior to its eligible external LTD at 5 percent of the value of its eligible external TLAC. The final rule includes a similar cap for covered IHCs that choose structural subordination of their long-term debt though with certain differences for non-resolution covered IHCs and resolution covered IHCs described further below. In each case, under the final rule, both covered BHCs and covered IHCs have the option under the final rule to contractually subordinate their eligible long-term debt to other third-party liabilities without the need for the 5 percent cap. Finally, the final rule requires covered BHCs and covered IHCs that issue long-term debt externally to make certain public disclosures.

4. Capital Deduction

The final rule does not adopt the requirement in the proposal that state member banks, bank holding companies, and savings and loan holding companies and IHCs formed to comply with the Board's enhanced prudential standards for foreign banking organizations deduct investments in the unsecured debt of covered BHCs that exceed certain thresholds from regulatory capital. The Board intends to address these elements of the proposal jointly with the Office of the Comptroller of the Currency (OCC) and FDIC at a later time, in order to apply these requirements consistently to all entities subject to the regulatory capital requirements of the federal banking agencies.

E. Consultation With the FDIC, the Council, and Foreign Authorities

In developing this final rule, the Board consulted with the FDIC, the Financial Stability Oversight Council (Council), and other U.S. financial regulatory agencies. The final rule reflects input that the Board received during this consultation process. Furthermore, the Board has consulted with foreign financial regulatory authorities regarding this final rule and the establishment of other standards that would maximize the prospects for the cooperative and orderly cross-border resolution of failed GSIBs.

II. External TLAC and LTD Requirements for U.S. GSIBs

A. Scope of Application (Section 252.60 of the Final Rule)

The final rule, like the proposal, applies to all ''covered BHCs.'' The term ''covered BHC'' is defined in the final rule in the same manner as the proposal to include any U.S. top-tier bank holding company identified as a global systemically important BHC under the Board's GSIB surcharge rule.[32] Under the GSIB surcharge rule, a U.S. top-tier bank holding company subject to the advanced approaches rule must determine whether it is a global systemically important BHC by applying a multifactor methodology established under the Board's regulatory capital rules.[33] This methodology evaluates a banking organization's systemic importance on the basis of its attributes in five broad categories: Size, interconnectedness, cross-jurisdictional activity, substitutability, and complexity. Accordingly, the methodology provides a tool for identifying as global systemically important BHCs those banking organizations that pose elevated risks. The final rule's focus on global systemically important BHCs is in keeping with the Dodd-Frank Act's mandate that more stringent prudential standards be applied to the most systemically important bank holding companies.[34]

Under the methodology in the GSIB surcharge rule, eight U.S. bank holding companies are currently identified as GSIBs. Those eight top-tier bank holding companies will therefore be covered BHCs subject to this final rule.[35] In addition, because the GSIB surcharge methodology is dynamic, other banking organizations could become subject to the final rule in the future. As under the proposal, a covered BHC will become subject to the requirements of the final rule on the later of January 1, 2019, or three years after the date on which the firm becomes a covered BHC.

The Board did not receive any comments on the proposed methodology for identifying those U.S. BHCs subject to the rule. Accordingly, the Board is adopting this methodology in the final rule without modification.

B. Calibration of the External TLAC and LTD Requirements (Sections 252.62 and 252.63 of the Final Rule)

Under the proposal, a covered BHC would have been required to maintain outstanding eligible external TLAC in an amount not less than the greater of 18 percent of its total risk-weighted assets and 9.5 percent of its total leverage exposure under the supplementary leverage ratio rule.[36] Under the final rule's external TLAC requirement, a covered BHC is required to maintain outstanding eligible external TLAC in an amount not less than the greater of 18 percent of the covered BHC's total risk-weighted assets[37] and

[32] 12 CFR 217.402; 80 FR 49106 (August 14, 2015).

[33] 12 CFR part 217, subpart H.

[34] 12 U.S.C. 5365(a)(1)(B).

[35] The eight firms currently identified as U.S. GSIBs are Bank of America Corporation, The Bank of New York Mellon Corporation, Citigroup Inc., Goldman Sachs Group, Inc., JP Morgan Chase & Co., Morgan Stanley, State Street Corporation, and Wells Fargo & Company.

[36] *See* 12 CFR 217.10(c)(4)(ii). Under the proposal, the risk-weighted assets component of the external TLAC requirement would have been phased in as follows: It would be equal to 16 percent of the covered BHC's risk-weighted assets beginning on January 1, 2019, and would be equal to 18 percent of the covered BHC's risk-weighted assets beginning on January 1, 2022.

[37] A covered BHC would calculate risk-weighted assets for purposes of the external TLAC requirement using the same methodology it uses to calculate risk-weighted assets under the Board's regulatory capital rules. *See* 12 CFR part 217, subparts D and E. The Board's regulatory capital rules require an advanced approaches banking organization (generally, a banking organization with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance sheet foreign exposure) that has successfully completed its parallel run to calculate each of its risk-based capital ratios using the standardized approach and the advanced approaches, and directs the banking organization to use the lower of each ratio as its governing ratio. *See* 12 CFR 217.10.

7.5 percent of the covered BHC's total leverage exposure.

As described below, the reduction of the leverage component of the external TLAC requirement is intended to account for revisions to the proposal. As revised, the final rule includes a buffer over the minimum external TLAC leverage exposure requirement that is being added in the final rule for parallelism with the buffer over the risk-weighted asset measure of external TLAC and with the Board's Regulation Q. As a result, two separate external TLAC buffers apply in addition to both the risk-weighted assets component and leverage component of the external TLAC requirement under the final rule.

Under the final rule's external LTD requirement, as under the proposal, a covered BHC is required to maintain outstanding eligible external LTD in an amount not less than the greater of 6 percent plus the surcharge applicable under the GSIB surcharge rule (expressed as a percentage) of total risk-weighted assets and 4.5 percent of total leverage exposure. Covered BHCs are prohibited from redeeming or repurchasing eligible external LTD prior to its stated maturity date without obtaining prior approval from the Board where the redemption or repurchase would cause the covered BHC's eligible external LTD to fall below its external LTD requirement. A summary table of the final rule's calibrations for eligible external TLAC and LTD appears below.

TABLE 1—ELIGIBLE EXTERNAL TLAC AND LTD CALIBRATIONS UNDER THE FINAL RULE FOR COVERED BHCS

	Risk-weighted assets	Leverage
Covered BHCs:		
External TLAC	18 percent plus buffer	7.5 percent plus buffer.
External LTD	6 percent plus GSIB surcharge	4.5 percent.

In developing the final rule, the Board considered comments on the calibration of the proposed external TLAC and LTD requirements. A number of commenters supported the external TLAC and LTD requirements in the proposed rule, and some commenters suggested that the requirements were appropriately calibrated to support U.S. financial stability. A few commenters, however, suggested that higher minimum TLAC requirements would provide additional financial stability benefits. Certain commenters argued that the external TLAC requirement should be calibrated using a more severe set of loss assumptions than the historical loss experience of major financial institutions during past financial crises, or set at a significantly higher percentage of a covered BHC's risk-weighted assets. For example, one commenter argued that the requirements should be well above a requirement informed by the most recent financial crisis and recommended a minimum TLAC requirement of 30 percent of risk-weighted assets.

A few commenters argued that the calibration of the external TLAC and external LTD requirements in the proposed rule was higher than necessary to support a successful resolution, did not take into account other regulatory efforts to address financial stability, and would impede economic growth and access to capital. These commenters generally supported adjusting the calibration of the external TLAC and LTD requirements by lowering the minimum external TLAC and LTD percentages levels. For example, certain commenters suggested reducing the risk-weighted asset component of the TLAC requirement from 18 percent to 14 percent and reducing the supplementary leverage ratio component of the TLAC requirement from 9.5 percent to 6.75, 7.5 or 8 percent. Similarly, one commenter suggested reducing the leverage component of LTD from 4.5 percent to 2.5 percent.

In addition, some commenters urged the Board to eliminate or significantly reduce the component of the external TLAC and external LTD requirement calculated as a percentage of the covered BHC's total leverage exposure in light of the lack of risk sensitivity of this measure. The commenters that objected to the calibrations as too high argued that superequivalent external TLAC and LTD requirements of the proposal relative to the FSB standard would put U.S. firms at a competitive disadvantage. Other commenters, however, expressed the view that superequivalence relative to the FSB requirements would enhance the competitive position of U.S. institutions and U.S. financial stability.

Certain commenters urged that the separate long-term debt requirement in the proposed rule be eliminated and that covered BHCs should be permitted to meet TLAC requirements with either equity or debt. These commenters argued that equity capital is the best way to ensure that firms are well capitalized and can absorb losses and that equity can act as a going-concern or gone-concern form of capital. These commenters further argued that if a separate LTD requirement were retained in the final rule, the final rule should include a one-year cure period for any breaches of the LTD requirement. Other commenters, however, including a member of Congress, expressed support for a separate long-term debt requirement to strengthen the resilience of covered firms and support recapitalization in a resolution, which would likely only occur after equity capital is depleted.

With regard to the calibration in the final rule, the Board balanced the need to help ensure the orderly resolution of a GSIB without imposing unduly high costs on the economy, against the need to ensure that firms can manage their overall liability structure in a cost effective manner that fits with their overall mix of business lines and funding needs. The final rule retains the overall calibration of the external TLAC and external LTD requirements set forth in the proposal but with certain modifications, discussed below, including a buffer for the leverage component of the external TLAC requirement.

As suggested by some commenters, the Board considered whether to structure the final rule solely around a minimum TLAC requirement—that is, as a single minimum requirement that could be satisfied by any mixture of capital and eligible LTD—without a specific minimum LTD requirement. In the absence of an LTD requirement, a TLAC requirement would permit each covered firm to reduce its expected systemic impact by striking its own balance between reducing its probability of default (by issuing additional going-concern equity capital above regulatory capital minimum requirements) or by reducing the harm it would cause if it were to fail (by issuing additional gone-concern LTD above regulatory capital minimum requirements).[38]

[38] *See* ''Calibrating the GSIB Surcharge'' at 3 (July 20, 2015), available at *www.federalreserve.gov/aboutthefed/boardmeetings/gsib-methodology-paper-20150720.pdf.*

The Board has determined that it is appropriate for the final rule to include both a minimum LTD requirement and a minimum TLAC requirement. Unlike existing equity, LTD can be ''bailed-in'' to create additional equity capital subsequent to a firm's failure. Imposing an LTD requirement would help to ensure that a covered firm would have a known and observable quantity of loss-absorbing capacity in excess of its going-concern equity capital. Unlike common equity, that loss-absorbing capacity would not be at substantial risk of volatility or depletion before the covered BHC fails or enters a resolution proceeding. Thus, the LTD requirements of the final rule would enhance the prospects for the successful resolution of a failed GSIB and thereby better address the too-big-to-fail problem, as compared with an approach that relied solely on a minimum TLAC requirement.

The availability of long-term debt that can serve as a fresh source of capital is vital to ensure a successful recapitalization of a failing firm experiencing stress without relying on government or taxpayer support to provide additional equity capital. The calibration of the TLAC and LTD requirements in the final rule takes into account the various statutory and regulatory requirements applicable to covered BHCs and other financial institutions, including those designed to enhance the stability of the United States financial system and support a successful resolution. In addition, the empirical analysis underlying the final rule's calibration described below suggests it would be sufficient to support the viability of a covered BHC during a period of severe economic stress.

The final rule also retains the proposed leverage-related TLAC and LTD requirements. Capital requirements based on simple measures of equity to total assets and capital requirements based on risk are complementary tools. Risk-based capital requirements reflect the different risk characteristics of different assets, while leverage capital requirements act as a backstop and act as a counterweight to potential arbitrage of risk-based capital requirements. For these reasons, the required TLAC and LTD requirements in the final rule include both risk-weighted and leverage-related components to ensure a robust set of requirements that are not overly dependent on a single risk measurement framework.

The calibration of the external TLAC requirement in the final rule is based in part on an analysis of the historical loss experience of major financial institutions during financial crises. First, a targeted analysis of losses of U.S. financial firms during the 2007–2009 financial crisis was performed. The analysis considered the loss experiences of the 19 bank holding companies that participated in the Supervisory Capital Assessment Program (SCAP).[39] This analysis combined the losses actually sustained by those firms during the 2007–2008 period with their 2009 SCAP loss projections[40] and the government recapitalization support that they received. This provided an estimate of the level of losses that would have been sustained in the absence of extraordinary government intervention in the financial system, which likely prevented substantial losses that each firm would otherwise have incurred as a result of the material financial distress or failure of major counterparties. The purpose of a TLAC requirement is to ensure that GSIBs have sufficient loss-absorbing capacity to absorb significant losses and then be recapitalized to the level necessary for them to face the market on a going-concern basis without public-sector support. Therefore, the sum of losses and public-sector recapitalization provides a good measure for the approximate level of TLAC necessary to achieve this purpose.

The analysis found that the bank holding company with the most severe loss experience incurred estimated losses and recapitalization needs of roughly 19 percent of risk-weighted assets. The risk-weighted assets component of the external TLAC requirement is consistent with this high-water mark from the global financial crisis. This historical analysis confirms the appropriateness of the calibration under the final rule.

Additionally, a separate quantitative study of the experiences of 13 U.S. and foreign GSIBs and other major financial firms that incurred substantial losses during the 2007–2009 financial crisis and the Japanese financial crisis of the 1990s was conducted. With respect to each firm, the study considered both the peak losses incurred by the firm (measured in terms of total comprehensive income) over the loss period and public-sector capital support, incorporating both direct capital injections and asset relief transactions.

The study examined losses and recapitalization needs in terms of both risk-weighted assets and total assets, which is relevant to the total leverage exposure component of the external TLAC requirement. The calibration of the external TLAC requirement in the final rule is consistent with the findings of this historical survey. The risk-weighted assets component of the final rule exceeds a substantial majority of the loss-and-recapitalization experiences surveyed, while the total leverage exposure requirement is slightly higher than the most severe experience surveyed. These are appropriate results in light of the Dodd-Frank Act's focus on the mitigation of risks that could arise from the material financial distress or failure of the largest, most systemic financial institutions, and further supports the calibration of the final rule.[41]

The calibration of the external LTD requirement in the final rule was also informed by an analysis of the extreme loss tail of the distribution of income for large U.S. bank holding companies over the past several decades. This analysis closely resembled the analysis that informed the calibration of the minimum risk-based capital requirements in the revised capital framework, but it involved looking further into the loss tail of the income distribution.

Like the proposal, the final rule's external LTD requirement was calibrated primarily on the basis of a ''capital refill'' framework. According to the capital refill framework, the objective of the external LTD requirement is to ensure that each covered BHC has a minimum amount of eligible external LTD such that, if the covered BHC's going-concern capital is depleted and the covered BHC fails and enters resolution, the eligible external LTD will be sufficient to absorb losses and fully recapitalize the covered BHC by replenishing its going-concern capital. The amount of eligible external LTD required by the final rule is the amount estimated to be necessary for a covered BHC that has depleted all of its equity capital to return to a sufficient level of going concern capital level without any government assistance or outside investment. Thus, even if a covered BHC were unable to identify outside sources of funding, the company would be capitalized at a level sufficient

[39] *See* Press Release, ''Federal Reserve, OCC, and FDIC release results of the Supervisory Capital Assessment Program'' (May 7, 2009), available at *http://www.federalreserve.gov/newsevents/press/bcreg/20090507a.htm.*

[40] *See* ''The Supervisory Capital Assessment Program: Overview of Results'' (May 7, 2009), available at *http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20090507a1.pdf.* One commenter indicated that it conducted a similar internal analysis and determined that the calibration for external TLAC under the proposed rule is well-sized and would be more than sufficient to restore firms to solvency based on last financial crisis.

[41] *See* 12 U.S.C. 5365.

to support all of the operations that had been in place before resolution proceedings were initiated. This enhanced level of resiliency is appropriate because of the size, interconnectedness, and complexity of covered BHCs. Fulfilling this objective is vital to the use of eligible external LTD to facilitate the orderly resolution of a covered BHC, because an orderly SPOE resolution requires that a firm exiting from resolution have sufficient going-concern capital to maintain market confidence in its solvency so that other market participants will do business with it.

The external LTD requirement was calibrated in accordance with this framework. Under the Board's regulatory capital requirements, a covered BHC must maintain a minimum ratio of common equity tier 1 capital to risk-weighted assets of 4.5 percent. In addition, a covered BHC is subject to a capital conservation buffer of 2.5 percent of risk-weighted assets plus a firm-specific surcharge determined under the GSIB surcharge rule (expressed as a percentage) of risk-weighted assets.[42] Thus, a covered BHC with a GSIB surcharge of 2 percent would be subject to a combined common equity tier 1 capital minimum plus buffers of 9 percent.

Since the calibration of the external LTD requirement is based on the capital refill framework, and the capital refill framework depends on the precise structure and calibration of bank capital requirements, the Board expects to consider updating the external LTD requirement in the event that the Board updates bank capital requirements in a way that materially changes their precise structure or calibration.

Under the final rule, a covered BHC is subject to an external LTD requirement equal to 7 percent of risk-weighted assets, plus the applicable GSIB surcharge, minus a 1 percentage point allowance for balance-sheet depletion. This results in a requirement of 6 percent plus the applicable GSIB surcharge (expressed as a percentage) of risk-weighted assets. Without the 1 percentage point allowance for balance-sheet depletion, the risk-weighted assets component of a covered BHC's external LTD requirement would require it to maintain outstanding an amount of eligible external LTD equal to the full amount of its minimum common equity tier 1 capital ratio plus buffer. The 1 percentage point allowance for balance-sheet depletion is appropriate under the capital refill theory because the losses that the covered BHC incurs leading to its failure will deplete its risk-weighted assets as well as its capital. Accordingly, the pre-failure losses would result in a smaller balance sheet for the covered BHC at the point of failure, meaning that a smaller dollar amount of capital would be required to restore the covered BHC's pre-stress capital level. Although the specific amount of eligible external LTD necessary to restore a covered BHC's pre-stress capital level in light of the diminished size of its post-failure balance sheet will vary in light of the firm-specific GSIB surcharges applicable to the covered BHCs, the Board is applying a uniform 1 percentage point allowance for balance-sheet depletion so as to avoid undue regulatory complexity.

The application of the capital refill framework to the leverage component of the external LTD requirement is analogous. The supplementary leverage ratio requires that bank holding companies maintain a ratio of tier 1 capital to total leverage exposure of at least 3 percent.[43] The enhanced supplementary leverage standards applicable to global systemically important BHCs add to a covered BHC's supplementary leverage ratio minimum a buffer of 2 percent of its total leverage exposure for a total tier 1 capital to total leverage exposure requirement plus buffer of 5 percent.[44] Under the final rule, a covered BHC is subject to an external LTD requirement equal to 4.5 percent of its total leverage exposure. This requirement, which incorporates a balance-sheet depletion allowance of 0.5 percent, is appropriate to ensure that a covered BHC that has depleted its tier 1 capital and failed would be able to refill its capital to meet the minimum leverage ratio requirement and buffer through the exchange or conversion of its eligible external LTD into equity.

The proposed rule would have prohibited a covered BHC from redeeming or repurchasing any outstanding eligible external LTD without the prior approval of the Board, if after the redemption the covered BHC would not meet its external LTD requirement or its external TLAC requirement. One commenter generally supported the proposed prior approval requirement, and, in particular, its limited application to cases where a BHC would fail to meet its external LTD requirement or its external TLAC requirement following redemption or repurchase.

The final rule adopts as proposed the prior approval requirement for redemptions and repurchases of a covered BHC's outstanding eligible external LTD. Allowing a covered BHC to redeem or repurchase its eligible external LTD without prior Board approval, where such redemption or repurchase would not result in the covered BHC failing to comply with the external TLAC and LTD requirements of the final rule, gives the covered BHC flexibility to manage its outstanding debt levels without interfering with the underlying purpose of the rule. In addition and as discussed below, the final rule includes a provision that would allow the Board, after notice and an opportunity to respond, to order a global systemically important BHC to exclude from its outstanding eligible long-term debt amount any debt securities with features that would significantly impair the ability of such debt securities to take losses.[45]

In addition, the final rule does not include a grace period during which a covered BHC that breaches its external LTD requirement could take voluntary actions to come into compliance with such requirement without being subject to any other regulatory consequences, such as an enforcement action, as suggested by certain commenters. The Board expects covered BHCs subject to the final rule to comply with applicable minimum external LTD requirements at all times. The key purpose of the eligible external LTD requirement is to have debt available to absorb losses; a one-year cure period would defeat this purpose by providing a period of time during which covered BHCs would not be required to meet the minimum requirements of the final rule.

[42] *See* 12 CFR 217.10(a)(1); 217.11. Under the Board's capital rules, the capital conservation buffer can be increased by an additional 2.5 percent of risk-weighted assets through the activation of a countercyclical capital buffer. The external LTD requirement does not incorporate any countercyclical capital buffer because it is likely that no such buffer would be active under the economic circumstances most likely to be associated with the failure and resolution of a covered BHC.

[43] 12 CFR 217.10(a)(5).

[44] The supplementary leverage ratio requirement and buffer become effective January 1, 2018. *See* 12 CFR 217.1(f)(1)(iii)(B).

[45] Section 263.83 of the Board's rules of procedures describes the notice and response procedures that apply if the Board determines that a company's capital levels are not adequate. *See* 12 CFR 263.83. The Board would follow the same procedures under the final rule to determine that a covered BHC must exclude from its eligible LTD amount securities with features that would significantly impair the ability of such debt securities to take losses. For example, the Board would provide notice to a company of its intention to require the company to exclude certain securities from its eligible LTD amount and up to 14 days to respond before the Board would issue a final notice requiring that company exclude the securities from its eligible LTD amount, unless the Board determines that a shorter period is necessary.

C. Core Features of Eligible External TLAC (Section 252.63(b) of the Final Rule)

The core features of eligible external TLAC under the final rule are the same as under the proposal. Under the final rule, a covered BHC's eligible external TLAC would be defined to be the sum of (a) the tier 1 regulatory capital (common equity tier 1 capital and additional tier 1 capital) issued directly by the covered BHC (excluding any tier 1 minority interests), and (b) the covered BHC's eligible external LTD, as defined below.[46] Tier 2 capital that meets the definition of eligible external LTD would continue to count toward the external LTD and TLAC requirements.

Certain commenters urged the Board to harmonize the proposed TLAC requirement with the Basel III Capital framework by not disqualifying minority interests in consolidated subsidiaries from counting as TLAC. These commenters argued that the qualifying criteria imposed on minority interests in consolidated subsidiaries in the U.S. capital rules and Basel capital framework significantly haircut the amount of minority interest in a consolidated subsidiary that may be included in a parent organization's regulatory capital, thus mitigating any concern that the subsidiary's loss absorbing capacity would be unavailable to absorb losses anywhere in an banking organization.

Like the proposal, the final rule does not permit minority interests in consolidated subsidiaries to count as TLAC. The requirement that regulatory capital be issued out of the covered BHC itself (rather than by a subsidiary) is intended to ensure that the total required amount of loss-absorbing capacity would be available to absorb losses incurred anywhere in the banking organization (through downstreaming of resources from the BHC to the subsidiary that has incurred the losses, if necessary).

D. External TLAC Buffers (Section 252.63(c) of the Final Rule)

The proposal would have imposed a buffer over the external TLAC requirement measured as a percentage of risk-weighted assets, but did not include a buffer over the external TLAC requirement measured as a percentage of total leverage exposure. The final rule retains the proposed buffer for the risk-weighted assets component of the external TLAC requirement and adds a buffer for the leverage component of the external TLAC requirement to address concerns raised by commenters regarding burden of the proposal's total leverage exposure requirement and for better parallelism with the regulatory capital framework in Regulation Q.

The Board received several comments on the proposed external TLAC buffer. The Board received comment arguing that the buffer should be broadened to apply to the leverage component of the external TLAC requirement, as well as the external LTD requirement, so that similar limitations on capital distributions and discretionary bonus payments would apply to each of the minimum requirements under the rule. A commenter also urged the Board to align the leverage component of the external TLAC requirement with the enhanced supplementary leverage ratio standard in Regulation Q by reducing the leverage component of the external TLAC requirement by 2 percent and adding a 2 percent buffer over this component. Commenters noted that, where the leverage component of the external TLAC requirement was binding, a buffer over this component of the external TLAC requirement would impose progressively more stringent limits on a firm's ability to make capital distribution and discretionary bonus payments as its capital was depleted, in parallel with the proposed buffer over the risk-weighted assets component of the external TLAC requirement. Another commenter suggested that breaches of the TLAC buffer should bar any capital distributions and discretionary bonus payments until the firm has refilled its TLAC buffer, rather than only resulting in the incremental limits to the firm's ability to make such payments. A commenter further urged the Board to study how the proposed TLAC buffer would interact with any incentive-based compensation rules issued by the Board and whether the rules were duplicative.

In response to comments received on the proposal, the final rule reduces the minimum amount of the leverage component of the external TLAC requirement and adds, in an equal amount, a TLAC buffer to the leverage component of the external TLAC requirement. Specifically, under the final rule, the leverage component of the external TLAC requirement has been reduced to 7.5 percent from 9.5 percent and a 2 percent buffer has been added over the leverage component of the external TLAC requirement. These changes should address the major concern raised by commenters to create a buffer for the leverage component of external TLAC to better parallel the buffer for the risk-weighted asset component of external TLAC and the Board's regulatory capital rules.

The purpose of the external TLAC buffers is to reduce the risk of insolvency by limiting the ability of a covered bank holding company to make capital distributions and discretionary bonus payments as its capital levels decline in the same manner as capital buffers in the Board's regulatory capital framework limits capital distributions and discretionary bonus payments. The buffer over the leverage component of the external TLAC requirement is designed to operate in a similar manner to the buffer in the enhanced supplementary leverage ratio standards, which functions similarly to the capital conservation buffer by limiting the ability of a company to make capital distributions and discretionary bonus payments as its capital levels decline.

Since the TLAC buffers are intended to be analogous to the capital buffers in Regulation Q, the final rule does not prohibit all discretionary bonus payments and dividends for breach of the applicable buffer, as suggested by one commenter, or include separate buffers on top of the long-term debt requirements. The Board notes that a covered BHC subject to this final rule may also be subject to future rules related to incentive compensation and that covered BHCs must comply with all applicable regulatory requirements.[47]

A covered BHC's external TLAC buffer for the risk-weighted asset component (TLAC risk-weighted assets buffer) is equal to the sum of 2.5 percent plus the GSIB surcharge applicable to the covered BHC under method 1 of the GSIB surcharge rule[48] plus any applicable countercyclical capital buffer. The external TLAC risk-weighted assets buffer must be filled solely with common equity tier 1 capital, and a covered BHC's breach of its external TLAC risk-weighted assets buffer would subject it to limits on capital distributions and discretionary bonus payments in accordance with Table 1 to section 252.63 of the final rule. Thus, the external TLAC risk-weighted asset buffer is analogous to the capital conservation buffer applicable under the Board's Regulation Q, except that it applies in addition to the external TLAC requirement rather than in addition to

[46] Although eligible external LTD due to be paid between one and two years would be subject to a 50 percent haircut for purposes of the external LTD requirement, such eligible external LTD would continue to count at full value for purposes of the external TLAC requirement in the same manner as under the proposal. As discussed below, eligible external LTD due to be paid in less than one year would not count toward either the external TLAC requirement or the external LTD requirement.

[47] *See* 12 U.S.C. 956; 81 FR 37670 (June 10, 2016).

[48] 80 FR 49082 (Aug. 14, 2015); 12 CFR part 217, subpart H.

minimum risk-based capital requirements under Regulation Q and incorporates only the applicable GSIB surcharge amount required under method 1 of the GSIB surcharge rule (rather than the greater of the applicable GSIB surcharge under method 1 and method 2).[49]

A covered BHC's external TLAC buffer for the total leverage exposure component of the external TLAC requirement (TLAC leverage buffer) is equal to 2 percent of total leverage exposure, the same as the buffer set by the enhanced supplementary leverage ratio standards. The TLAC leverage buffer must be filled solely with tier 1 capital, and a covered BHC's breach of its TLAC leverage buffer also subjects it to similar limits on capital distributions and discretionary bonus payments, as described in Table 2 to section 252.63 of the final rule. Accordingly, the TLAC leverage buffer is analogous to the buffer established under the enhanced supplementary leverage ratio standards except that it would apply in addition to the external TLAC requirement.[50]

Finally, since under the final rule a covered BHC is subject to both the TLAC risk-weighted assets and TLAC leverage buffers, any limitations on distributions and discretionary bonus payments would be based on the more restrictive of the buffers. As an example, if a covered BHC had an amount of TLAC in excess of the TLAC risk-weighted asset requirement and in excess of the TLAC risk-weighted assets buffer but had an amount of TLAC in excess of the TLAC leverage requirement but less than the TLAC leverage buffer, the covered BHC's distributions and discretionary bonus payments would be limited by the level of its TLAC leverage buffer.

TABLE 2—CALCULATION OF MAXIMUM EXTERNAL TLAC RISK-WEIGHTED ASSET PAYOUT AMOUNT

External TLAC risk-weighted buffer level	Maximum external TLAC risk-weighted payout ratio (as a percentage of eligible retained income)
Greater than the external TLAC risk-weighted buffer	No payout ratio limitation applies.
Less than or equal to the external TLAC risk-weighted buffer, *and* greater than 75 percent of the external TLAC risk-weighted buffer.	60 percent.
Less than or equal to 75 percent of the external TLAC risk-weighted buffer, *and* greater than 50 percent of the external TLAC risk-weighted buffer.	40 percent.
Less than or equal to 50 percent of the external TLAC risk-weighted buffer, *and* greater than 25 percent of the external TLAC risk-weighted buffer.	20 percent.
Less than or equal to 25 percent of the external TLAC risk-weighted buffer	0 percent.

TABLE 3—CALCULATION OF MAXIMUM EXTERNAL TLAC LEVERAGE PAYOUT AMOUNT

External TLAC leverage buffer level	Maximum external TLAC leverage payout ratio (as a percentage of eligible retained income)
Greater than 2.0 percent	No payout ratio limitation applies.
Less than or equal to 2.0 percent, and greater than 1.5 percent	60 percent.
Less than or equal to 1.5 percent, and greater than 1.0 percent	40 percent.
Less than or equal to 1.0 percent, and greater than 0.5 percent	20 percent.
Less than or equal to 0.5 percent	0 percent.

A covered BHC's external TLAC risk-weighted asset buffer level will be equal to its common equity tier 1 capital ratio minus that portion (if any) of its common equity tier 1 capital ratio (expressed as a percentage) that could be used to meet the risk-weighted assets component of the external TLAC requirement. To calculate its external TLAC risk-weighted assets buffer level, a covered BHC will subtract from its common equity tier 1 capital ratio the greater of 0 percent and the following figure: The risk-weighted assets component of the covered BHC's external TLAC requirement minus the ratio of its additional tier 1 capital (excluding tier 1 minority interest) to its risk-weighted assets and minus the ratio of its outstanding eligible external LTD to its risk-weighted assets.

For example, suppose that a covered BHC called ''BHC A'' has a common equity tier 1 capital ratio of 10 percent, an additional tier 1 capital ratio of 2 percent, an outstanding eligible external LTD amount equal to 8 percent of its risk-weighted assets, and no tier 1 minority interest. Suppose further that BHC A is subject to an external risk-weighted asset TLAC requirement of 18 percent and an external risk-weighted assets TLAC buffer of 5 percent of risk-weighted assets. BHC A would meet its external risk-weighted asset TLAC requirement because the sum of its common equity tier 1 capital ratio, its additional tier 1 capital ratio, and the ratio of its eligible external LTD to risk-weighted assets would be equal to 20, which is greater than 18. Moreover, BHC A would have an external TLAC risk-weighted assets buffer level equal to $10 - (18 - 2 - 8) = 2$ percent. Because 2 percent is less than 50 percent and more than 25 percent of the applicable 5 percent external TLAC buffer, BHC A would be subject to a maximum external TLAC risk-weighted payout ratio of 20 percent of eligible retained income.

The covered BHC's external TLAC leverage buffer level would be equal to its supplementary leverage ratio minus that portion (if any) of its supplementary leverage ratio (expressed as a percentage) that is used to meet the leverage component of the external TLAC requirement. To calculate its external TLAC leverage buffer level, a

[49] *See* 12 CFR 217, subpart H.

[50] *See* 79 FR 24528 (May 1, 2014); 80 FR 49082 (August 14, 2015).

covered BHC would subtract from its supplementary leverage ratio the greater of 0 percent and the following figure: 7.5 percent (the leverage component of the covered BHC's external TLAC requirement) minus the ratio of its outstanding eligible external LTD amount to its total leverage exposure.

For example, suppose that a covered BHC called ''BHC B'' has a ratio of common equity tier 1 capital to total leverage exposure of 5 percent, a ratio of additional tier 1 capital to total leverage exposure of 1 percent, a ratio of outstanding eligible external LTD amount to total leverage exposure of 3 percent, and no tier 1 minority interest. BHC B will be subject to an external TLAC leverage requirement of 7.5 percent and a TLAC leverage buffer of 2 percent. BHC B would meet its external TLAC leverage requirement because the ratio of its common equity tier 1 capital and additional tier 1 capital plus outstanding eligible external LTD amount to total leverage exposure would be equal to 9 percent. Moreover, BHC B would have a TLAC leverage buffer level equal to $5 - (7.5 - 1 - 3) = 1.5$ percent. Because 1.5 percent is less than or equal to 1.5 percent and greater than 1.0 percent, BHC B would be subject to a 40 percent maximum external TLAC leverage payout ratio for making distributions or discretionary bonus payments.

Finally, it is important to note that if the two examples provided above described a single BHC's TLAC risk-weighted assets buffer level and TLAC leverage buffer level then the BHC would be bound by the TLAC risk-weighted assets buffer because it would be more restrictive.

In order to comply with the external TLAC requirement and satisfy the TLAC risk-weighted assets buffer and TLAC leverage buffer, a covered BHC would need to have an outstanding TLAC amount sufficient to satisfy both the risk-weighted assets component and the total leverage exposure component of the TLAC requirement, as well as additional capital sufficient to satisfy both buffers. A covered BHC generally may use the same regulatory capital to satisfy its external TLAC requirement and the minimum ratios under Regulation Q. Therefore, a covered BHC that satisfies the minimum requirements and buffers under Regulation Q, and complies with the external LTD requirement, generally will satisfy the external TLAC requirement and the TLAC risk-weighted assets buffer and TLAC leverage buffer.

The rationale for the external TLAC buffers is similar to the rationale for the capital conservation buffer established by the Board's Regulation Q. During the 2007–2009 financial crisis, some banking organizations continued to pay dividends and substantial discretionary bonuses even as their financial condition weakened. These capital distributions weakened the financial system and exacerbated the crisis. The external TLAC buffers are intended to encourage covered BHCs to practice sound capital conservation and thus to enhance the resilience of covered BHCs and of the financial system as a whole. The external TLAC buffers pursue this goal by providing covered BHCs with incentives to hold sufficient capital to reduce the risk that their eligible external TLAC would fall below the minimum external TLAC requirement during a period of financial stress.

E. Core Features of Eligible External LTD (section 252.61 of the final rule)

Under the final rule, a covered BHC's eligible external LTD is defined to be debt that is paid in and issued directly by the covered BHC, is unsecured, has a maturity of greater than one year from the date of issuance, has ''plain vanilla'' features, and is governed by U.S. law. While the core features of eligible external LTD are generally the same under the final rule as under the proposal, eligible external LTD under the final rule also includes certain debt instruments issued prior to December 31, 2016 that do not meet all the same requirements of eligible external LTD as described further below. Principal due to be paid on eligible external LTD in one year or more and less than two years is subject to a 50 percent haircut for purposes of the external LTD requirement, and principal due to be paid on eligible external LTD in less than one year would not count toward the external LTD requirement.

Commenters expressed general concerns about the criteria that long-term debt would be required to meet in order to count towards a firm's external long-term debt requirement. Some commenters suggested that the definition of eligible external LTD should be expanded to include a broader set of debt securities that may be available to absorb losses and recapitalize the covered BHC in a Title II resolution or bankruptcy. Several commenters suggested that the definition of eligible external LTD should include all capital structure liabilities, which would include all debt instruments available to absorb losses that have a reasonably determinable claim in bankruptcy, including instruments with standard acceleration clauses, instruments issued under foreign law, and principal-protected structured notes. Certain commenters, for example, urged the Board to permit all instruments that satisfy the Board's tier 2 regulatory capital requirements to qualify as eligible LTD, including preferred stock.[51] Commenters also noted that the criteria proposed for eligible external LTD would disqualify a significant amount of the existing, outstanding long-term debt issued by covered BHCs.

Several commenters suggested that the existing, outstanding long-term debt issued by covered BHCs should qualify as eligible external LTD, even if such debt does not meet all of the requirements for eligible external LTD. Some of these commenters noted that other actions covered BHCs would need to take to conform outstanding debt to the requirements for eligible external LTD in lieu of grandfathering—such as tendering and replacing outstanding debt, exchanging outstanding debt, or acquiring bondholder consent to amend the terms of outstanding debt—would impose significant costs on covered BHCs, costs that would be significantly reduced if the Board permitted such debt to qualify as eligible external LTD for even a short transitional period after the effective date of the final rule. Many of these commenters proposed that all external debt issued by covered BHCs before the effective date of the final rule should be permanently grandfathered to qualify as eligible external LTD. Other commenters proposed permitting outstanding long-term debt to qualify as eligible external LTD if such debt would be ineligible only due to one of the following features: The inclusion of otherwise impermissible acceleration clauses, such debt being subject to foreign law, or debt that was ineligible due to inclusion of a market-based redemption feature (*e.g.,* a security with a survivor put provision). Certain commenters noted that nearly all outstanding long-term debt issued by covered BHCs includes standard market acceleration clauses that would be impermissible under the proposal absent an explicit grandfathering provision in the final rule and that a significant fraction of currently outstanding long-term debt issued by covered IHCs has been issued under foreign law.

As discussed below, the general purpose of the proposed limitations on eligible long-term debt was to ensure the adequacy of the instruments to absorb losses in a resolution of the covered

[51] Commenters requested that preferred stock be allowed as eligible external LTD and eligible internal LTD. The Board is declining to allow preferred stock for either form of LTD for the same reasons as described below.

BHC. As a consequence, the final rule largely retains the eligibility criteria for eligible external LTD set forth in the proposal, with important modifications to address concerns raised by commenters. The modifications provided in the final rule to the eligibility criteria for eligible external LTD should mitigate the impact on covered BHCs and preserve the marketability of such debt, without adversely impacting its loss-absorbing capacity in resolution.

In response to concerns raised by comments, and to mitigate the impact of the requirements, the final rule includes as eligible external LTD those long-term debt instruments that are issued by a covered BHC prior to December 31, 2016 even if these instruments contain otherwise impermissible acceleration clauses or are subject to foreign law as described below. This grandfathering provision would largely eliminate the costs of modifying the terms of existing, outstanding debt or issuing new debt to meet the minimum requirements as cited by commenters. Over time, debt that is grandfathered will mature and be replaced by long-term debt that meets the eligibility criteria of the final rule. As noted above, the final rule also contains a provision that would allow the Board, after notice and an opportunity to respond, to exclude from a covered BHC's outstanding long-term debt, the amount of any debt securities with features that would impair the ability of the debt to absorb losses.

1. Issuance by the Covered BHC and Prohibition on Own Holdings

Consistent with the proposal, eligible external LTD would be required to be paid in and issued directly by the covered BHC itself—that is, by the banking organization's top-tier holding company. Thus, debt instruments issued by a subsidiary would not qualify as eligible external LTD, even if they would qualify as regulatory capital.

Two commenters requested that the final rule make explicit whether TruPS would be classified as eligible external LTD in the final rule. In a typical TruPS structure, a trust holds assets consisting solely of junior subordinated notes issued by the bank holding company to the trust, and the trust issues the TruPS to investors. Therefore, TruPS, as typically structured, would not meet the requirement in the final rule that the debt be issued externally by the covered BHC. In addition, TruPS do not meet the criteria that such debt be ''plain vanilla,'' given the somewhat complex structure used to issue TruPS to the market, and the fact that TruPS are hybrid equity-debt instruments.

One commenter, who argued that TruPS should count as LTD, noted that its existing TruPS had impermissible acceleration clauses, another feature that would disqualify the securities from counting as eligible external LTD. In addition, information provided by commenters and the Board's review of available information regarding outstanding TruPS issued by U.S. covered BHCs suggests that the effect of not counting TruPS as eligible long-term debt would have a relatively minor impact on covered BHCs.

The requirement that eligible external LTD be issued by the covered BHC itself serves two purposes. First, as with the requirement that regulatory capital be issued directly by the covered BHC in order to count as eligible external TLAC, this requirement allows eligible external LTD to be used to absorb losses incurred anywhere in the banking organization. By contrast, loss-absorbing debt issued by a subsidiary would lack this flexibility and would generally be available only to absorb losses incurred by that particular subsidiary.

Second, issuance directly from a covered BHC would enable the use of the eligible external LTD in an SPOE resolution of the covered BHC. Under the SPOE approach, only the covered BHC itself would enter resolution. The covered BHC's eligible external LTD would be used to absorb losses incurred throughout the banking organization, enabling the recapitalization of operating subsidiaries that had incurred losses and enabling those subsidiaries to continue operating on a going-concern basis. For this approach to be implemented successfully, the eligible external LTD must be issued directly by the covered BHC. Debt issued by a subsidiary generally cannot be used to absorb losses, even at the issuing subsidiary itself, unless that subsidiary enters a resolution proceeding. Therefore, permitting debt issued by a subsidiary to qualify as eligible external LTD would be contrary to the SPOE approach and potentially would create risks to the orderly resolution of a covered BHC.

2. Unsecured

Eligible external LTD is required to be unsecured, not guaranteed by the covered BHC or a subsidiary of the covered BHC, and not subject to any other arrangement that legally or economically enhances the seniority of the instrument (such as a credit enhancement provided by an affiliate). As no commenters raised issues regarding the requirement that eligible LTD must be unsecured, the final rule retains this requirement with no changes from the proposal.

The primary rationale for this restriction is to ensure that eligible external LTD can serve its intended purpose of absorbing losses incurred by the banking organization in resolution. To the extent that a creditor is secured, it can avoid suffering losses by seizing the collateral that secures the debt. This would thwart the purpose of eligible external LTD by leaving losses with the covered BHC (which would lose the collateral) rather than imposing them on the eligible external LTD creditor (which could take the collateral).

A secondary purpose of the restriction is to prevent eligible external LTD from contributing to the asset fire sales that can occur when a financial institution fails and its secured creditors seize and liquidate collateral. Asset fire sales can drive down the value of the assets being sold, which can undermine financial stability by transmitting financial stress from the failed firm to other entities that hold similar assets.

Finally, the requirement that eligible external LTD be unsecured ensures that losses can be imposed on that debt in resolution in accordance with the standard creditor hierarchy in bankruptcy, under which secured creditors are paid ahead of unsecured creditors.

3. ''Plain Vanilla''

As under the proposal, eligible external LTD instruments are required to be ''plain-vanilla'' instruments under the final rule. Exotic features could create complexity and thereby diminish the prospects for an orderly resolution of a covered BHC. These limitations would help to ensure that a covered BHC's eligible external LTD represents loss-absorbing capacity with a definite value that can be quickly determined in resolution. In a resolution proceeding, claims represented by such ''plain-vanilla'' debt instruments are more easily ascertainable and relatively certain compared to more complex and volatile instruments. Permitting these features could engender uncertainty as to the level of the covered BHC's loss-absorbing capacity and could increase the complexity of the resolution proceeding, both of which could undermine market participants' confidence in an SPOE resolution and potentially result in a disorderly resolution. This could occur, for instance, if creditors and counterparties of the covered BHC's subsidiaries decided to reduce their exposures to the subsidiaries of the failed covered BHC by severing business relationships and

refusing to provide additional funding to such subsidiaries.

Under the final rule, eligible external LTD instruments are prohibited from (1) being structured notes; (2) having a credit-sensitive feature; (3) including a contractual provision for conversion into or exchange for equity in the covered BHC; or (4) including a provision that gives the holder a contractual right to accelerate payment (including automatic acceleration), other than a right that is exercisable on a one or more dates specified in the instrument, in the event of the insolvency of the covered BHC, or the covered BHC's failure to make a payment on the instrument when due that continues for 30 days or more.[52]

In response to comments requesting that the Board permit all tier 2 capital to count as eligible LTD, the Board has determined not to include as eligible LTD any instrument that qualifies as tier 2 capital. Certain of these instruments (*e.g.,* certain forms of preferred stock and convertible debt) would not meet the requirement to be ''plain vanilla'' or other aspects of the requirements of eligible LTD (*e.g.,* the prohibition on convertibility features described below). An instrument that qualifies as tier 2 capital will only qualify as eligible LTD under the final rule if it meets the applicable qualification requirements.

a. Structured Notes

The final rule retains the prohibition on counting structured notes, including principal-protected structured notes, as eligible external LTD. Structured notes contain features that could make their valuation uncertain, volatile, or unduly complex. In addition, they are often liabilities of retail customers (as opposed to investor liabilities). To promote resiliency and market discipline, it is important that covered BHCs have a minimum amount of loss-absorbing capacity whose value is easily ascertainable at any given time. Moreover, in an orderly resolution of a covered BHC, debt instruments that will be subjected to losses must be able to be valued accurately and with minimal risk of dispute. The requirement that eligible external LTD not contain the features associated with structured notes advances these goals.

For purposes of the final rule, a ''structured note'' is defined a debt instrument that (a) has a principal amount, redemption amount, or stated maturity that is subject to reduction based on the performance of any asset,[53] entity, index, or embedded derivative or similar embedded feature; (b) has an embedded derivative or similar embedded feature that is linked to one or more equity securities, commodities, assets, or entities; (c) does not have a minimum principal amount that becomes due and payable upon acceleration or early termination; or (d) is not classified as debt under U.S. generally accepted accounting principles. The definition of a structured note does not include a non-dollar-denominated instrument or an instrument whose interest payments are based on an interest rate index (for example, a floating-rate note linked to the federal funds rate or to LIBOR) that satisfies the proposed requirements in all other respects.[54]

Several commenters proposed modifying the ''plain vanilla'' requirement for eligible external LTD to include a broader array of long-term debt securities issued by covered BHCs. In particular, certain commenters suggested that the final rule expand the definition of eligible external LTD to include structured notes that are principal-protected at par, as these notes by their terms require the issuer to pay 100 percent of the stated principal amount of the structured note upon early termination or acceleration and at maturity. As a result, these commenters argued that principal-protected structured notes do not present the same type of valuation issues as other structured notes whose value may be more volatile or uncertain since the minimum amount of any claim in a bankruptcy or Title II proceeding for a principal-protected structured note will always be the stated principal amount of the structured note.

Structured notes with principal protection often combine a zero-coupon bond, which pays no interest until the bond matures, with an option or other derivative product, whose payoff is linked to an underlying asset, index, or benchmark.[55] The derivative feature violates the intent of the clean holding company requirements (described below), which prohibits derivatives entered into by the covered bank holding company with third parties. Moreover, investors in structured notes tend to pay less attention to issuer credit risk than investors in other long-term debt, because structured note investors use structured notes to gain exposure unrelated to the covered BHC. As a result, these investors are less likely to contribute to the market discipline objective of the minimum LTD requirements.

For these same reasons, the final rule does not grandfather existing outstanding structured notes as eligible external TLAC. These products may not serve in a loss absorbing capacity consistent with the intended purposes of the final rule's long-term debt requirement. Moreover, based on figures provided by commenters and the Board's review of available information, the impact of not counting principal-protected structured notes as eligible external LTD is likely to be limited, especially in light of the grandfathering provided in the final rule for other outstanding long-term debt instruments.

b. Contractual Provision for Conversion Into or Exchange for Equity

Consistent with the proposal, the final rule retains the requirement that eligible external LTD be prohibited from including contractual provisions for conversion into or exchange for equity. Some commenters supported the requirement that the eligible external LTD not exclude debt that is convertible or exchangeable into equity of the covered BHC, arguing that such a conversion feature would reduce the financial stability benefits of the debt and increase risks to investors. By contrast, other commenters pointed out that tier 2 capital includes debt that may convert into tier 1 capital, but under the proposed rule would not count towards a firm's LTD or TLAC requirements even though such securities would be ''loss-absorbing'' either on an as-converted basis, or as outstanding debt. Consequently, these commenters contended that such securities should count as eligible external LTD (or, at a minimum, count towards a covered BHC's TLAC requirement). These commenters also stated that, while covered BHCs currently do not have long-term debt with such convertibility features outstanding, covered BHCs may wish to issue debt securities with such convertibility features in the future, particularly in times of stress when issuing other forms of capital could be difficult.

[52] As under the proposal, this restriction would be subject to an exception that would permit eligible external LTD instruments to give the holder a future put right as of a date certain, subject to the provisions discussed below regarding when the debt is due to be paid.

[53] Assets would include loans, debt securities, and other financial instruments.

[54] One commenter recommended that the final rule clarify that instruments denominated in a currency other that U.S. dollars would not constitute ''structured notes'' and therefore may qualify as eligible external LTD. The same commenter noted that the final rule should clarify that an instrument whose interest payments are linked to an interest rate index would not be a structured note merely due to inclusion of this feature. The preamble to the proposed rule addressed these points and changes to provide further clarity are reflected in the final rule.

[55] *https://www.sec.gov/investor/alerts/structurednotes.htm.*

The fundamental objective of the external LTD requirement is to ensure that covered BHCs will have a minimum amount of loss-absorbing capacity available to absorb losses upon the covered BHC's entry into resolution. Debt instruments that could convert into equity prior to resolution may not serve this goal, since by doing so they would reduce the amount of debt that will be available to absorb losses in resolution. In addition, debt with features to allow conversion into equity are often complex and thus may not be characterized as ''plain vanilla.'' Convertible debt instruments may be viewed as debt instruments with an embedded stock call option. The embedded stock call option introduces a derivative-linked feature to the debt instrument that is inconsistent with the purpose of the clean holding company requirements (described below) and introduces uncertainty and complexity into the value of such securities. For these reasons, under the final rule, eligible external LTD may not include contractual provisions allowing for the conversion into or exchange for equity prior to the covered BHC's resolution. Moreover, in light of the fact that commenters indicate that existing outstanding debt generally does not contain such convertibility features, the impact of such a prohibition is likely to be immaterial.

c. Credit-Sensitive Features and Acceleration Clauses

Under the proposal, eligible external LTD was prohibited from having a credit-sensitive feature or giving the holder of the instrument a contractual right to the acceleration of payment of principal or interest at any time prior to the instrument's stated maturity (an acceleration clause), other than upon the occurrence of either an insolvency event or a payment default event, except that eligible external LTD instruments would be permitted to give the holder a put right as of a future date certain, subject to the remaining maturity provisions discussed below.

Several commenters expressed concerns with the proposed limitations on acceleration clauses. These commenters contended that the Board's final rule should permit more classes of acceleration clauses. In particular, these commenters argued that a covered BHC is unlikely to breach any traditional covenants that result in acceleration unless it were on the brink of insolvency. Traditional covenants range from covenants that are impossible to breach inadvertently, such as those not to enter a merger transaction or sell all or substantially all of their assets unless the successor assumes the debt securities subject to the covenant or to pledge the stock of material subsidiaries, to those that are administrative in nature and easy to comply with or cure breaches of, such as maintaining paying agents in certain locations. Commenters also argued that some classes of acceleration clauses that would be barred by the proposal would be unlikely to frustrate the purposes of the rule, and should therefore be permitted, including, for example, clauses permitting acceleration upon the event of non-payment of principal or interest (subject to a period during which the covered BHC could ''cure'' the failure to pay), restrictions on mergers or asset transfers, limits on the sale of principal subsidiaries, and other procedural covenants intended to facilitate payments on, and registration and transfer of, the debt securities. Moreover, commenters argued that these traditional covenants and related acceleration rights are important to investors and have traditionally been demanded and given in the markets for investment-grade senior long-term debt securities issued by covered BHCs.

Commenters contended that nearly all currently outstanding long-term debt of covered BHCs includes standard acceleration clauses, which would not qualify as eligible external LTD under the proposed rule, and that it would be impossible or very expensive to conform or redeem. For these reasons, commenters argued that the impact of this requirement was significant. The commenters asserted that, to the extent such debt is not grandfathered, covered BHCs would have a projected shortfall, as of January 1, 2019, of almost three times the estimated shortfall projected in the proposal. A number of commenters suggested that grandfathering outstanding debt would be helpful to mitigate the impact of the requirements.

A few commenters expressed the view that the final rule should prohibit all acceleration clauses in eligible external LTD, including the insolvency or payment default acceleration clauses permitted under the proposal. These commenters argued that because acceleration clauses related to payment default or insolvency are highly unlikely to protect creditors from losses upon insolvency of a covered BHC, their inclusion could be deceptive for investors.

Under the final rule, eligible external LTD is prohibited from having a credit-sensitive feature or an acceleration clause—a contractual right to the acceleration of payment of principal or interest at any time prior to the instrument's stated maturity, other than upon the occurrence of either an insolvency event or a payment default event that continues for 30 days or more—except that eligible external LTD instruments would be permitted to give the holder a put right as of a future date certain, subject to the provisions discussed below related to when the debt is due to be paid.[56]

The final rule does not broaden the list of acceleration clauses that are permissible for long-term debt (and limits the permissibility of payment default acceleration clauses to those that include a cure period as described below). This restriction on acceleration clauses serves the same purpose as several of the other restrictions discussed above: To ensure that the required amount of loss-absorbing capacity will indeed be available to absorb losses in resolution if the covered BHC fails. Early acceleration clauses, including cross-acceleration clauses, could undermine an orderly resolution by forcing a covered BHC to make payment on the full value of the debt prior to the entry of the covered IHC into resolution, potentially depleting the covered BHC's eligible external LTD immediately prior to resolution. This concern does not apply to acceleration clauses that are triggered by an insolvency event, however, because the insolvency that triggers the clause would generally occur concurrently with the covered BHC's entry into a resolution proceeding.

Senior debt instruments issued by covered BHCs commonly also include payment default event clauses. These clauses provide the holder with a contractual right to accelerate payment upon the occurrence of a ''payment default event''—that is, a failure by the covered BHC to make a required payment when due. Payment default event clauses, which are not permitted in tier 2 regulatory capital, raise more concerns than insolvency event clauses because a payment default event may occur (triggering acceleration) before the institution has entered a resolution proceeding and a stay has been imposed. Such a pre-resolution payment default event could cause a decline in the covered BHC's loss-absorbing capacity.

Nonetheless, the final rule permits eligible external LTD to be subject to payment default event acceleration

[56] This final rule's prohibition is similar to but moderately less stringent than the analogous restriction on tier 2 regulatory capital. The main difference between eligible external LTD and tier 2 capital in this regard is that tier 2 capital is also prohibited from containing payment default event acceleration clauses. *See* 12 CFR 217.20(d)(1)(vi).

rights for two reasons. First, default or acceleration rights upon a borrower's default on its direct payment obligations are a standard feature of senior debt instruments, such that a prohibition on such rights could be unduly disruptive to the potential market for eligible external LTD. Second, the payment default of a covered BHC on an eligible external LTD instrument would likely be a credit event of such significance that whatever diminished capacity led to the payment default event would also be a sufficient trigger for an insolvency event acceleration clause, in which case a prohibition on payment default event acceleration clauses would have little or no practical effect.

In addition, the final rule revises this aspect of the proposal to provide that an acceleration clause relating to a failure to pay principal or interest must include a ''cure period'' of at least 30 days. During this cure period, the covered BHC could make payment on the eligible external LTD before such debt could be accelerated and if the covered BHC satisfies its obligations on the eligible external LTD within the cure period, the instrument could not be accelerated. The purpose of this modification is to ensure that an accidental or temporary failure to pay principal or interest does not trigger immediate acceleration. Moreover, this cure period for interest payments is found in many existing debt instruments and is consistent with current market practice.

As discussed, the final rule's definition of ''eligible debt security'' has been modified to allow debt instruments issued prior to December 31, 2016 that contain otherwise impermissible acceleration clauses to count as eligible long-term debt. This change significantly mitigates the impact of the requirements, because, based on information provided by commenters, nearly all existing outstanding long-term debt issued by covered BHCs contains acceleration clauses that would otherwise be prohibited under the final rule.

Certain commenters argued that the inclusion of acceleration causes could be misleading to investors that hold long-term debt. The disclosure requirements (described below) require a covered BHC to publicly disclose a description of the financial consequences to unsecured debtholders of the covered IHC entering into a resolution proceeding. Accordingly, the disclosure requirements should address the concerns raised by commenters regarding transparency.

Commenters also noted that the proposal does not impose limits on the rights of holders of internal LTD to file suit in the event of non-payment or that such holders would have to waive those rights. However, because of the limitations on acceleration provisions, commenters requested that the Board clarify that the rule does not also limit such rights. The final rule does not require the holder of an eligible debt security to waive the holder's rights to file suit to enforce their ordinary creditor remedies. However, if a covenant involves a redemption or repurchase by the covered BHC (*e.g.,* upon sale of a principal subsidiary), any such covenant would be subject to the restrictions on repurchase described elsewhere in this **SUPPLEMENTARY INFORMATION**, including prior approval from the Board where the redemption or repurchase would cause the covered BHC's eligible external LTD to fall below its external LTD requirement.

4. Minimum Remaining Maturity and Amortization (Section 252.62(b) of the Final Rule)

Under the proposal, eligible external LTD with a remaining maturity of between one and two years would be subject to a 50 percent haircut for purposes of the external LTD requirement, and eligible external LTD with a remaining maturity of less than one year would not count toward the external LTD requirement.

Some commenters recommended that debt with a remaining maturity of at least one year, but less than two years, should not be subject to a haircut for purposes of the external LTD requirement. These commenters argued that this haircut incorrectly assumes that a covered BHC could be cut off from capital markets for a period of up to two years. One commenter noted, for example, that this proposed haircut would depart from the FSB standard, and would thus contribute to unequal treatment of covered BHCs subject to the U.S. requirements and foreign GSIBs subject to rules of foreign jurisdictions that adhere to the FSB standard. Another commenter, however, expressed the view that the proposed haircut is appropriately conservative, and would help to ensure that loss-absorbing resources will likely always exceed a covered BHC's total loss-absorbing capacity needs. One commenter urged the Board to require that LTD have a maturity of considerably longer than one year.

In addition, some commenters suggested that the Board should take into consideration maturity date concentrations in the issuances of covered BHCs. One commenter suggested that the Board should establish a mandatory minimum maturity to which all eligible external LTD would have to comply at issuance. Other commenters, however, urged the Board not to mandate a particular issuance schedule for external LTD of covered BHCs.

The final rule adopts the proposed amortization haircut requirements applicable to eligible external LTD. However, the final rule modifies the terminology from the remaining maturity of the unpaid principal amount to the amount due to be paid. The purpose of this intended change is to clarify that it is the amount of debt due to be paid that counts as eligible LTD under the final rule.[57] Under the final rule, the amount of eligible external LTD that is due to be paid between one and two years would be subject to a 50 percent haircut for purposes of the external LTD requirement, and the amount of eligible external LTD that is due to be paid in less than one year would not count toward the external LTD requirement. The amount of eligible external LTD that is due to be paid in more than two years would count at 100 percent of the unpaid principal amount.

The purpose of these restrictions is to limit the debt that would fill the external LTD requirement to debt that will be reliably available to absorb losses in the event that the covered BHC fails and enters resolution. Debt that is due to be paid in less than one year does not adequately serve this purpose because of the relatively high likelihood that the debt will mature during the period between the time when the covered BHC begins to experience extreme stress and the time when it enters a resolution proceeding. If the debt matures during that period, then it is likely that the creditors would be unwilling to maintain their exposure to the covered BHC and will therefore refuse to roll over the debt or extend new credit, and the distressed covered BHC will likely be unable to replace the debt with new long-term debt that would be available to absorb losses in resolution. This run-off dynamic could result in a case where the covered BHC enters resolution with materially less loss-absorbing capacity than would be required to recapitalize its subsidiaries, potentially resulting in a disorderly

[57] The final rule makes clear that when principal payments are due, rather than the remaining maturity, governs the amount of LTD that counts toward the minimum requirements under the final rule. A covered BHC may only count the unpaid principal amount that is due to be paid as eligible external LTD. For amortizing debt, when the covered BHC pays back principal, that amount would not count toward the minimum LTD requirements in the final rule.

resolution. To protect against this outcome, eligible external LTD would cease to count toward the external LTD requirement upon being due to be paid in less than on year, so that the full required amount of loss-absorbing capacity would be available in resolution even if the resolution period were preceded by a year-long stress period.[58]

For the same reasons, eligible external LTD that is due to be paid in less than two years but greater than or equal to one year is subject to a 50 percent haircut under the final rule for purposes of the external LTD requirement, meaning that only 50 percent of the value of its principal amount would count toward the external LTD requirement.[59] This amortization provision is intended to protect a covered BHC's loss-absorbing capacity against a run-off period in excess of one year (as might occur during a financial crisis or other protracted stress period) in two ways. First, it requires covered BHCs that rely on eligible external LTD that is vulnerable to such a run-off period (because it due to be paid in less than two years) to maintain additional loss-absorbing capacity. Second, it incentivizes covered BHCs to reduce or eliminate their reliance on loss-absorbing capacity that is due to be paid less than two years, since by doing so they avoid being required to issue additional eligible external LTD in order to account for the haircut. A covered BHC could reduce its reliance on eligible external LTD that is due to be paid in less than two years by staggering its issuance, by issuing eligible external LTD that is due to be paid after a longer period, or by redeeming and replacing eligible external LTD once the amount due to be paid falls below two years.

The final rule also provides similar treatment for eligible external LTD that could become subject to a ''put'' right—that is, a right of the holder to require the issuer to redeem the debt on demand—prior to reaching its stated maturity. As under the proposal, such an instrument would be treated as if it were due to be paid on the day on which it first became subject to the put right, since on that day the creditor would be capable of demanding payment and thereby subtracting the value of the instrument from the covered BHC's loss-absorbing capacity.[60]

One commenter also recommended that the Board permit or grandfather long-term debt with a ''survivor put'' feature—that is, a provision that says that, on the death of the holder, the named holder's representative may require the issuer to repay the security within a designated period after the primary holder's death—to count as eligible external LTD. Under the final rule, the date on which debt is due to be paid of an outstanding eligible debt security is the date that the holder first has a contractual right to request or require payment of principal, provided that, with respect to a right that is exercisable on one or more dates that are specified in the instrument only on the occurrence of an event, the date will be calculated as if the event has occurred. Therefore, under the final rule, debt with a survivor put right would be treated as having matured on the first day it became subject to a put right, which would be the day of issuance. Because eligible external LTD must have a maturity of greater than one year, debt with a survivor put would therefore not qualify as eligible external LTD. For similar reasons, the final rule does not grandfather as eligible LTD outstanding long-term debt with such survivor put features.

5. Governing Law

Eligible long-term debt instruments should consist only of liabilities that can be effectively used to absorb losses during the resolution of a covered BHC under the U.S. Bankruptcy Code or Title II without giving rise to material risk of successful legal challenge. To this end, the proposal would have required eligible external LTD to be governed by the laws of the United States or any State, which would include the U.S. Bankruptcy Code and Title II.

Several commenters argued that long-term debt subject to foreign law should not be excluded from the definition of eligible external LTD. These commenters contended that a significant fraction (over 10 percent) of existing, outstanding long-term debt securities would be ineligible due to the restriction on foreign governing law. These commenters expressed the view that there is no material risk that any actions taken in a U.S. bankruptcy or Title II proceeding to impose losses on long-term debt securities governed by foreign law would be subject to a successful legal challenge or not upheld by a court in foreign jurisdictions. These commenters pointed out that the United Kingdom, Japan and Australia, which commenters said account for 98 percent of the foreign-law governed LTD outstanding as of September 30, 2015, all have statutes that provide a judicial mechanism for recognizing and giving effect to actions taken in a U.S. bankruptcy or Title II proceeding. Certain commenters recommended that any material risk of a successful legal challenge could be eliminated by including clauses in eligible long-term debt securities that result in investors consenting to any actions taken in U.S. bankruptcy or Title II proceedings in the event of a covered BHC's failure as suggested by the FSB standard which provides that eligible external TLAC may be made subject to the laws of a foreign jurisdiction if the application of the home country's resolution tools is made ''enforceable on the basis of binding statutory provisions or legally enforceable contractual provisions for recognition of resolution actions.''[61]

The final rule retains the requirement that long-term debt subject to foreign law does not qualify as eligible external LTD. Long-term debt that is subject to foreign law would potentially be subject to legal challenge in a foreign jurisdiction, which could jeopardize the orderly resolution of a covered BHC. Foreign courts might not defer to actions of U.S. courts or U.S. resolution authorities requiring the debt be converted into equity, for example, where the conversion negatively impacts foreign bondholders or foreign shareholders. While the presence of recognition regimes abroad does improve the likelihood that these actions would be enforced, it does not guarantee it.

However, to mitigate the impact of this requirement, the final rule's definition of ''eligible debt security'' has been modified to allow debt instruments issued prior to December 31, 2016 that are governed by foreign law to count as eligible long-term debt. Thus, long-term debt that is governed by foreign law and issued before December 31, 2016, may count toward the minimum LTD and TLAC requirements in the final rule.

6. Contractual Subordination

The final rule, like the proposal, does not include a requirement that eligible LTD instruments be contractually

[58] This requirement also accords with market convention, which generally defines ''long-term debt'' as debt with maturity in excess of one year.

[59] As discussed above, the proposed amortization would apply only to eligible external LTD, not to eligible external TLAC. Thus, an eligible external LTD instrument that counts for only half value toward the external LTD requirement because of the 50 percent amortization provision would continue to count for full value toward the external TLAC requirement, although debt with a remaining maturity of less than one year would not count toward either requirement.

[60] The date on which principal is due to be paid would be calculated from the date the put right would first be exercisable regardless of whether the put right would only be exercisable on that date if another event occurred (*e.g.,* a credit rating downgrade).

[61] FSB Standard at 17.

subordinated. Covered BHCs would have the option of contractual subordination or structural subordination.

A number of commenters expressed support for the approach taken in the proposal to not require contractual subordination of eligible external LTD. Some commenters expressed concern that if the final rule required eligible external LTD to be either contractually or structurally subordinated to other liabilities of a covered BHC, long-term debt that failed to meet this criteria would not be available to absorb losses in the event of a resolution of a covered BHC. These commenters expressed the view that structural subordination would sufficiently ensure that eligible external LTD would absorb losses ahead of the liabilities of subsidiaries in an SPOE resolution. These commenters further argued that giving covered BHC's flexibility to comply with the external LTD requirement by either contractual or structural subordination allows for efficient compliance and adaptation to investor risk preferences, and limits the need to re-issue LTD that would otherwise be outstanding and available to absorb losses. By contrast, other comments expressed the view that the failure to include a contractual subordination provision might improve marketability but could be deceptive to investors. One commenter recommended that the Board should prohibit such debt from being called ''senior debt,'' which commenter argued was a title that could further mislead unsophisticated investors.

After reviewing the comments, the Board again considered whether to require eligible external LTD instruments to be contractually subordinated to the claims of general creditors of a covered BHC. A contractual subordination requirement could improve the market discipline imposed on a covered BHC by increasing the clarity of treatment for eligible external LTD holders relative to other creditors as suggested by certain commenters.

There continue to be several reasons to not require eligible LTD be contractually subordinated to the claims of third-party creditor. First, as discussed above, the structural subordination of a covered BHC's creditors to the creditors and counterparties of the covered BHC's subsidiaries already generally ensures that the covered BHC's creditors would absorb losses ahead of the creditors of the covered BHC's subsidiaries in an SPOE resolution of the covered BHC.[62] Second, the final rule includes clean holding company requirements that limit the amount of non-TLAC instruments that could be pari passu with or junior to eligible external LTD, which will further address any concerns with covered BHCs' unsecured creditor hierarchies. In order to provide additional flexibility, the final rule provides that a covered BHC that chooses to issue all of its external LTD with a contractual subordination provision would not be subject to such a cap as described further below.

By limiting the criteria for eligible external LTD to those necessary to achieve the objectives of the final rule, the final rule seeks to retain the broadest possible market for eligible external LTD instruments. Allowing covered BHCs to retain the flexibility to satisfy the external LTD requirement with either senior or subordinated debt instruments should allow covered BHCs to comply with the requirement efficiently, to adapt to debt investors' risk preferences, and to avoid re-issuances of outstanding long-term senior debt instruments that would otherwise meet the criteria for eligible external LTD.

7. Explicit Bail-In Mechanisms

Several commenters recommended that the final rule include an express mechanism by which a covered BHC's eligible external LTD would be ''bailed in'' in the event of the covered BHC's bankruptcy or resolution. These commenters argued that additional detail would facilitate the orderly resolution of a covered BHC and reduce investor uncertainty. For example, such commenters sought clarification that the ''bail in'' of eligible external LTD would wipe out existing equity holders of a covered BHC in a resolution scenario. Other commenters encouraged the Board to mandate that a covered BHC's eligible external LTD could not be bailed in prior to the failure of the firm. One commenter suggested that a covered BHC emerging from bankruptcy or resolution should be required to be significantly simpler.

Under the final rule, eligible external LTD would be ''bailed in'' to absorb losses of the covered BHC only in bankruptcy or resolution proceedings of the firm. In contrast to the debt conversion mechanism that applies to the internal LTD of covered IHCs, as discussed below, the final rule does not require that a covered BHC's eligible external LTD include a specific conversion mechanism that could be triggered outside of bankruptcy or resolution. The requirements in the final rule are written under the assumptions that a covered BHC would recapitalize its subsidiaries in the event of distress so that the subsidiaries could remain operational outside of a bankruptcy or resolution proceedings and that losses the covered BHC sustained by such recapitalization could be imposed on holders of TLAC through a bankruptcy or resolution proceeding. However, the final rule does not prescribe any specific requirements for how a covered BHC would enter into bankruptcy or resolution, as any resolution would be dependent on the specific facts and circumstances of a covered BHC at the time of failure, and would be within the purview of the bankruptcy court (in a proceeding under the U.S. Bankruptcy Code) or the FDIC (in a Title II resolution).

8. Other Comments

Certain commenters argued that a covered BHC's eligible external LTD should be a required component of its executive compensation program. These commenters argued that requiring executives of a covered BHC to be compensated with such debt would help align the incentives of a covered BHC's management with the incentives of other holders of eligible external LTD.

The final rule does not include a requirement that a covered BHC compensate management with eligible external LTD. The intended purpose of this final rule is to improve the resolvability of covered BHCs by requiring them to issue long-term debt. Achieving this policy objective does not, as a general matter, require certain parties to hold the long-term debt of covered BHCs. Moreover, other rules may apply to the incentive compensation practices of covered BHCs.[63]

F. Costs and Benefits

An analysis of the potential costs and benefits of the external TLAC and external LTD requirements was conducted at the time of the release of the proposal. To evaluate the costs attributable to the proposed requirements, this analysis estimated (a)

[62] As discussed above, in an insolvency proceeding, direct third-party claims on a parent holding company's subsidiaries would be superior to the parent holding company's equity claims on the subsidiaries.

[63] Recently, the Board jointly issued with the OCC, the FDIC, the National Credit Union Administration, the Securities and Exchange Commission, and the Federal Housing Finance Agency, joint proposed rules that would implement the incentive compensation requirements of the Dodd-Frank Act. *See* 12 U.S.C. 956; 81 FR 37670 (June 10, 2016).

the extent by which each covered BHCs' required capital and currently outstanding long-term debt fell short of the proposed requirements, (b) the increase in each U.S. GSIB's ongoing cost of funding that would result from meeting the proposed requirements, (c) the expected increase in the interest rates that the U.S. GSIBs would charge to borrowers to make up for their higher funding costs, and (d) any decline in the gross domestic product (GDP) of the United States that would result from these increased lending rates.

The following components relevant to the benefits of the proposed requirements were evaluated: (a) The probability of a financial crisis occurring in a given year, (b) the cumulative economic cost that a financial crisis would impose if it were to occur, and (c) the extent to which the proposed requirements would decrease the likelihood and cost of a financial crisis.

The analysis concluded that the estimated benefits would outweigh the estimated costs and that the proposed external TLAC and LTD requirements would yield a substantial net benefit for the U.S. economy. In evaluating the costs and benefits of the final rule it is important to consider the state of covered BHC's at the time of the proposal. Importantly, while covered BHC's have closed some of the shortfall in their TLAC requirements since the time of the proposal, this activity does not reduce the costs of complying with the requirements. In particular, information reviewed by the Board suggests that covered BHC's aggregate TLAC shortfall has fallen from roughly $120 billion at the time of the proposal to roughly $70 billion as of the third quarter of 2016.[64] This reduction in shortfall, however, does not reduce the overall cost of the requirements but rather demonstrates that covered BHCs have already begun to bear the cost of the requirements of the final rule. Moreover, since the requirements of the final rule have been finalized largely as proposed, the overall estimated costs and benefits of the requirements as described in the final rule have not materially changed from the proposal. Several features of the final rule that differ from the proposal have impacted overall costs and we discuss these below.

A few commenters suggested that the Board underestimated the cost of the rule in the proposal because the proposal's analysis assumed that covered firms' existing long-term debt is eligible under the rule even though much of the existing long-term debt would not have met the eligibility requirements under the proposal. Existing debt containing impermissible acceleration clauses was identified by certain commenters to be present in nearly all of the covered BHC's outstanding traditional long-term debt as of September 30, 2015. Similarly, commenters argued that a significant portion (over 10 percent) of the covered BHC's outstanding LTD would be ineligible under the proposal because it had been issued under foreign law. Commenters estimated that absent any grandfathering of this debt to satisfy the LTD requirements, the resulting shortfall would be in the range of $500 to $700 billion rather than the Board's estimated shortfall of $120 billion under the proposal. The Board believes that these comments on impact have been addressed and the costs of the final rule mitigated in large part by the fact that, as described above, eligible LTD in the final rule includes debt issued prior to December 31, 2016, that contains impermissible acceleration clauses or that is governed by foreign law. As a result the estimated shortfall of $120 billion that was reported in the original proposal is appropriate for considering the economic costs of the final rule.

1. Shortfall Analysis

An analysis of information collected and reviewed by the Board suggested that the total TLAC shortfall of U.S. GSIBs at the time of the proposal was roughly $120 billion.[65] This estimate includes debt with impermissible acceleration clauses and debt that is issued under foreign law but that is included in eligible LTD due to grandfathering of these features under the final rule. In addition, U.S. GSIBs have taken steps to reduce their overall shortfall since the release of the proposal. Information received and reviewed by the Board suggests that the aggregate TLAC shortfall has declined to roughly $70 billion as of the third quarter of 2016. This reduction in the shortfall indicates that the TLAC requirements are manageable as firms have made considerable progress in reducing their shortfalls in the relatively short period of time since the proposal. However, this also indicates that firms have already begun bearing the costs of the final rule by beginning to alter their capital structures after the proposal. The Board estimates that $120 billion is the relevant amount for purposes of considering the cost of the final rule because this is the shortfall that existed at the time of the proposal before covered entities had an opportunity to adjust their capital structure in response to the proposal.

2. Cost-of-Funding Analysis

The analysis also considered the effect that filling the $120 billion shortfall through the issuance of additional eligible external LTD would have on the covered BHCs' cost of funding. This analysis relied on additional information about the amounts and costs of funding of the debt that the covered BHCs and their subsidiaries have outstanding. For the same reasons that were discussed above, the estimated cost of filling the $120 billion shortfall that was described in the proposal is appropriate for estimating the costs of the final rule: It captures the cost that covered entities will bear to fill the shortfall that existed at the time the proposal was released and before covered entities made any changes to their capital structure in response to the proposal's requirements.

One reason that would cause the proposal's cost estimate to be inaccurate would be if the cost of long term debt relative to short term debt changed markedly between the time of the proposal and the final rule. Such a change would indicate that the current costs of filling the shortfall at the time of the release of the final rule would be significantly different from the costs that prevailed at the time of the proposal. One simple measure of the cost of long term versus short term financing is the spread between five-year and three-month U.S. Treasury debt. At the time of the proposal, this yield spread was roughly 1.45 percent and as of November 2016 this spread is roughly 1.1 percent. Accordingly, the cost of exchanging short term debt for long term debt has declined somewhat, which suggests that the estimates provided in the proposal represent a somewhat conservative estimate of filling the estimated shortfall. Accordingly, the estimated cost of filling the shortfall has not been decreased to reflect the modest narrowing in funding spreads.

Several additional assumptions were made to estimate the cost of filling the $120 billion shortfall. First, it was assumed that covered BHCs would fill their shortfalls by replacing existing, ineligible debt with eligible external LTD during the period prior to the effective date of the proposed requirements, rather than by expanding their balance sheets by issuing the new debt while maintaining existing

[64] The TLAC proposal reported a total shortfall of $120BN as of year-end 2014 that was based on different data and assumptions than the estimates presented above.

[65] *See* 80 FR 74926 at 74938.

liabilities outstanding. Second, it was assumed that covered BHCs would minimize the cost associated with meeting the proposed external TLAC and LTD requirements by first replacing with eligible external LTD their ''near-eligible debt''—that is, their outstanding debt that comes closest to meeting all requirements for eligible external LTD (and that therefore entails a cost of funding almost as high as that associated with eligible external LTD)—and by proceeding in this cost-minimizing fashion until the proposed requirements were met. Thus, the marginal cost of each additional dollar of eligible external LTD was assumed to be the surplus of the funding cost associated with eligible external LTD over the funding cost of the covered BHC's highest-cost remaining ineligible debt. Finally, if total near-eligible liabilities were insufficient to fill the shortfall, it was assumed that the covered BHC proceeded to replace more senior, short-term liabilities, such as deposits, with eligible external LTD.

Roughly $65 billion of the aggregate $120 billion shortfall could be filled through the issuance of eligible external LTD in the place of existing near-eligible debt, most of which would be the form of long-term bonds issued by the covered BHCs' bank subsidiaries.[66] Based on market data, it was estimated that the spread between this near-eligible debt and eligible external LTD is between 20 and 30 basis points. Some commenters provided independent estimates of the cost of replacing this near-eligible debt with eligible debt. In particular, a group of commenters estimated that the cost of subordinating near-eligible debt would range from 25 to 100 basis points.[67] The remaining $55 billion shortfall could then be filled through the issuance of eligible external LTD in the place of existing deposits or other lower-cost liabilities. It was estimated that the spread between these liabilities and eligible external LTD would be approximately equal to the spread between the risk-free interest rate and the eligible external LTD rate, which is estimated to be between 100 and 150 basis points. One commenter provided independent estimates of the cost of lengthening the duration of a bank's funding profile, but these estimates compared the costs of three to five year debt versus debt with a ten year maturity, rather than the relative costs of short term, deposit-like funding with longer-term debt.

The funding cost estimates at the low ends of the ranges described above—20 basis points for replacing near-eligible debt and 100 basis points for replacing lower-cost liabilities such as deposits—result in an aggregate increased cost of funding for the covered BHCs of $680 million per year.

A more conservative estimate can be produced using figures at the high ends of these ranges and then further adjusting them upward to reflect a potential supply effect of 30 basis points.[68] Using the resulting, higher figures—130 basis points for replacing near-eligible debt and 200 basis points for replacing lower-cost liabilities—resulted in an estimated aggregate increased cost of funding for the covered BHCs of approximately $2.0 billion per year. The Board notes that this amount is roughly $500 million larger than the estimate that was provided in the proposal since the high estimate of the cost of replacing near-eligible debt with eligible debt has been taken from the higher estimate provided by one group of commenters which was 100 basis points rather than the 30 basis points that was cited in the proposal.

Thus, the aggregate increased cost of funding attributable to the proposed external TLAC and LTD requirement are estimated to be in the range of $680 million to $2.0 billion annually.

3. Increased Lending Rate Analysis

The Board conducted an analysis of increased lending rates using the updated values described previously that was similar to the analysis conducted under the proposal. To arrive at a conservative estimate of the effect of the final rule's external TLAC and LTD requirements on lending rates, it was next assumed that the U.S. GSIBs would maintain their current return-on-equity levels by passing all of their increased funding costs on to borrowers, holding constant their level of lending activity. The increased lending rates that the U.S. GSIBs would charge to borrowers were calculated by dividing both the low-end and the high-end estimated cost-of-funding increases by the U.S. GSIBs' aggregate outstanding loans of roughly $3.2 trillion. Under this analysis, covered BHCs would employ an increased lending rate of 1.3 to 6.3 basis points as a result of the external TLAC and LTD requirements of the final rule. The total dollar value of this increase in funding rates is between $4.2 and $20.2 billion per year in increased lending costs across the entire U.S. economy.

4. Macroeconomic Costs Analysis

The Board also conducted the analysis of macroeconomic costs similar to that conducted for the proposal using the updated values described previously. In prior assessments of the economic impact of regulations on banking organizations, increases in lending rates have been assumed to produce a drag on GDP growth. However, the very modest lending rate increases estimated above—from 1.3 to 6.3 basis points—do not rise to the level of increase that could be expected to meaningfully affect GDP. Thus, from the standpoint of the economy as a whole and consistent with the analysis in the proposal, it appears that the costs associated with the external TLAC and LTD requirements would be minimal.

5. Macroeconomic Benefits Analysis

To estimate the benefits of the final rule's requirements, the analysis built on the framework considered in a recent study titled ''An assessment of the long-term economic impact of stronger capital and liquidity requirements'' (LEI report).[69] The LEI report estimated that, prior to the regulatory reforms undertaken since 2009, the probability of a financial crisis occurring in a given

[66] For purposes of this analysis, structured notes were not treated as near-eligible debt. Structured notes could be viewed as near-eligible debt, but in many cases structured notes serve different purposes than debt that was treated as near-eligible (such as ''plain-vanilla'' bonds issued by covered BHCs' bank subsidiaries). As a result, the analysis assumed that covered BHCs would not replace their outstanding structured notes with eligible external LTD. On the assumption that covered BHCs would indeed replace their outstanding structured notes with eligible external LTD, covered BHCs would be able to meet roughly $100 billion of the aggregate $120 billion shortfall by replacing near-eligible debt with eligible external LTD, which would result in a lower estimated cost impact from the proposed requirements.

[67] This particular estimate was provided by foreign bank commenters that were required under the proposal to contractually subordinate their debt. They indicated these costs reflected arm's length market terms for these transactions and, accordingly, the Board has considered these costs in evaluating the total cost of subordinating the debt.

[68] This accounts for an increase in the interest rate on eligible external LTD caused by the increase in the supply of eligible external LTD as a result of the external LTD requirement. The aggregate shortfall in eligible LTD amounts to approximately 20 percent of the covered BHCs' current eligible LTD, implying that the covered BHCs in the aggregate would need to increase their outstanding eligible external LTD by 3 to 4 percent each year through 2022, when the proposed requirements would be fully phased in. On the basis of both internal analysis and an international survey of market participants in which Board staff participated, it is estimated that this increase in supply would increase spreads of covered BHCs' eligible external LTD by approximately 30 basis points.

[69] Basel Committee on Banking Supervision, ''An assessment of the long-term economic impact of stronger capital and liquidity requirements'' (August 2010), available at *http://www.bis.org/publ/bcbs173.pdf.*

year was between 3.5 percent and 5.2 percent and the cumulative cost was between 20 percent and 100 percent of annual economic output. Even assuming that the lower ends of these ranges are accurate, these estimates reflect the well-understood fact that financial crises impose very substantial costs on the real economy. And the disorderly failures of major financial institutions play a major role in causing and deepening financial crises, as Congress recognized in enacting section 165 of the Dodd-Frank Act.

This final rule will materially reduce the risk that the failure of a covered BHC would pose to the financial stability of the United States by enhancing the prospects for the orderly resolution of such a firm. Moreover, by ensuring that the losses caused by the failure of such a firm are borne by private-sector investors and creditors (the holders of a covered BHC's eligible external TLAC), the final rule will materially reduce the probability that a covered BHC would fail in the first place by giving the firm's shareholders and creditors stronger incentives to discipline its excessive risk-taking. Both of these reductions will promote financial stability and materially reduce the probability that a financial crisis would occur in any given year. The final rule will therefore advance a key objective of the Dodd-Frank Act and help protect the American economy from the substantial potential losses associated with a higher probability of financial crises.

III. TLAC and LTD Requirements for U.S. Intermediate Holding Companies of Global Systemically Important Foreign Banking Organizations

A. Eligible External and Internal Issuance of TLAC and LTD by covered IHCs

One of the key elements of the proposed rule was that it would have required a covered IHC, regardless of its resolution strategy, to issue internal TLAC and LTD—*i.e.,* to issue TLAC and LTD, directly or indirectly, to its foreign parent. A U.S. covered BHC, by contrast, would have been required to issue its TLAC and LTD externally to third-party investors. A number of commenters, particularly foreign banks with MPOE resolution strategies, urged the Board, consistent with the FSB standard, to permit a covered IHC the flexibility to satisfy its TLAC and LTD requirements with instruments issued either to unaffiliated third parties or to foreign parents. These commenters argued that requiring covered IHCs that intend to serve as a point of entry for resolution to maintain internal TLAC issued solely to a parent entity is inconsistent with an MPOE resolution strategy and, in fact, makes it impossible to pursue an MPOE resolution strategy by creating dependencies between the U.S. operations and the larger foreign banking organization. One commenter urged the Board to allow any covered IHC, regardless of its resolution strategy, to issue LTD externally to third-party investors in the same manner as U.S. GSIBs. This commenter suggested that an IHC with an SPOE resolution strategy should be permitted to issue LTD externally, provided that a cap is established to ensure that less than a majority of the covered IHC's LTD is issued to third parties. The purpose of the cap would be to ensure that, in the event that the long-term debt is converted to equity, the foreign parent would remain the controlling owner, thereby preserving alignment of interests between the covered IHC and its parent. Certain commenters also noted that the requirement to issue internally under the proposal limited the funding options available to covered IHCs.

In response to these comments, the proposed rule has been modified to allow a resolution covered IHC, which expects to enter into resolution in the U.S. based on its FBO parent's MPOE resolution strategy, to have the option to issue its capital and debt internally to the FBO parent or to a foreign wholly owned subsidiary of the FBO parent,[70] or externally to third-party investors. The purpose of this change is to ensure that covered IHCs can issue TLAC and LTD in a manner that best fits their adopted resolution strategy. For the same reason, the final rule, like the proposed rule, requires non-resolution covered IHCs that are not expected to enter resolution proceedings in the U.S. (because their foreign parent has adopted an SPOE resolution strategy) to issue debt internally to the FBO parent or to a wholly owned subsidiary of the FBO parent. Requiring internal issuance by these covered IHCs is consistent with their resolution strategy to upstream losses to their home country FBO parent or a wholly owned subsidiary of the FBO parent.

B. Scope of Application (Sections 252.153 and 252.160 of the Final Rule)

The proposed rule would have applied to ''covered IHCs,'' defined to include any U.S. intermediate holding company that is (a) required to be formed under the Board's enhanced prudential standards rule (IHC rule) and (b) controlled by a foreign GSIB.

The proposed rule would have established three methods by which the top-tier foreign banking organization that controls a covered IHC would be deemed a foreign GSIB. First, the proposed rule would have required foreign banking organizations that already provide the information used for the BCBS assessment methodology to use such information to determine whether they have the characteristics of a GSIB under that methodology. Accordingly, the proposed rule would have required a foreign banking organization that controls a U.S. intermediate holding company to notify the Board each year whether its home country regulatory authority has adopted standards consistent with the BCBS assessment methodology; whether the organization, for any reason, prepares or reports the information required for the BCBS assessment methodology; and whether, after using such information, the organization has determined that it is a GSIB under the BCBS assessment methodology.[71] Any foreign banking organization that determined it is a GSIB under the BCBS assessment methodology would have been a foreign GSIB under the proposed rule.

Second, a foreign banking organization would have been deemed a foreign GSIB under the proposed rule if the Board determined that the organization either was a GSIB under the BCBS assessment methodology, or would be a GSIB under the Board's capital rules if the foreign banking organization were a domestic, top-tier bank holding company.

Third, a foreign banking organization would have been deemed a foreign GSIB under the proposed rule if the Board determined that the organization's intermediate holding company, formed pursuant to the IHC rule, would be a GSIB under the Board's capital rules if the intermediate holding company were a top-tier bank holding company.

[70] While the proposed rule required the internal debt to be issued, directly or indirectly, to the parent FBO, the final rule also allows covered IHCs the option to issue internal debt to other foreign affiliates that are wholly owned by the parent FBO, as described below.

[71] As discussed in the supplementary information section to the proposed rule, these notice and determination requirements would have applied to the ''top-tier foreign banking organization,'' which would have been defined as, with respect to a foreign bank, the top-tier entity that controls the foreign bank (if any) unless the Board specifies a subsidiary of such entity as the ''top-tier foreign banking organization.'' Thus, the definition would have included the top-tier entity that controls a foreign bank, which would be the foreign bank if no entity controls the foreign bank, or the entity specified by the Board that is a subsidiary of the top-tier entity.

Several commenters expressed concern with the proposal's method of identifying whether a covered IHC is controlled by a foreign GSIB. In particular, commenters argued that the TLAC requirements should apply only to covered IHCs of foreign banking organizations that have been identified as GSIBs by the FSB. These commenters argued that the additional requirement for covered IHCs to conduct their own assessment using both the Board's methodology and the global methodology and report to the Federal Reserve is overly complex and burdensome, especially where the covered IHC and its top-tier FBO are not close to the GSIB threshold. One commenter requested that the Board confirm it will determine which FBOs are subject to the final rule's requirements by relying exclusively on the method 1 GSIB surcharge calculation and not the method 2 GSIB surcharge calculation.

The final rule adopts the same methodology as the proposal for determining whether a covered IHC is controlled by a foreign GSIB. The methodology in the GSIB surcharge rule identifies the most systemically important U.S. banking organizations. As discussed above with respect to covered BHCs, this methodology evaluates a banking organization's systemic importance on the basis of its size, interconnectedness, cross-jurisdictional activity, substitutability, and complexity. The firms that score the highest on these attributes are classified as GSIBs. While the GSIB surcharge rule itself applies only to U.S. BHCs, its methodology is equally well-suited to evaluating the systemic importance of foreign banking organizations. The method 1 methodology in the GSIB surcharge rule for identifying GSIBs is consistent with the methodology developed by the BCBS to identify GSIBs. Moreover, foreign jurisdictions collect information from banking organizations in connection with that framework that parallels the information collected by the Board for purposes of the Board's GSIB surcharge rule.

Given that the global methodology and the method 1 methodology in the GSIB surcharge rule to identify GSIBs are virtually identical, the two methodologies should lead to the same outcomes, and the requirements in the final rule to identify whether a foreign banking organization is a GSIB should entail minimal additional burden for foreign banking organizations.

The Board received a number of comments arguing that covered IHCs should not be subject to the requirements of the final rule. Commenters contended that the U.S. operations of covered IHCs are not significant enough to justify applying the proposed rule to them and that the Board did not explain its basis for subjecting covered IHCs to the proposal. In particular, certain commenters argued that the proposed internal TLAC and LTD requirements have no relationship to the systemic risk to the U.S. financial system posed by covered IHCs and discriminated against covered IHCs compared to covered BHCs with similar systemic significance based solely on ownership of the covered IHC by a global systemically important FBO. These commenters generally recommended that covered IHCs should be treated more like non-GSIB, similarly sized, domestic bank holding companies, which are not subject to TLAC or LTD requirements under the final rule. These commenters argued that the proposed rules conflicted with the statutory requirements to give due regard to the principle of national treatment and equality of competitive opportunity and take into account the extent to which the financial company is subject on a consolidated basis to home country standards that are comparable to those applied to financial institutions in the United States.[72]

The Dodd-Frank Act requires the Board to give due regard to national treatment and equality of competitive opportunity. This generally means that the Board must, in establishing standards applicable to foreign banking organizations operating in the United States, consider the standards applicable to similarly situated U.S. banking organizations and explain any differences in treatment between the two. The purpose of this requirement is to encourage competition in the U.S. banking market so that neither U.S. banking organizations nor the U.S. operations of foreign banking organizations are unfairly disadvantaged. The requirement does not mean, however, that the same standards must always apply to U.S. banking organizations and foreign banking organizations of a similar size and complexity.

For example, in the context of resolution, covered IHCs are not similarly situated to U.S. banking organizations of a similar size and complexity. Unlike U.S. banking organizations, covered IHCs are connected to foreign GSIBs, which affects the potential impact of their resolution, the contexts under which they will be resolved, and how their resolution will be conducted. Foreign GSIBs, whose failure would impact the financial stability of the global financial system, also pose risks to the financial stability of the United States. Therefore, covered IHCs are more similarly situated to the U.S. GSIBs, and the final rule treats the two groups similarly, with appropriate adjustments to reflect their differences.

The Board's enhanced prudential standards rules identify foreign banking organizations with a substantial U.S. presence and require each of them to form a single U.S. intermediate holding company over their respective U.S. subsidiaries.[73] Thus, whether a foreign banking organization is required to form a U.S. intermediate holding company is an indicator of whether its U.S. presence is substantial. As with the application of the requirements in the final rule to covered BHCs, which are the largest, most systemically important U.S. banking organizations, the final rule's focus on IHCs held by foreign GSIBs is in keeping with the Dodd-Frank Act's mandate that more stringent prudential standards be applied to the most systemically important bank holding companies.[74] Furthermore, as discussed in more detail below, the use of the methodology in the GSIB surcharge rule to identify both foreign and U.S. GSIBs (and to identify both covered BHCs and covered IHCs) promotes a level playing field between U.S. and foreign banking organizations. Thus, the final rule applies to the U.S. operations of those foreign banking organizations that would be considered GSIBs under the Board's GSIB surcharge rule and that have substantial operations in the United States.

Additionally, while some covered IHCs may be subject to comparable TLAC standards in their home jurisdiction, the final rule is tailored to the potential risks presented by the U.S. operations of foreign GSIBs to the U.S. financial system. In this regard, the final rule mandates that a covered IHC have sufficient loss absorbing capacity present in the United States to support a successful recapitalization or resolution of the covered IHC.

C. Resolution and Non-Resolution IHCs (Section 12 CFR 252.164 of the Final Rule)

Under the final rule, as explained above, whether or not a covered IHC has the option to issue debt externally to

[72] 12 U.S.C. 5635(b)(2).

[73] The IHC rule generally requires any foreign banking organization with total consolidated non-branch U.S. assets of $50 billion or more to form a single U.S. intermediate holding company over its U.S. subsidiaries. 12 CFR 252.153; 79 FR 17329 (May 27, 2014).

[74] 12 U.S.C. 5365(a)(1)(B).

third-party investors depends on whether the covered IHC (or any of its subsidiaries) is expected to enter resolution if a foreign parent entity fails (an MPOE strategy), rather than continuing to operate outside of resolution proceedings while a foreign parent entity is resolved (an SPOE strategy). In addition, under the final rule like under the proposal, the amount of eligible total loss-absorbing capacity that a covered IHC would be required to maintain outstanding would depend on whether the covered IHC (or any of its subsidiaries) is expected to enter resolution if a foreign parent entity fails, rather than the covered IHC continuing to operate outside of resolution proceedings.

Under the proposal, the home country resolution authority for the parent foreign banking organization of the covered IHC would have been required to provide a certification to the Board indicating that the authority's planned resolution strategy for the foreign banking organization did not involve the covered IHC or any subsidiary of the covered IHC entering a resolution proceeding in the United States for the covered IHC to have been considered a ''non-resolution entity.'' A few commenters objected to the requirement in the proposal that this determination require the home country resolution authority to provide such a certification to the Board. These commenters generally argued that this requirement created an unnecessary administrative burden that home country resolution authorities may not be able to satisfy—for example, due to internal policies or requirements that would not permit them to make an official certification. These commenters also pointed out that the Board already has enough information to make such a determination. In particular, these commenters noted the Board reviews FBO resolution plans that specify whether their resolution strategy is SPOE or MPOE, and participates in Crisis Management Groups for all covered IHCs of FBOs.

To address these concerns, the final rule modifies the proposal to require the top-tier foreign banking organization with U.S. non-branch assets equal to or greater than $50 billion, rather than the home country resolution authority, to certify to the Board whether the planned resolution strategy of the top-tier foreign banking organization involves the covered IHC or its subsidiaries entering resolution, receivership, insolvency, or similar proceedings in the United States. The certification must be provided by the top-tier foreign banking organization to the Board on the later of June 30, 2017 or one year prior to the date on which the covered IHC is required to comply with the covered IHC TLAC and LTD requirements of the final rule.[75] In addition, the top-tier foreign banking organization with U.S. non-branch assets equal to or greater than $50 billion must provide an updated certification to the Board upon a change in resolution strategy.

A covered IHC is a ''resolution covered IHC'' under the final rule if the certification provided indicates that the top-tier foreign banking organization's planned resolution strategy involves the covered IHC or its subsidiaries entering into resolution, receivership, insolvency or similar proceeding. A covered IHC is a ''non-resolution covered IHC'' under the final rule if the certification provided to the Board indicates that the top-tier foreign banking organization's planned resolution strategy does not involve the covered IHC or its subsidiaries entering into resolution, receivership, insolvency, or similar proceedings in the United States.

In addition, under the final rule, the Board may determine in its discretion that an entity that is certified to be a non-resolution covered IHC is a resolution covered IHC, or that an entity that is certified to be a resolution covered IHC is a non-resolution covered IHC.

In reviewing certifications provided with respect to covered IHCs, the Board would expect to review all the information available to it regarding a firm's resolution strategy, including information provided to it by the firm. The Board would also expect to consult with the firm's home country resolution authority in connection with this review. In addition, the Board may consider a number of factors suggested by commenters including but not limited to whether a foreign banking organization conducts substantial U.S. activities outside of the IHC chain; whether the group's capital and liability structure is set up in a way to allow for losses to be upstreamed to the top-tier parent; whether the top-tier parent or foreign affiliates provide substantial financial or other forms of support to the U.S. operations (*e.g.,* guarantees, contingent claims and other exposures between group entities); whether the covered IHC is operationally independent (*e.g.,* costs are undertaken by the IHC itself and whether the IHC is able to fund itself on a stand-alone basis); whether the covered IHC depends on the top-tier parent or foreign affiliates for the provision of critical shared services or access to infrastructure; whether the covered IHC is dependent on the risk management or risk-mitigating hedging services provided by the top-tier parent or foreign affiliates; and the location where financial activity that is conducted in the United States is booked.

A covered IHC would have one year or a longer period determined by the Board to comply with the requirements of the final rule if it changes its resolution strategy or if the Board determines that the firm certified to the wrong strategy. For example, if the Board determines that a firm that had certified it is a non-resolution covered IHC, which is subject to a lower TLAC requirement under the final rule, is a resolution covered IHC for purposes of the final rule, the IHC would have up to one year from the date on which the Board notifies the covered IHC in writing of such determination to raise additional capital or long-term debt to comply with the requirements of the final rule. Similarly, a firm that certified it was a resolution covered IHC that is determined to be a non-resolution covered IHC would have one year to comply with the requirements of the final rule. Since under the final rule a resolution covered IHC has the option to issue TLAC and LTD externally to third-parties, the one-year period would provide the covered IHC with time to make any necessary adjustments to the composition of its TLAC and LTD, for example by issuing internal LTD to its foreign parent.

As noted, under the final rule, the Board may extend the one-year period discussed above. In acting on any requests for extensions of this time period, the Board would consider whether the covered IHC had made a good faith effort to comply with the requirements of the final rule.

D. Calibration of the TLAC and LTD Requirements (Sections 252.162 and 252.165 of the Final Rule)

The proposed rule would have imposed different minimum internal loss-absorbing capacity (eligible internal TLAC) requirements for covered IHCs expected to enter into resolution proceedings if their foreign parent entity fails (resolution covered IHCs), and covered IHCs not expected to enter resolution proceedings under the same circumstances (non-resolution covered IHCs). The proposed rule would have treated all covered IHCs as resolution

[75] Under the final rule, a covered IHC is required to comply with the rule's requirements by the later of three years after the date on which the U.S. non-branch assets of the foreign banking organization that controls the covered IHC equal or exceed $50 billion, and the date on which the foreign banking organization that controls the covered IHC first became a GSIB.

entities unless the home country resolution authority for the foreign GSIB that controls the covered IHC certified to the Board that the authority's resolution plan for the foreign GSIB adopted an SPOE approach.[76]

Under the proposed rule, covered IHCs that were resolution entities would have been required to maintain a minimum amount of outstanding eligible internal TLAC no less than the greatest of (a) 18 percent of the covered IHC's total risk-weighted assets;[77] (b) 6.75 percent of the covered IHC's total leverage exposure (if applicable); and (c) 9 percent of the covered IHC's average total consolidated assets, as computed for purposes of the U.S. tier 1 leverage ratio. Covered IHCs that were non-resolution entities would have been required to maintain a minimum amount of outstanding eligible internal TLAC no less than the greater of (a) 16 percent of the covered IHC's total risk-weighted assets;[78] (b) 6 percent of the covered IHC's total leverage exposure (if applicable); and (c) 8 percent of the covered IHC's average total consolidated assets, as computed for purposes of the U.S. tier 1 leverage ratio.[79] The proposed rule also would have applied an internal TLAC buffer to all covered IHCs in addition to the applicable risk-weighted assets component of the internal TLAC requirement.

Under the proposed internal LTD requirement, a covered IHC would have been required to maintain outstanding eligible internal long-term debt instruments in an amount not less than the greatest of (a) 7 percent of total risk-weighted assets; (b) 3 percent of the total leverage exposure (if applicable); and (c) 4 percent of average total consolidated assets, as computed for purposes of the U.S. tier 1 leverage ratio. A covered IHC would have been prohibited from redeeming eligible internal LTD prior to the stated maturity date without obtaining prior approval from the Board if after such redemption the covered IHC's eligible internal LTD would fall below its internal LTD requirement.

Some commenters argued that, based on the size of their U.S. operations, covered IHCs should be treated like domestic U.S. bank holding companies that are not subject to the requirements of the final rule. These commenters questioned whether TLAC and LTD requirements for covered IHCs are even necessary, particularly where ownership by a major foreign bank parent would add a source of strength for covered IHCs and where other prudential standards, including robust capital, liquidity, stress testing, and risk management requirements, already address the risk to U.S. financial stability posed by covered IHCs. A few commenters suggested that the Board reserve the power to alter TLAC and LTD requirements for institutions on a case-by-case basis based on the relative importance of the U.S. operations of a foreign banking organization to U.S. financial stability.

Commenters expressed a number of concerns with the proposal's calibration of internal TLAC and LTD for covered IHCs. In general, commenters requested a reduction in the calibration of internal TLAC and LTD for both resolution covered IHCs and non-resolution covered IHCs. Commenters contended that the levels of internal TLAC and LTD under the proposal were far higher than necessary to promote resolvability and resiliency of covered IHCs. Several commenters expressed concern that prepositioning too much capital and LTD at a covered IHC would prevent a foreign banking group from putting resources to better use, either by providing more services to the market or using the capital to assist the covered IHC's foreign affiliates in times of stress.

Other commenters suggested that the requirements could potentially discourage cooperation between U.S. and foreign banking regulators, and perhaps encourage foreign banking regulators to impose more stringent requirements for foreign affiliates of U.S. banking organizations in retaliation for the proposed rule. Commenters concerned about the reaction of foreign regulators to the proposed rule suggested that the Board set the minimum TLAC requirements applicable to covered IHCs in consultation with foreign regulators. Several commenters also suggested that the requirements were so high that they would negatively impact credit markets and thereby decrease economic activity. Commenters argued that the calibration for non-resolution covered IHCs, in particular, was too high and that the Board should follow the approach described in the FSB standard and establish internal TLAC calibration levels for non-resolution covered IHCs based only on the need to ensure home-host country cooperation. These commenters urged that the internal TLAC requirements applicable to non-resolution covered IHCs should be reduced from the proposed level of approximately 90 percent of the TLAC requirements applicable to resolution covered IHCs, the top end of the range set by the FSB standard, to not more than 75 percent of such requirements applicable to resolution covered IHCs, representing the low end of the range recommended by the FSB standard, in order to appropriately incentivize SPOE resolution strategy.[80] These commenters contended that the proposal's higher calibration would not provide enough flexibility to allocate a foreign parent's loss-absorbing capacity wherever necessary within the firm in the case of failure, and that the potential ring-fencing of excessive amounts of capital would reduce, and not enhance, the resilience of the firm. These commenters also argued that non-resolution covered IHCs do not pose the same risks to U.S. financial stability because these firms would receive support from their foreign parents in times of stress.

A number of commenters argued that covered IHCs that are subject to the SLR requirement should not be subject to the additional prong of the covered IHC TLAC and LTD requirements in the proposal that required covered IHCs to maintain TLAC and LTD levels greater than or equal to a percentage of average total consolidated assets, as there is no corresponding requirement imposed on covered BHCs. These commenters urged the Board to remove the average total consolidated assets-based leverage ratio test for covered IHCs subject to the supplemental leverage ratio component of TLAC and LTD.

In addition, commenters urged the Board to allow a portion of internal TLAC to be satisfied through collateralized guarantees, as contemplated in the FSB standard. These commenters suggested that such guarantees would address concerns motivating the proposed internal TLAC requirements in a manner less likely to lead to going-concern ring fencing and ''misallocation risk'' (*i.e.,* trapping

[76] As described above, the final rule has modified this aspect of the proposal.

[77] Under the proposed rule, the risk-weighted assets component of the internal TLAC requirement for covered IHCs of MPOE firms would have been phased in as follows: It would be equal to 16 percent of the covered IHC's risk-weighted assets beginning on January 1, 2019, and would be equal to 18 percent of the covered IHC's risk-weighted assets beginning on January 1, 2022.

[78] Under the proposed rule, the risk-weighted assets component of the internal TLAC requirement would have been phased in as follows: It would be equal to 14 percent of the covered IHC's risk-weighted assets beginning on January 1, 2019, and would be equal to 16 percent of the covered IHC's risk-weighted assets beginning on January 1, 2022.

[79] The final rule imposes the same leverage capital requirements on U.S. intermediate holding companies as it does on U.S. bank holding companies. 12 CFR 252.153(e)(2). These leverage capital requirements include the generally applicable leverage ratio and the supplementary leverage ratio for U.S. intermediate holding companies that meet the scope of application for that ratio.

[80] FSB standard at 19.

resources that may not be needed in a covered IHC through pre-positioning). To reduce misallocation risk, a few commenters argued that the Board should permit a covered IHC to satisfy minimum TLAC and LTD requirements with capital contribution agreements which would obligate a foreign GSIB parent to contribute an amount of assets up to the minimum amount required in order to recapitalize the covered IHC upon the occurrence of certain events. These commenters also recommended that the Board permit covered IHCs to satisfy a portion of their internal TLAC requirements with other forms of parent support that have similar characteristics to such guarantees and satisfy the Board's policy objectives, such as keepwell agreements and uncollateralized guarantees.

A number of commenters argued that the Board should eliminate separate long-term debt requirements for covered IHCs. According to the commenters, separate long-term debt requirements are not necessary to ensure that covered IHCs have enough loss-absorbing capacity to be recapitalized. These commenters asserted that equity can absorb losses equally well both inside and outside of a bankruptcy or Title II proceeding, and can function as both going-concern and gone-concern capital. As a result, these commenters argued that covered IHCs should be able to satisfy their minimum TLAC requirements by freely substituting equity for LTD. A few commenters suggested that, consistent with the FSB standard, LTD for non-resolution IHCs be established as a supervisory expectation, rather than a formal minimum requirement, and that internal LTD be required to comprise no more than 33 percent of internal TLAC. Other commenters, however, noted that requiring covered IHCs to maintain a minimum amount of LTD represents a departure from the FSB standards, which do not require that any portion of internal TLAC consist of long-term debt instruments.

A number of commenters also pointed out that the Board did not apply the ''balance sheet'' depletion approach to calibrate the proposed internal LTD and TLAC requirements that the Board used for determining the calibration levels for the external LTD and TLAC requirements. These commenters urged the Board, consistent with the principle of national treatment, to include this adjustment to the calibration of LTD and TLAC requirements for covered IHCs.

As noted, covered IHCs are more similarly situated to covered BHCs than to U.S. banking organizations of a similar size, and the LTD and TLAC requirements should therefore apply to covered IHCs. Thus, the rationale for the internal LTD and TLAC requirements in the final rule is generally parallel to the rationale for the TLAC and LTD requirements for covered BHCs, as discussed above. Resolution covered IHCs would be subject to a TLAC requirement with a risk-weighted assets component identical to the risk-weighted assets component of the TLAC requirement applicable to covered BHCs. They would be subject to a supplementary leverage ratio component (if applicable) that is lower than the supplementary leverage ratio component of the proposed TLAC requirement applicable to covered BHCs, in recognition of the fact that covered IHCs are not U.S. GSIBs and so would not be subject to the enhanced supplementary leverage ratio that applies to U.S. GSIBs. Finally, covered IHCs are also subject to TLAC and LTD requirements that are based on the U.S. tier 1 leverage ratio.[81]

The calibrations for TLAC and LTD under the final rule applicable to covered IHCs are reflected below:

TABLE 4—COVERED IHC TLAC AND LTD FINAL RULE CALIBRATIONS

		RWA	Leverage: SLR	Leverage: Total assets (%)
Non-Resolution Covered IHC	Covered IHC TLAC	16 percent plus buffer	6 percent (if applicable)	8
	Covered IHC LTD	6 percent	2.5 percent (if applicable).	3.5
Resolution Covered IHC	Covered IHC TLAC	18 percent plus buffer	6.75 percent (if applicable)	9
	Covered IHC LTD	6	2.5 percent (if applicable)	3.5

Other than the adjustment to the LTD calibration to reflect balance sheet depletion, the final rule does not reduce or eliminate the TLAC and LTD requirements in the manner suggested by commenters. However, the final rule does reflect a number of changes intended to address concerns raised by commenters and mitigate the burden of the final rule on covered IHCs. In particular, resolution covered IHCs are permitted under the final rule to issue external debt in the same manner as covered BHCs. Resolution covered IHCs are therefore subject to similar calibrations as covered BHCs under the final rule, because these IHCs are analogous to covered BHCs, which are themselves resolution entities.

The final rule provides that non-resolution covered IHCs are subject to slightly lower TLAC requirements than resolution covered IHCs. However, the final rule does not further reduce the requirement relative to the proposal as requested by commenters. The final rule's calibration of TLAC for non-resolution covered IHCs is the same as under the proposal and within (though toward the higher end) of the recommended range in the FSB standard.

The Board considered comments requesting that the final rule lower the calibration for non-resolution covered IHCs. Most foreign GSIBs are expected to be resolved by their home jurisdiction resolution authorities through an SPOE resolution and are therefore expected to be non-resolution entities under the proposal. Were such an SPOE resolution to succeed, the covered IHC would avoid entering resolution and would continue as a going concern, with its eligible internal TLAC and eligible internal LTD used to transmit the covered IHC's going-concern losses to the parent foreign GSIB, to the extent necessary. However, the final rule recognizes the need to plan for the contingency in which the covered IHC enters a U.S. resolution proceeding. The proposed calibration for such a covered IHC was based on the desirability of providing support for the preferred SPOE resolution of the foreign GSIB. This approach is most effective when a

[81] Generally, a bank holding company is subject to a 4 percent on-balance sheet leverage ratio requirement and a 3 percent supplementary leverage ratio requirement (if the supplementary leverage ratio applies to the bank holding company). The final rule's calibration of the on-balance sheet leverage ratio component of the proposed internal TLAC requirement, 8 percent, is twice the 4 percent requirement to be conceptually consistent with the proposed calibration of the supplementary leverage ratio requirement, 6 percent, which is twice the 3 percent requirement.

foreign GSIB parent has internal loss-absorbing capacity that can be freely allocated to whichever subsidiaries have incurred the greatest losses (including non-U.S. subsidiaries). The value of this flexibility must, however, be balanced against the need to maintain sufficient loss-absorbing capacity in the United States so that a covered IHC can be maintained as a going concern or subjected to an orderly resolution in the United States if the foreign GSIB is not successfully resolved in an SPOE resolution or is otherwise unable to provide support to a non-resolution covered IHC.

For these reasons, the final rule retains the proposed calibrations in order to maximize the likelihood that a non-resolution or resolution covered IHC could be resolved in an orderly manner in the United States. For similar reasons, collateralized guarantees and other forms of contingent support do not count toward the minimum TLAC requirements under the final rule as requested by commenters. These forms of contingent support would not be pre-positioned in the United States and available for use during a period of stress without additional actions by the foreign GSIB parent.

To ensure that the LTD requirements are sufficient to replace a covered IHC's capital in a manner consistent with the Board's existing capital requirements, the LTD requirements are based on each of the three regulatory capital measures applicable to covered IHCs. The final rule does not eliminate, as requested by certain commenters, the total consolidated asset measure for covered IHCs that are subject to the total leverage exposure component because covered IHC's are generally subject to U.S. tier 1 leverage ratio capital requirement and basing the LTD requirements on this capital measure is consistent with the underlying capital refill framework that motivates the requirements.[82]

The proposal has been modified to reduce the minimum LTD requirement applicable to covered IHCs to reflect the same balance sheet depletion approach that was used to calibrate the requirements in the final rule applicable to the covered bank holding companies. Thus, under the final rule, the risk-weighted asset component of the LTD requirements has been reduced from 7 percent under the proposal to 6 percent (4.5 percent plus a 2.5 percent capital conservation buffer with a 1 percentage point allowance for balance sheet depletion); the SLR component from 3 percent to 2.5 percent; and the total assets component from 4 percent to 3.5 percent.

With respect to the comment that the Board should reserve the power to adjust TLAC and LTD requirements for institutions on an case-by-case basis based on the relative importance of the U.S. operations of a foreign banking organization to U.S. financial stability, the final rule, like the proposal, establishes a minimum baseline requirement applicable to all covered IHCs, The possibility of adjusting these requirements on a case-by-case basis is something the Board may consider in the future based on the risk of the particular institution in question as the Board gains more experience with the application of the requirements.

The final rule adds a new provision for covered IHCs to describe the treatment of long-term debt subject to a put right—that is, a right of the holder to require the issuer to redeem the debt on demand—that is the same as the applicable provision for covered BHCs under the final rule. In particular, such an instrument would be treated as if it were due to be paid on the day on which it first became subject to the put right, since on that day the creditor would be capable of demanding payment and thereby subtracting the value of the instrument from the covered BHC's loss-absorbing capacity. Also like the provision applicable to covered BHCs, the Board may order a covered IHC, after notice and an opportunity to respond, to exclude from its outstanding eligible long-term debt amount any debt securities with features that would significantly impair the ability of such debt securities to take losses.

The Board has consulted with, and expects to continue to consult with, foreign financial regulatory authorities regarding the requirements of the final rule. In addition, as noted above, the Board intends to update required TLAC and LTD calibration requirements in light of any future changes to the framework of applicable capital requirements.

E. Core Features of Eligible TLAC (Section 252.165 of the Final Rule)

Under the proposal, a covered IHC's eligible internal TLAC was defined to be the sum of the tier 1 regulatory capital (common equity tier 1 capital and additional tier 1 capital) issued from the covered IHC to a foreign entity that directly or indirectly controls the covered IHC (''foreign parent entity'') and the covered IHC's eligible LTD.[83] Only those tier 2 capital instruments that meet the definition of eligible LTD would have counted toward the TLAC requirement applicable to covered IHCs.

Requiring that regulatory capital be issued directly by a covered IHC, rather than by a subsidiary of the IHC, in order to count as eligible internal TLAC means that a covered IHC would have loss-absorbing capacity available to absorb losses incurred by any subsidiary of the IHC. In contrast, regulatory capital that is issued by one subsidiary of a covered IHC would not necessarily be available to absorb losses incurred by another subsidiary.

Under the proposal, regulatory capital and long-term debt were also required to be issued to a foreign parent entity of the covered IHC. As noted, a number of commenters urged the Board to permit covered IHCs, particularly resolution covered IHCs, to issue capital and long-term debt externally under the final rule. In addition, a few commenters argued that covered IHCs should be permitted to issue capital or long-term debt to any foreign affiliate (*i.e.,* any foreign entity within the foreign GSIB majority owned by the same top-tier foreign parent) rather than just a foreign parent as under the proposal. These

[82] Covered BHCs are not subject to a TLAC or LTD requirement that references total average consolidated assets as is the case for covered IHC's. This is because the U.S. tier 1 leverage ratio requirement applicable to covered IHCs is 4 percent, which is lower than the 5 percent enhanced supplementary leverage ratio requirement. Accordingly, adding a total consolidated assets TLAC or LTD requirement in the case of covered BHCs would be superfluous since the enhanced supplementary leverage ratio based requirement would always be larger than the U.S. tier 1 leverage ratio requirement. This is because both the U.S. tier 1 leverage ratio requirement of 4 percent is lower than the enhanced supplementary leverage ratio requirement of 5 percent, and the total consolidated assets amount is always less than the total leverage exposure amount. This reasoning does not apply in the case of covered IHCs. Covered IHCs are not subject to the enhanced supplementary leverage ratio of 5 percent but are subject to the supplementary leverage ratio of 3 percent. Accordingly, there can be cases in which the U.S. tier 1 leverage ratio based requirement would be larger than the supplementary leverage ratio-based requirement. Since covered IHCs are subject to both the U.S. tier 1 leverage ratio and the supplementary leverage ratio and since the U.S. tier 1 based requirement is not redundant, the final rule requires that the TLAC and LTD requirements reference both the U.S. tier 1 and supplementary leverage ratio capital measures.

[83] Although eligible internal LTD with a remaining maturity between one and two years would have been subject to a 50 percent haircut for purposes of the LTD requirement, such eligible LTD would have counted at full value for purposes of the internal TLAC requirement. As discussed below, eligible internal LTD with a remaining maturity of less than one year would not have counted toward either the internal TLAC requirement or the internal LTD requirement. These requirements are the same under the final rule as under the proposal other than the fact that the final rule considers the date debt is due to be paid rather than the remaining maturity of the debt for reasons described above.

commenters pointed out that internal TLAC and LTD issued to foreign affiliates would transfer losses outside the U.S. just as well as if the internal TLAC or LTD was issued to a foreign parent. Moreover, these commenters argued that broadening TLAC and LTD eligibility to include instruments held by any non-U.S. affiliate of the covered IHC would provide covered IHCs with greater flexibility to satisfy their TLAC and LTD requirements in a manner consistent with global operations and funding structures.

In response to comments, the final rule makes two changes to the proposed internal TLAC requirements. First, resolution covered IHCs have the option to issue capital and long-term debt externally to third-parties under the final rule or to issue it internally to a foreign parent or foreign wholly owned subsidiary of the foreign parent consistent with their resolution strategy.

Second, covered IHCs may issue internal TLAC and LTD to any foreign affiliate of the covered IHC that is wholly owned, directly or indirectly, by the top-tier parent foreign banking organization, in addition to foreign parent entities of the covered IHC. This modification to the proposal provides additional flexibility to foreign banking organizations without compromising the principle that losses incurred by a covered IHC with an SPOE strategy should be upstreamed to a foreign parent or another foreign affiliate rather than being transferred to other U.S. entities. It will also prevent the conversion of eligible LTD into equity from effecting a change in control over the covered IHC in the case of a non-resolution entity IHC that is required to issue internal LTD. A change in control of a covered IHC could create additional and undesirable regulatory and management complexity during a failure scenario, and could severely disrupt an SPOE resolution strategy.

F. TLAC Buffer for Covered IHCs

The proposed rule would have required covered IHCs to maintain a buffer of common equity tier 1 capital in addition to the risk-weighted assets component of the minimum internal TLAC requirement. This buffer would have been similar to the buffer in the proposed rule that would have applied to covered BHCs, except that the internal TLAC buffer would not have included a GSIB surcharge component because covered IHCs are not subject to the Board's GSIB surcharge rule. A covered IHC's internal TLAC buffer would thus be equal to the sum of 2.5 percent plus any applicable countercyclical capital buffer. Under the proposed rule, a covered IHC that breached its buffer would be subject to the limits on capital distributions and discretionary bonus payments.

Commenters questioned whether the internal TLAC buffer was necessary for covered IHCs. These commenters argued that the buffer imposed additional burden with no corresponding benefits and encouraged the Board to eliminate the buffer, particularly for covered IHCs that issued TLAC only to their affiliates. Certain commenters recommended that a breach of the buffer should be addressed by the Board as part of the supervisory process rather than through self-executing restrictions on an IHC's capital distributions and discretionary bonus payments. One commenter argued that the 50 percent haircut on long-term debt operates as a de facto buffer, making the internal TLAC buffer duplicative and unnecessary. This commenter also argued that the TLAC buffer would unnecessarily strain liquidity at the covered IHCs.

The covered IHC TLAC buffer serves the same purpose as the TLAC buffer applicable to covered BHCs: It limits capital distributions and discretionary bonus payments as a firm approaches its minimum TLAC requirements, thereby helping to preserve capital. Consistent with this principle and the proposal, the final rule includes a buffer that for covered IHCs that must be satisfied with common equity tier 1 capital.

Also, consistent with the proposal, a covered IHC's breach of its TLAC buffer would result in limits on capital distributions and discretionary bonus payments in accordance with Table 5. As discussed above with respect to the external TLAC risk-weighted assets buffer, a covered IHC that meets the applicable capital requirements, the existing capital conservation buffer, and the covered IHC LTD requirements generally would not need to increase its common equity tier 1 capital to meet its covered IHC TLAC requirement and its TLAC buffer.

The Board is not adding a buffer over the leverage component of the covered IHC TLAC requirement as described previously for covered BHCs. The buffers in the final rule are designed to be consistent with the buffers in Regulation Q, which only includes a buffer over a leverage requirement for the covered BHCs.

TABLE 5—CALCULATION OF MAXIMUM COVERED IHC TLAC PAYOUT AMOUNT

Covered IHC TLAC buffer level	Maximum covered IHC TLAC payout ratio (as a percentage of eligible retained income)
Greater than the Covered IHC TLAC buffer	No payout ratio limitation applies.
Less than or equal to the Covered IHC TLAC buffer, *and* greater than 75 percent of the Covered IHC TLAC buffer.	60 percent.
Less than or equal to 75 percent of the Covered IHC TLAC buffer, *and* greater than 50 percent of the Covered IHC TLAC buffer.	40 percent.
Less than or equal to 50 percent of the Covered IHC TLAC buffer, *and* greater 25 percent of the Covered IHC TLAC buffer.	20 percent.
Less than or equal to 25 percent of the Covered IHC TLAC buffer	0 percent.

G. Core Features of Eligible Internal and External LTD for Covered IHCs (Section 252.161 of the Final Rule)

Under the proposal, a covered IHC's eligible internal LTD would have been defined as debt that is paid in and issued directly from the covered IHC, is unsecured, has a maturity of greater than one year from the date of issuance, is ''plain vanilla,'' and is governed by U.S. law.[84] These are generally the same requirements as applied under the proposal to eligible external LTD issued by covered BHCs.

A few additional requirements applied to eligible internal LTD under the proposal. Eligible internal LTD would be required to be issued, directly or indirectly, to a foreign parent entity

[84] The proposal required that eligible internal LTD be governed by U.S. law in order to clarify that the conversion and exchange provisions of these instruments, which would be held by foreign companies, are enforceable under U.S. law.

of the covered IHC, to be contractually subordinated to all third-party liabilities of the covered IHC, and to include a contractual trigger pursuant to which the Board could require the covered IHC to cancel the eligible internal LTD or convert or exchange it into tier 1 common equity on a going-concern basis under certain specified conditions. Eligible internal LTD was also prohibited from having any acceleration clauses.

In general, commenters argued that the Board should conform the eligibility requirements of internal LTD for covered IHCs with those of external LTD for covered BHCs because the additional features were costly, unnecessary, and thereby placed covered IHCs at a significant competitive disadvantage relative to covered BHCs. In particular, commenters recommended that the Board eliminate the contractual subordination and contractual trigger requirements and to permit eligible internal LTD to contain the same acceleration events as permitted by long-term debt issued by covered BHCs. Commenters argued that covered IHCs transact with foreign parents on an arm's length basis, and that these features would require covered IHCs to pay a significant premiums for these features. Commenters also argued that these features of eligible internal LTD under the proposal would significantly increase the risk that the debt would be characterized as equity for U.S. income tax purposes and therefore significantly increase costs for covered IHCs. Each of these features, relevant comments, and changes to the final rule to address these concerns are discussed in more detail below.

1. Issuance to a Foreign Parent Entity that Controls the Covered IHC

Under the proposal, eligible internal LTD was required to be paid in and issued, directly or indirectly, to a foreign parent entity that controls the covered IHC. As discussed above, a number of commenters urged the Board to allow external issuance for resolution covered IHCs consistent with their resolution strategy. In response to these comments, the final rule permits resolution covered IHCs to issue eligible long-term debt externally to third-party investors as discussed above. The final rule defines a new term ''eligible external debt security'' with generally the same terms as eligible debt securities issued by covered BHCs.[85] As it would for eligible external LTD issued by covered BHCs, the final rule would also permit an eligible external debt instrument issued prior to December 31, 2016 by a resolution covered IHC that contains otherwise impermissible acceleration clauses and is issued under foreign law to qualify as an eligible external debt security.

Resolution covered IHCs also have the option to issue debt internally to a foreign parent or foreign wholly owned subsidiary of a global systemically important foreign banking organization that directly or indirectly controls the covered IHC. Non-resolution covered IHCs are required under the final rule to issue debt internally to a foreign parent or foreign wholly owned subsidiary of a global systemically important foreign banking organization that directly or indirectly controls the covered IHC, for the reasons described above. The definition of ''eligible internal debt'' security is the same for both types of covered IHCs. The requirements for an ''eligible internal debt security'' are generally the same as the terms for an ''eligible external debt security'' for a resolution covered IHC and ''eligible debt security'' for a covered BHC with a few key differences described below.

The proposal prohibited an eligible internal debt security from having any acceleration clauses. Under the final rule, both an eligible external debt security and an eligible internal debt security would be permitted to have the same types of acceleration clauses permitted for an eligible debt security of a covered BHC. However, unlike for eligible external debt securities, the final rule does not allow eligible internal debt of covered IHCs issued prior to December 31, 2016, to have impermissible acceleration clauses or be issued under foreign law. The Board does not believe that covered IHCs have substantial amounts of internal long-term debt outstanding since the requirement to establish a covered IHC became effective on July 1, 2016.

Moreover, the Board believes that covered IHCs could modify the terms of existing outstanding internal debt issued to a foreign parent or another foreign affiliate with relative ease and low cost.

Another difference from the proposal is that neither an eligible internal debt security nor an eligible external debt security would be required to be contractually subordinated under the final rule. Under the final rule, a covered IHC like a covered BHC would have the option of structural subordination, subject to a similar cap on unrelated liabilities applicable to covered BHCs described further below.

However, eligible internal debt securities would continue to have two key distinctions from eligible external debt securities under the final rule. First, an ''eligible internal debt security'' must be issued to and remain held by a company that is incorporated and organized outside of the United States that directly or indirectly controls the covered IHC, or a foreign, wholly owned subsidiary of a global systemically important foreign banking organization that directly or indirectly controls the covered IHC. Second, the internal debt security must have a contractual provision that is approved by the Board that provides for immediate conversion or exchange of the instrument into common equity tier 1 capital of the covered IHC upon issuance by the Board of an internal debt conversion order.

In response to comments by a number of foreign banks, the Board consulted with the U.S. Department of the Treasury on the possibility that internal LTD could be considered equity—rather than debt—for purposes of U.S. tax law, and therefore increase the cost of the debt relative to the external LTD required of covered BHCs.[86] Four changes to the proposal should mitigate the concerns raised by commenters on the proposal.

First, the final rule removes the ability of the Board to require cancellation of the debt and only retains the ability of the Board to require its conversion or exchange. Second, eligible internal debt securities under the final rule are permitted to have the same acceleration clauses as eligible external LTD. Third, eligible internal debt securities are not required to be contractually

[85] In particular, eligible external debt security is defined as a debt instrument that is paid in, and issued by the covered IHC to and remains held by a company that does not directly or indirectly control the covered IHC and is not a wholly owned subsidiary; is not secured, not guaranteed by the covered IHC or a subsidiary of the covered IHC, and is not subject to any other arrangement that legally or economically enhances the seniority of the instrument; has a maturity of greater than or equal to 365 days (one year) from date of issuance; is governed by the laws of the United States or any State thereof; does not provide the holder of the instrument a contractual right to accelerate payment of principal or interest on the instrument, except for a right that is exercisable on one or more dates that are specified in the instrument or in the event of a receivership, insolvency, liquidation or similar proceeding of the covered IHC or a failure of the covered IHC to pay principal or interest on the instrument when due and payable that continues for 30 days or more; and does not include structured notes.

[86] Commenters noted that, regardless of the characterization of internal LTD as equity under U.S. tax law, coupon payments on internal LTD are likely to be treated as debt in an FBO's home jurisdiction. The commenters argued that the overall result would therefore be the incurrence by FBOs of tax costs in respect of internal LTD substantially in excess of those that would arise from either conventional debt or conventional equity.

subordinated under the final rule. Fourth, the final rule allows the Board to require the partial conversion or exchange of less than all of the eligible internal debt securities of the IHC, whereas the proposal only contemplated 100 percent conversion. A more detailed explanation of these changes follows.

2. Acceleration Clauses

The proposal would have prohibited an eligible internal debt security issued by a covered IHC from having any contractual provision giving the holder of the instrument a contractual right to accelerate payment of principal or interest on the instrument. Many commenters expressed concern with this aspect of the proposal as being stricter than the requirements for covered BHCs and argued that eligible LTD issued by covered IHCs should be permitted to contain the same acceleration events as permitted for eligible debt securities issued by covered BHCs (*i.e.,* acceleration clauses for insolvency and payment default). These commenters explained that covered IHCs may not have more flexibility than covered BHCs to price internal debt because covered IHCs and their non-U.S. affiliates transact on market terms. These commenters also noted that prohibiting all acceleration clauses further increases the risk that eligible LTD would be characterized as equity rather than debt for U.S. federal income tax purposes, creating uncertainty about the tax deductibility of interest payments on eligible internal LTD and whether these payments are subject to withholding tax. These commenters argued that an instrument is more likely to be considered debt for U.S. tax purposes if its holder has adequate legal remedies, such as acceleration rights or the right to sue (*e.g.,* for breaches of debt covenants).

As explained above, the final rule permits both eligible external debt securities and eligible internal debt securities issued by covered IHCs to have the same acceleration clauses permitted under the final rule for covered BHCs. In particular, the eligible long-term debt issued by covered IHCs would not be permitted to provide the holder of the instrument a contractual right to accelerate payment of principal or interest on the instrument, except a right that is exercisable on one or more dates that are specified in the instrument or in the event of (A) a receivership, insolvency, liquidation, or similar proceeding of the covered IHC or (B) a failure of the covered IHC to pay principal or interest on the instrument when due and payable that continues for 30 days or more. The rationale for these requirements is explained in more detail above in connection with the discussion of requirements for eligible long-term debt for covered BHCs.

As for eligible external LTD issued by covered BHCs, the final rule would also permit an eligible external debt instrument issued prior to December 31, 2016 by a resolution covered IHC that contains otherwise impermissible acceleration clauses or is subject to foreign law to count for eligible external LTD. This allowance should mitigate compliance costs on resolution covered IHCs that have outstanding unsecured debt with acceleration clauses or subject to foreign law. The same treatment does not apply to internal LTD. The Board does not believe that covered IHCs have substantial amounts of internal long-term debt outstanding since the requirement to establish a covered IHC became effective on July 1, 2016. Moreover, the Board believes that covered IHCs could modify the terms of existing outstanding internal debt issued to a foreign parent or another foreign affiliate with relative ease and low cost.

Commenters also noted that the proposal does not impose limits on the rights of holders of internal LTD to file suit in the event of non-payment or that such holders would have to waive those rights. However, because of the limitations on acceleration provisions, commenters requested that the Board clarify that the rule does not also limit such rights. The final rule does not require the holder of an eligible internal debt security, eligible external debt security, or eligible debt security to waive the holder's rights to file suit to enforce their ordinary creditor remedies. However, if a covenant involves a redemption or repurchase by the covered IHC of eligible LTD (*e.g.,* upon sale of a principal subsidiary), any such covenant would be subject to the restrictions on redemption and repurchase described elsewhere in this **SUPPLEMENTARY INFORMATION**, including prior approval from the Board if after redemption or repurchase of eligible LTD, a covered IHC would not meet its LTD requirement.

3. Contractual Subordination

Under the proposal, eligible internal LTD was required to be contractually subordinated to all third-party liabilities of the covered IHC, with the exception of liabilities that are related to eligible internal TLAC.[87] A number of commenters objected to the requirement under the proposal that internal LTD was required to be contractually subordinated. These commenters encouraged the Board, consistent with the FSB standard and principles of national treatment and equality of competitive opportunity, to permit covered IHCs the flexibility afforded to covered BHCs to rely on either structural or contractual subordination. These commenters suggested that covered IHCs relying on structural subordination should be permitted a similar 5 percent allowance for unrelated liabilities to that permitted for covered BHCs under the proposal.[88] Commenters argued that these modifications would enable covered IHCs to avoid added costs associated with contractual subordination. One commenter, for example, provided an estimate of the cost of contractual subordination ranging from an additional 25 to 100 basis points with an average of 59 additional basis points. Commenters also indicated that the deep subordination requirements of the proposal would contribute to uncertainty over whether eligible long-term debt would be characterized as debt and not equity for purposes of U.S. federal and state tax laws.

The Board has modified the proposal to permit covered IHCs the option to contractually or structurally subordinate their debt. For the same reasons discussed above with respect to covered BHCs, a covered IHC will have flexibility under the final rule to choose between contractual subordination and structural subordination. This modification also provides parity between covered BHCs and covered IHCs and thus should mitigate the costs of contractual subordination raised by comments under the proposal. If a covered IHC opts to contractually subordinate all of its eligible long-term debt, it will not be required to have a cap on unrelated liabilities.[89] If a covered IHC has any eligible long-term debt that is structurally subordinated,

[87] The exception for liabilities that are related to eligible internal TLAC applied to instruments that were eligible internal TLAC when issued and have ceased to be eligible solely because their remaining maturity is less than one year, because they have become subject to a put right, or because they could become subject to a put right within one year, as well as to payables (such as dividend- or interest-related payables) that are associated with such liabilities.

[88] While the Board did not propose to subject covered BHCs to this contractual subordination requirement, it did propose to impose a cap on the value of a covered BHC's non-eligible external LTD-related liabilities that can be pari passu with or junior to its eligible long-term debt. This aspect of the final rule is discussed below.

[89] A covered BHC similarly would have the option under the final rule to contractually subordinate all of its eligible external LTD and not have a cap on unrelated liabilities as described below.

the long-term debt would be allowed to be senior unsecured debt and to be senior to a capped amount of liabilities of the covered IHC that do not count as eligible external LTD.[90]

4. Contractual Conversion Trigger

Under the proposal, eligible internal LTD was required to include a contractual trigger pursuant to which the Board could require the covered IHC to cancel the eligible internal LTD or convert or exchange it into tier 1 common equity on a going-concern basis (that is, without the covered IHC's entry into a resolution proceeding) under certain circumstances. These were if the Board determines that the covered IHC is ''in default or in danger of default'' and any of three additional circumstances applied.[91] First, the top-tier foreign banking organization or any of its subsidiaries was placed into resolution proceedings. Second, the home country supervisory authority consented to the cancellation, exchange, or conversion, or did not object to the cancellation, exchange, or conversion following 48 hours' notice. Third and finally, the Board made a written recommendation to the Secretary of the Treasury that the FDIC should be appointed as receiver of the covered IHC under Title II of the Dodd-Frank Act.[92]

A number of commenters requested that the Board eliminate the contractual conversion trigger. These commenters argued that the conversion trigger was unnecessary to achieve the Board's objectives, would unfairly increase the funding costs of covered IHCs as compared to covered BHCs and could unfairly increase tax costs of covered IHCs as compared to covered BHCs. In particular, these commenters indicated that this feature posed a substantial risk of the LTD being characterized as equity, rather than debt, for U.S. tax purposes, further increasing the cost of compliance for covered IHCs, especially when combined with the contractual subordination requirement and prohibition on any acceleration clauses under the proposal.

One commenter estimated the cost of the contractual conversion feature would range from a minimum of 20 additional basis points to a maximum of 85 basis points with an average increase in cost of 50 basis points. Another commenter estimated that a covered IHC's pre-tax cost would increase by a range of $10.5 million to $105 million as a result of the contractual conversion feature for a hypothetical covered IHC with risk-weighted assets of $100 billion. These commenters argued that the costs of this feature outweigh its benefits. In particular, certain commenters argued that a conversion trigger is not necessary to ensure an IHC can withstand losses, as the FBO parent would have every incentive to preserve the value of the IHC and recapitalize the IHC to avoid its entry into insolvency or resolution. Commenters also argued that the conversion trigger contravenes principles of national treatment and equality of competitive opportunity required under the Dodd-Frank Act.

Commenters recommended that the Board, if it retained the contractual conversion trigger in any final rule, coordinate with the U.S. Treasury to ensure that the long-term debt would be treated as debt for U.S. federal income tax purposes. Commenters also suggested a number of modifications to the conversion trigger to increase the likelihood that the long-term debt would be treated as debt. In particular, commenters urged the Board to remove the ability to cancel the long-term debt, since cancellation is not necessary to ensure that a covered IHC can be recapitalized outside of insolvency (*i.e.,* conversion alone can achieve that end). These commenters argued that the provision providing for the cancellation of the debt instrument would be inconsistent with the principle that debt must retain its priority over equity, because the cancellation of internal LTD would result in the subordination of LTD to existing equity. These commenters also indicated that this same concern arose from the requirement that internal LTD convert into equity while any existing equity remains outstanding. As a result, these commenters urged the Board to clarify in the preamble of the final rule that covered IHCs could adopt ''self-help'' measures to preserve the priority of internal LTD when it converts into equity (*e.g.,* all classes of a covered IHC's going concern equity may contain a transfer provision that allows the equity to be transferred for no consideration to the covered IHC, which is able to cancel the equity, prior to conversion of LTD into equity).

Commenters also indicated that allowing internal LTD to have provisions (*e.g.,* acceleration clauses and covenants) on the same terms as external LTD would make it more likely that the internal LTD would be characterized as debt and not equity. Further, commenters argued that not requiring internal LTD to be contractually subordinated, rather allowing it to be structurally subordinated, would further help the characterization of internal LTD as debt and not equity.

As an initial matter, the final rule gives resolution covered IHCs the option to issue debt externally to third-party investors under the final rule on the same terms as covered BHCs. The external debt issued by resolution covered IHCs is not required to contain a contractual conversion trigger.

After considering all of the information provided by commenters, the Board has determined that the benefits of a conversion trigger requirement for internal debt outweigh its potential costs. A conversion trigger will allow covered IHCs that are in default or danger of default to be recapitalized through the conversion of eligible internal LTD to equity upon the occurrence of the trigger conditions in light of the losses that the covered IHC has incurred. Under certain circumstances, entry of a covered IHC into a resolution proceeding could pose a risk to the financial stability of the United States. Recapitalizing such a covered IHC outside of a resolution proceeding, and thereby reducing systemic risk, would advance the Dodd-Frank Act's goal of ''mitigat[ing] risks to the financial stability of the United States that could arise from the material financial distress'' of the covered IHC without the need for government or taxpayer support.[93]

The final rule contains certain targeted changes suggested by commenters that are consistent with the policy objectives of the final rule that internal LTD be characterized as debt and not equity and that are intended to mitigate associated potential costs with respect to the proposed conversion feature raised by commenters.

First, the Board has modified the requirement that the internal eligible long-term debt instrument allow the Board to require either the cancellation or conversion of the debt under the proposal. Under the final rule, the Board

[90] The applicability of the cap to resolution covered IHCs and non-resolution covered IHCs is described in more detail below.

[91] The phrase ''in default or in danger of default'' would be defined consistently with the standard provided by section 203(c)(4) of Title II of the Dodd-Frank Act. *See* 12 U.S.C. 5383. Consistent with section 203's definition of the phrase, a covered IHC would be considered to be in default or in danger of default upon a determination by the Board that (A) a case has been, or likely will promptly be, commenced with respect to the covered IHC under the U.S. Bankruptcy Code; (B) the covered IHC has incurred, or is likely to incur, losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the company to avoid such depletion; (C) the assets of the covered IHC are, or are likely to be, less than its obligations to creditors and others; or (D) the covered IHC is, or is likely to be, unable to pay its obligations (other than those subject to a bona fide dispute) in the normal course of business.

[92] *See* 12 U.S.C. 5383.

[93] 12 U.S.C. 5365(a)(1).

would only have the ability to require the conversion of the debt into equity. This change does not prejudice the Board's policy objective of transferring the losses suffered by the covered IHC to the holder of the eligible internal LTD through the conversion of eligible internal LTD into equity.

Second, under the proposal, the Board would have had to require conversion of all eligible internal debt. Under the final rule, the Board would have the ability to require the conversion of some or all of the eligible internal debt. This change gives the Board the flexibility to respond to losses or stress at a covered IHC in a more targeted manner.

Third, as noted, the final rule allows all eligible LTD to have acceleration clauses on the same terms as eligible external LTD.

Fourth, also as noted, the final rule allows internal LTD to be structurally subordinated in a similar manner as eligible external LTD. The combination of these changes represent a number of adjustments that commenters indicated would ameliorate the characterization of internal LTD as equity under U.S. tax law. In addition, nothing in this final rule restricts the ability of a covered IHC to build terms that are consistent with applicable law into its equity or debt instruments (*e.g.,* terms that provide that existing equity would be transferred to the covered IHC and canceled upon transfer if the long-term debt converts to equity or debt covenants on the same terms permissible for covered BHCs described above).

Under the proposal, the Board was required to consider an objection by the home country supervisor to the conversion, exchange or cancellation of eligible internal debt securities if the Board received the objection no later than 48 hours after the Board requested such consent or non-objection from the home country supervisor. A few commenters argued that this period was too short for the home country regulator of a covered IHC's parent FBO to play a meaningful role in the decision to recapitalize or resolve a covered IHC, particularly during a period of market stress.

After giving additional consideration to this issue and consulting with certain foreign regulatory authorities, the Board has determined to reduce the 48-hour-period in the proposal to 24 hours in the final rule. As exhibited during the last financial crisis, a firm can collapse precipitously meaning that time may be of the essence. The Board expects to be in close coordination with regulators in other jurisdictions if a firm with a covered IHC begins to exhibit losses or stress, meaning the 24-hour period should be a sufficient amount of time for the home country regulator to object to the conversion of the covered IHC's LTD into equity. These early communications between the Board and the home country regulators should address the concerns raised by commenters about ensuring that a home country regulator has enough time and notice to be able to play a meaningful role in a decision regarding the covered IHC.

For all these reasons, the final rule requires internal debt, whether issued by resolution covered IHCs or non-resolution covered IHCs, to contain a contractual conversion feature. As under the proposal, the terms of the contractual conversion provision in the debt instrument would have to be approved by the Board.

The conversion trigger in the final rule represents a compromise between the interests of home and host regulators. From the perspective of a host regulator, it is desirable to have the power to impose losses on eligible internal LTD quickly and easily upon a determination that the hosted subsidiary is in danger of default, in order to remove those losses from the host jurisdiction's financial system and thereby promote financial stability in the host jurisdiction. The conversion trigger advances this interest by giving the Board the power to do so upon a determination that the covered IHC is in danger of default where the home jurisdiction supervisory authority either consents or fails to object within 24 hours or where the home jurisdiction resolution authority has placed the parent foreign banking organization into resolution proceedings.

At the same time, from the perspective of a home regulator, it is desirable that host regulators not impose losses on the top-tier parent entity, except where doing so is appropriate to prevent the failure of the hosted subsidiary, since doing so drains loss-absorbing capacity from the top-tier parent entity that may be needed to support other subsidiaries in the home jurisdiction or in another host jurisdiction. The conversion trigger requirement advances this interest by giving the home jurisdiction supervisory authority the right to object to the triggering decision within 24 hours, except where the home jurisdiction resolution authority has placed the parent foreign banking entity into resolution proceedings. The United States is home to numerous U.S. GSIBs and also hosts substantial operations of numerous foreign GSIBs, thereby making both considerations relevant to the Board's role as both a home and host country supervisor.

5. Haircuts

Under the proposal, eligible internal LTD with a remaining maturity of between one and two years was subject to a 50 percent haircut for purposes of the internal LTD requirement, and eligible internal LTD with a remaining maturity of less than one year would not count toward the internal LTD requirement.

A number of commenters recommended that the Board eliminate the 50 percent haircut applicable to eligible debt securities with a remaining maturity between one and two years, to make the proposed requirements more consistent with the FSB standard. These commenters argued that the haircut is less appropriate in the context of internal LTD for covered IHCs because there would be no refinancing risk—*i.e.,* risk that the covered IHC will lose market risk and be unable to replace the internal LTD as it approaches maturity since it can simply replace internal LTD with a new issuance of internal LTD to a foreign affiliate. These commenters argued that foreign parents and foreign affiliates can be expected to continue to roll over debt or extend credit to a covered IHC in a period of stress so that the covered IHC could continue to meet any applicable LTD requirements. One commenter also recommended that the Board reduce the haircut for internal debt with a remaining maturity of less than one year from 100 percent to 50 percent.

The Board is not modifying the proposed rule in response to these comments. The Board has modified the proposal to change ''remaining maturity'' of the principal amount to the amount ''due to be paid.'' Like for covered BHCs, this clarification is intended to make clear that only the remaining principal amount due to be paid counts as eligible LTD. Under the final rule, eligible external LTD or internal LTD issued by covered IHCs that is due to be paid between one and two years is subject to a 50 percent haircut for purposes of the internal LTD requirement, and eligible LTD that is due to be paid in less than one year would not count toward the internal LTD requirement. These requirements are the same as those applicable to covered BHCs.

The purpose of these requirements is to ensure the ability of LTD instruments to absorb losses. The rationale for the haircut is to incentivize a firm to have enough debt of sufficient maturity to avoid issuing debt in unfavorable market circumstances or in the event

that the covered IHC is experiencing financial difficulties. With respect to internal LTD in particular, based on the information provided by commenters it appears covered IHCs should be able to easily roll over their one-year or two-year debt to avoid haircuts if that is the manner in which they choose to fund themselves. Moreover, the argument that foreign parents will always be incentivized to rollover or refinance the debt of covered IHCs, even when a third party would not do so, is inconsistent with other comments provided by foreign GSIBs indicated that covered IHCs generally transact with their FBO parents on an arm's-length terms.

The final rule applies the same treatment as the proposal to an internal debt instrument that could become subject to a put right in the future. Under the final rule, such instruments would be treated as due to be paid on the first day on which the put right could be exercised. The rationale for this approach is the same as the rationale for the identical provisions that apply to eligible external LTD issued by covered BHCs, as discussed above. No comments were received on this aspect of the proposal.

IV. Clean Holding Company Requirements (Sections 252.64 and 252.166 of the Final Rule)

The proposed rule would have prohibited covered BHCs and covered IHCs (together, covered holding companies) from engaging in certain transactions that could impede the orderly resolution of a covered holding company or increase the risk that financial market contagion would result from the resolution of a covered holding company. Specifically, the proposal would have prohibited covered holding companies from having the following categories of outstanding liabilities: Third-party debt instruments with an original maturity of less than one year, including deposits (short-term debt); qualified financial contracts with a third party (third-party QFCs); guarantees of a subsidiary's liabilities if the covered holding company's insolvency or entry into a resolution proceeding (other than resolution under Title II of the FDI Act) would create default rights for a counterparty of the subsidiary (subsidiary guarantees with cross-defaults rights); and liabilities that are guaranteed by a subsidiary of the covered holding company (upstream guarantees) or that are subject to rights that would allow a third party to offset its debt to a subsidiary upon the covered holding company's default on an obligation owed to the third party.

Additionally, the proposal would have limited the total value of each covered BHC's non-TLAC-related third-party liabilities that are either pari passu with or subordinated to any eligible external TLAC to 5 percent of the value of the covered BHC's eligible external TLAC (5 percent cap). With respect to covered IHCs, the proposal would have prohibited covered IHCs from having any non-TLAC-related third-party liabilities that are pari passu with or subordinated to eligible internal LTD by requiring that eligible internal LTD be contractually subordinated to all third-party debt claims. Therefore, the proposed cap was not relevant to covered IHCs under the proposal.

The Board received comments on the proposed prohibitions on short-term debt, third-party QFCs, and subsidiary guarantees with cross-defaults rights. The final rule generally adopts these requirements of the proposal with modifications to address comments received on the proposal.

A. Third-Party Short-Term Debt Instruments (Sections 252.64(a)(1) and 252.166(a)(1) of the Final Rule)

Like the proposal, the final rule prohibits covered holding companies from issuing debt instruments with an original maturity of less than one year to a third party. (Issuances to an affiliate of the covered holding company are permitted under the final rule.) Under the final rule, a liability has an original maturity of less than one year if it would provide the creditor with the option to receive repayment within one year of the creation of the liability, or if it would create such an option or an automatic obligation to pay upon the occurrence of an event that could occur within one year of the creation of the liability (other than an event related to the covered holding company's insolvency). The prohibition of the final rule would also cover short-term and demand deposits at the covered holding company.[94]

One objective of SPOE resolution is to mitigate the risk of destabilizing funding runs. A funding run occurs when the short-term creditors of a financial company observe stress at that institution and seek to minimize their exposures to it by refusing to roll over the debts of the financial company. The resulting liquidity stress can hasten a company's failure, including by forcing the company to engage in asset fire sales to pay obligations due to short-term creditors. Because they reduce the value of similar assets held by other firms, asset fire sales can be a key channel for the propagation of stress throughout the financial system. The short-term creditors of a failing GSIB may also run on counterparties that are similar to a failing firm, thereby weakening those firms and forcing further fire sales. Similarly, certain depositors, who generally have the ability to demand their funds on short notice, present analogous funding issues.

The final rule seeks to mitigate these risks in two complementary ways. First, although the operating subsidiaries of covered holding companies rely on short-term funding, in an SPOE resolution, the short-term creditors of operating subsidiaries would not bear losses incurred by the subsidiaries because those losses would instead be transferred to the covered holding company and therefore borne by the external TLAC holders during the bankruptcy or resolution of the covered holding company. To the extent that market participants view SPOE resolution as workable, the subsidiaries' short-term creditors should have reduced incentives to run because their direct counterparty would not default in such a resolution. Second, the covered holding companies themselves would be prohibited from relying on short-term funding, reducing the run risk associated with the failure of such an entity. This goal is particularly important in light of the likely liquidity needs of a GSIB during SPOE resolution, because a short-term funding run on a covered holding company would drain liquidity that may be needed to support the group's operating subsidiaries.

One commenter argued that the proposal was unnecessarily restrictive and could prevent covered BHCs from obtaining liquidity via temporary secured lending. The prohibition against short-term funding in the final rule applies to both secured and unsecured short-term borrowings. Although secured creditors are less likely to take losses in resolution than unsecured creditors, secured creditors may nonetheless be unwilling to maintain their exposure to a covered holding company that comes under stress. In particular, if the covered holding company were to enter into a resolution proceeding, the collateral used to secure the debt would be subject to a stay, preventing the creditor from liquidating it immediately. (Qualified financial contracts, which are not subject to a stay under the U.S. Bankruptcy Code but which present other potential difficulties for SPOE resolution, are discussed below.) The creditor would therefore face two risks: The risk that

[94] For purposes of the final rule, deposits would include those that are captured in line item 11 of schedule PC of FR Y–9LP.

the value of the collateral would decline before it could be liquidated and the liquidity risk attributable to the fact that the creditor would be stayed from liquidating the collateral for some time. Knowing this, secured short-term creditors may well decide to withdraw funding from a covered holding company that comes under stress.

Additionally, many short-term lenders to GSIBs are themselves maturity-transforming financial firms that are vulnerable to runs (for instance, money market mutual funds). If such firms incur losses in stressful conditions, then they may be unable to meet their obligations to their own investors and counterparties, which would cause further losses throughout the financial system. Because SPOE resolution relies on imposing losses on the covered holding company's creditors while protecting the creditors and counterparties of its material operating subsidiaries, it is desirable that the holding company's creditors be limited to those entities that can be exposed to losses without materially affecting financial stability. The final rule would enhance the credibility of the SPOE approach by reducing these risks and simplifying the types of creditors and funding of a covered holding company in resolution.

Finally, the prohibition of the final rule on short-term debt instruments would promote the resiliency of covered holding companies as well as their resolvability. As discussed above, reliance on short-term funding creates the risk of a short-term funding run that could destabilize the covered holding company by draining its liquidity and forcing it to engage in capital-depleting asset fire sales. The increase in covered holding company resiliency yielded by the prohibition provides a secondary justification for the proposal.

One commenter contended that the proposed prohibition on short-term debt might prohibit covered holding companies from obtaining secured liquidity from the FDIC and requested the final rule except from the prohibition secured liquidity provided by the FDIC during periods of market distress or to facilitate an SPOE resolution. The Board would not expect the prohibition under the final rule to interfere with the orderly resolution of covered holding companies under Title II or other forms of governmental liquidity support and therefore is adopting the prohibition as proposed.

B. Qualified Financial Contracts With Third Parties (Sections 252.64(a)(3) and 252.166(a) of the Final Rule)

Under the proposal, covered BHCs could have only entered into qualified financial contracts (QFCs) with their subsidiaries and covered IHCs could have only entered into QFCs with their affiliates. The proposal defined QFCs by reference to Title II of the Dodd-Frank Act, which defines QFCs to include securities contracts, commodities contracts, forward contracts, repurchase agreements, and swap agreements.[95]

One commenter expressed support for this aspect of the rule arguing that it is best for all holding company swap transactions to be executed with internal entities to minimize the impact of external market disruption and reduce complexity. Other commenters noted that the prohibition on third-party QFCs not only would bar a covered holding company from directly entering into a swap, repurchase agreement, or other QFC but also would prohibit the covered company from guaranteeing or otherwise providing a credit enhancement for such a contract between a subsidiary of the covered holding company and a third party. The proposed third-party QFC prohibition would have prohibited credit enhancements provided by covered holding companies because the definition of QFC in Title II of the Dodd-Frank Act, which the proposal incorporated by reference, includes credit enhancements of swap agreements, repurchase agreements, and the other financial contracts identified in the definition.

Some commenters suggested that the Board permit covered BHCs to enter into QFCs with third parties if the QFCs were cleared through a central counterparty (CCP). This commenter argued that the risk-minimizing requirements in place at CCPs (that is, requirements to post initial and variation margin and the maintenance of a guaranty or default fund) limit concerns over the termination of QFCs and related fire sales as well as any concern that the CCP counterparty would itself become insolvent and contribute to contagion risk.

In response to these comments, the Board notes that, like counterparties to uncleared transactions, a CCP counterparty may respond to an institution's default by immediately liquidating the institution's collateral and seeking replacement trades with other dealers. Even less drastic actions, such as increasing collateral requirements, could have a significant impact on the liquidity of a failing clearing member. Therefore, cleared QFC activities have the potential to complicate the resolution of the covered holding company. Moreover, the potential imposition of losses on CCPs could itself cause contagion and fire sale risk. For these reasons, the final rule prohibits covered holding companies from entering into cleared QFCs with third parties.

Certain commenters requested the final rule permit covered BHCs to enter QFCs for hedging purposes including to engage in risk-management of eligible long-term debt. These commenters pointed out that new margin requirements on swaps and security-based swaps limit the potential build-up of risk from third-party derivatives.

In response, while QFCs entered into for hedging purposes are intended to reduce or mitigate risk of the underlying position being hedged, a material amount of third-party QFCs poses risk to resolution of covered holding companies regardless of the purpose for which they are entered. Moreover, the final rule does not restrict the covered holding company from entering into QFCs with its affiliates for hedging purposes nor does the final rule prohibit other affiliates from engaging in QFCs for hedging purposes and risk management.

The failure of a large financial organization that is a party to a material amount of third-party QFCs could pose a substantial risk to the stability of the U.S. financial system. The restriction on third-party QFCs would mitigate this threat to financial stability in two ways. First, covered holding companies' operating subsidiaries, which are parties to large quantities of QFCs, are expected to remain solvent under an SPOE resolution and not expected fail to meet any ordinary course payment or delivery obligations during a successful SPOE resolution. Therefore, assuming that the cross-default provisions of the QFCs engaged in by the operating subsidiaries of covered holding companies are appropriately structured, their QFC counterparties generally would have no contractual right to terminate or liquidate collateral on the basis of the covered holding company's entry into resolution proceedings.[96]

[95] 12 U.S.C. 5390(c)(8)(D).

[96] *See* Restrictions on Qualified Financial Contracts of Systemically Important U.S. Banking Organizations and the U.S. Operations of Systemically Important Foreign Banking Organizations; Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions, 81 FR 29169 (May 11, 2016) (Board QFC Stay Proposal).

Second, the covered holding companies themselves would have no QFCs with external counterparties, and so their entry into resolution proceedings would not result in QFC terminations and related fire sales. The restriction on third-party QFCs would therefore materially diminish the fire sale risk and contagion effects associated with the failure of a covered holding company.

For all these reasons, the final rule prohibits third-party QFC, provided that, as requested by commenters, the final rule clarifies that the prohibition on third-party QFCs does not include credit enhancements of QFCs. The clean holding company requirements of the final rule separately address the provision of credit support to QFCs (and other liabilities) by covered holding companies as described below.[97]

C. Guarantees That Are Subject to Cross-Defaults (Sections 252.64(a)(4) and 252.166(a)(3) of the Final Rule)

The proposal would have prohibited a covered holding company from guaranteeing (including by providing credit support) any liability between a direct or indirect subsidiary of the covered holding company and an external counterparty if the covered holding company's insolvency or entry into resolution (other than resolution under Title II of the Dodd-Frank Act) would have directly or indirectly provided the subsidiary's counterparty with a default right.[98]

The proposed prohibition was intended to complement other work that has been done or is underway to facilitate resolution through the stay of cross-defaults, including the International Swaps and Derivatives Association (ISDA) 2014 Resolution Stay Protocol.[99] Commenters urged the Board to limit the scope of the prohibition on guarantees with cross defaults to those that are inconsistent with the Board's expected rule restricting default rights in QFCs or the ISDA Protocol. These commenters noted that the ISDA Protocol overrides cross-default rights in instruments subject to the ISDA Protocol with counterparties that have signed the ISDA Protocol if certain conditions are satisfied. These commenters argued that the prohibition in the proposed rule would be overbroad and unnecessary for any guarantees of instruments covered by the ISDA Protocol if the guaranteed subsidiary's counterparty had agreed to the ISDA Protocol. Some commenters argued that the exception to the guarantee prohibition should apply to all liabilities, even if the Board's expected stay rule only applied to QFCs. Some commenters also requested the Board delay imposing prohibitions on covered holding companies until regulations requiring stays of cross-default provisions in QFCs of banking organizations were finalized.

Commenters also argued that, even for instruments not subject to the same conditions as the ISDA Protocol, the prohibition in the proposal would be unnecessary in a resolution proceeding under Title II of the Dodd-Frank Act. Section 210(c)(16) of Title II gives the FDIC authority to override any cross-defaults if they are triggered by a covered BHC's insolvency or entry into resolution under Title II and certain conditions are satisfied.[100]

As noted, the proposed prohibition on subsidiary guarantees with cross-defaults rights was intended to complement other efforts to facilitate SPOE resolution through the stay of cross-defaults, including the ISDA Protocol. Since the TLAC proposal was issued, the Board and other banking agencies (OCC and FDIC) have proposed QFC stay rules, which require covered holding companies and their subsidiaries to restrict the default rights of their QFCs that are subject to the rule.[101] The QFC stay proposal issued by the Board would permit, under limited circumstances, covered holding companies to provide guarantees of their subsidiaries' covered QFCs with default rights based, directly or indirectly, on the resolution of the covered holding company (or another affiliate). The comment period to the proposed QFC stay rule closed on August 5, 2016, and the Board is considering the comments thereto.

To ensure consistent treatment of financial contracts among the Board's regulations, the final rule prohibits subsidiary guarantees with cross-default rights, but exempts guarantees subject to a rule of the Board restricting such defaults rights or any similar rule of another U.S. federal banking agency.[102] Although the Board has not adopted a rule regarding cross-default provisions of financial contracts (including those regarding the applicability of Title II of the Dodd-Frank Act), this final rule leaves open the possibility that in the future certain guarantees would be permitted to the extent they are authorized under a rule of the Board or another federal banking agency.[103]

Commenters also requested the Board confirm that the prohibition would only apply prospectively. The text of the regulation has been amended to clarify that the prohibition applies only to new agreements.

Finally, the scope of contracts subject to the exception will be co-extensive with the scope of contracts subject to the final stay rule, which the proposed stay rule specifically sought comment on, to align the Board's rulemakings with respect to these requirements. The prohibition under the final rule advances the key SPOE resolution goal of ensuring that a covered holding company's subsidiaries would continue to operate normally upon the covered holding company's entry into resolution. This goal would be jeopardized if the covered holding company's entry into resolution or insolvency operated as a default by the subsidiary and empowered the subsidiary's counterparties to take default-related actions, such as ceasing to perform under the contract or liquidating collateral. Were the counterparty to take such actions, the subsidiary could face liquidity, reputational, or other stress that could undermine its ability to continue operating normally, for instance by

[97] The final rule adds a new definition of ''credit enhancement'' to mean enhancement means a qualified financial contract of the type set forth in section 210(c)(8)(D)(ii)(XII), (iii)(X), (iv)(V), (v)(VI), or (vi)(VI) of Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5390(c)(8)(D)(ii)(XII), (iii)(X), (iv)(V), (v)(VI), or (vi)(VI)) or a credit enhancement that the FDIC determines by regulation is a qualified financial contract pursuant to section 210(c)(8)(D)(i) of Title II of the act (12 U.S.C. 5390(c)(8)(D)(i)).

[98] The proposal defined the term ''default right'' broadly.

[99] This protocol was subsequently replaced by the ISDA 2015 Universal Resolution Stay Protocol (ISDA Protocol). The ISDA Protocol and its annexes enable parties to amend the terms of their QFCs ''to contractually recognize the cross-border application of special resolution regimes applicable to certain financial companies until comprehensive statutory regimes are adopted and to support the resolution of certain financial companies under the United States Bankruptcy Code.'' Internal Swaps and Derivatives Association, ISDA 2015 Universal Resolution Stay Protocol *available at https://www2.isda.org/functional-areas/protocol-management/protocol/22.*

[100] These commenters noted that the prohibition may likewise become unnecessary in a U.S. bankruptcy proceed if certain bills pending in both Houses of Congress are passed that would amend the Bankruptcy Code to override such cross-defaults if certain conditions are satisfied.

[101] Board QFC Stay Proposal; Mandatory Contractual Stay Requirements on Qualified Financial Contracts, 81 FR 55381 (Aug. 19, 2016); Restrictions on Qualified Financial Contracts of Certain FDIC-Supervised Institutions; Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions, 81 FR 74326 (Oct. 26, 2016).

[102] Liabilities would be considered ''subject to'' such a rule even if those liabilities were exempted from one or more of the requirements of the rule.

[103] Because QFCs subject to the final stay rule of the Board or other banking agencies are exempted from the prohibition, these QFCs would be required to conform to the stay rule on the time period specified therein.

prompting a short-term funding run on the subsidiary. As in the proposal, guarantees by covered holding companies of liabilities that are not subject to such cross-default rights are unaffected by the final rule.

D. Upstream Guarantees and Offset Rights (Sections 252.64(a)(2), (5) and 252.166(a)(2), (5) of the Final Rule)

The proposed rule would have prohibited covered holding companies from having outstanding liabilities that are subject to a guarantee from any direct or indirect subsidiary of the holding company. SPOE resolution is premised on the assumption that holders of eligible external TLAC will bear all losses incurred by the issuing covered holding company on a consolidated basis while ensuring that its operating subsidiaries continue to operate normally. This arrangement could be undermined if a liability of the covered holding company is subject to an upstream guarantee, because the effect of such a guarantee is to expose the guaranteeing subsidiary (and, ultimately, its creditors) to the losses that would otherwise be imposed on the holding company's creditors. A prohibition on upstream guarantees would facilitate the SPOE resolution strategy by increasing the certainty that the covered holding company's eligible external TLAC holders will be exposed to loss ahead of the creditors of its subsidiaries.

Upstream guarantees do not appear to be common among covered holding companies. Section 23A of the Federal Reserve Act already limits the ability of a U.S. insured depository institution to issue guarantees on behalf of its parent holding company.[104] The principal effect of the prohibition would therefore be to prevent the future issuance of such guarantees by material non-bank subsidiaries. For these reasons, the final rule prohibits covered holding companies from having outstanding liabilities that are subject to a guarantee from any direct or indirect subsidiary.[105]

For analogous reasons, the final rule prohibits covered holding companies from issuing an instrument if the holder of the instrument has a contractual right to offset its liabilities, or the liabilities of an affiliate of the holder, to the covered holding company's subsidiaries against the covered holding company's liability under the instrument.[106] The prohibition includes all such offset rights regardless of whether the right is provided in the instrument itself. Such offset rights are another device by which losses that are expected to flow to the covered holding company's external TLAC holders in an SPOE resolution could instead be imposed on operating subsidiaries and their creditors.

One commenter requested confirmation that this prohibition does not affect the ability of a subsidiary of the covered BHC to provide an offset right to a counterparty where the covered BHC has guaranteed the subsidiary's underlying obligations. In response, the prohibition in the final rule does not extend to offset rights provided by a subsidiary to its counterparties. However, as noted by the commenter, the prohibition does prevent a covered holding company from guaranteeing an obligation of its subsidiary if the guarantee may be offset against obligations of a subsidiary of the covered holding company.

E. Cap on Certain Liabilities (Sections 252.64(b)–(c) and 252.166(b)–(c) of the Final Rule)

Cap on liabilities of Covered BHCs. As noted, the proposed rule would have limited the total value of certain other liabilities of covered BHCs to 5 percent of the value of the covered BHC's eligible external TLAC. The proposed cap would have applied to non-contingent, non-TLAC liabilities (that is, liabilities that were not eligible LTD) to third parties (*i.e.,* persons that are not affiliates of the covered BHC) that would rank either pari passu with or junior to the covered BHC's eligible LTD in the priority scheme of either the U.S. Bankruptcy Code or Title II.[107]

The final rule generally adopts these requirements as proposed. To provide additional flexibility to covered BHCs, and for consistency with the treatment of covered IHCs (described below), the final rule adds a new provision to make clear that in the event the covered bank holding company chooses to contractually subordinate all of its long-term debt, there is no cap on the amount of its non-contingent liabilities.[108]

Commenters requested that certain liabilities that could be loss-absorbing in an orderly resolution not count toward the 5 percent cap (*i.e.,* not be ''unrelated liabilities'' under the proposal). Requests for exclusion included all equity, hybrid and long-term debt securities that can absorb losses without threatening financial stability. In particular, commenters urged that long term debt securities that contain any impermissible acceleration provisions, long-term debt securities governed by foreign law, long-term structured notes, and long term convertible debt securities and hybrid securities should not count as unrelated liabilities under the final rule. One commenter provided figures indicating that without these changes covered BHCs would have outstanding unrelated liabilities nearly 8 times over the 5 percent cap on January 1, 2019. This commenter recommended the Board allow at least a one year cure period for inadvertent breaches of the 5 percent cap.

As noted, debt issued on or before December 31, 2016, with standard acceleration clauses or under foreign law counts as eligible LTD for purposes of the LTD requirements and TLAC requirements of the final rule. As such, this outstanding debt is not an ''unrelated liability'' subject to the 5 percent cap under the final rule. Other forms of debt that do not count as eligible LTD under the final rule would continue to be subject to the cap under the final rule including debt instruments with derivative-linked features (*i.e.,* structured notes); external vendor and operating liabilities, such as for utilities, rent, fees for services, and obligations to employees; and liabilities arising other than through a contract (*e.g.,* liabilities created by a court judgment).[109] Covered BHCs will have until January 1, 2019, to conform these liabilities with the 5 percent cap.

The liabilities subject to the cap fall into two groups: Those that could be subjected to losses alongside eligible external TLAC potentially without undermining SPOE resolution or financial stability, and those that potentially could not.

The first group includes structured notes. The final rule defines structured notes so as to avoid capturing debt instruments merely because the debt instrument is non-dollar denominated

[104] Transactions subject to the quantitative limits of section 23A of the Federal Reserve Act and Regulation W include guarantees issued by a bank on behalf of an affiliate. *See* 12 U.S.C. 371c(b)(7); 12 CFR 223.3(h).

[105] In response to comments, the regulatory text of the prohibition has been modified slightly from the proposed to clarify the prohibition only applies prospectively.

[106] The prohibition for covered IHCs also includes contractual rights to offset against the covered IHC because the covered IHC itself may not enter resolution or insolvency proceedings.

[107] *See* 11 U.S.C. 507; 12 U.S.C. 5390(b).

[108] As discussed above, covered BHCs have the option under the final rule to structurally subordinate or contractually subordinate their long-term debt.

[109] Commenters requested the Board clarify the scope of judgment liabilities that would be subject to the cap. In general, all administrative penalties and court judgments for which the covered BHC has completed any applicable appeals process would be included. The Board may address other questions regarding these kinds of liabilities based on the facts and circumstances of the liability.

or pays interest based on the performance of a single index but to otherwise capture all debt instruments that have a principal amount, redemption amount, or stated maturity, that is subject to reduction based on the performance of any asset, entity, index, or embedded derivative or similar embedded feature.[110] Such liabilities could be subjected to losses in resolution alongside eligible external TLAC, but the proposal would cap them in light of their greater complexity relative to the plain-vanilla debt that qualifies as external TLAC. In an orderly resolution of a covered BHC, debt instruments that will be subjected to losses should be able to be valued accurately and with minimal risk of dispute. Structured notes contain features that could make their valuation uncertain, volatile, or unduly complex. Additionally, structured notes are often customer products sold to purchasers who are primarily seeking exposure to a particular asset class and not seeking credit exposure to the covered BHC, and the need to impose losses on a financial institution's customers in resolution may create obstacles to orderly resolution. The cap on structured notes promotes the resolvability of covered BHCs by limiting their issuance of instruments that present these issues.[111] The cap does not limit a covered BHC's ability to issue structured notes out of subsidiaries.

The second group includes, for example, vendor liabilities and obligations to employees. Successful resolution may require that the covered BHC continue to perform on certain of its unsecured liabilities in order to ensure that it is not cut off from vital services and resources. If these liabilities were pari passu with eligible external LTD, protecting these liabilities from loss would entail treating these liabilities differently from eligible external LTD of the same priority, which could present both operational and legal risk. The operational risk flows from the need to identify such liabilities quickly in the context of a complex resolution proceeding. The legal risk flows from the no-creditor-worse-off principle, according to which each creditor of a firm that enters resolution is entitled to recover at least as much as it would have if the firm had simply been liquidated under chapter 7 of the U.S. Bankruptcy Code.[112] As creditors of a given priority receive special treatment (that is, as they are paid in full to ensure that the firm maintains access to vital external services and resources), the pool of resources available to other creditors of the same priority shrinks, making it more likely that those creditors will recover less than they would have in liquidation. Thus, imposing a cap on the total value of liabilities that are pari passu with or junior to eligible external TLAC but that might need to receive special treatment in resolution mitigates the no-creditor-worse-off risk.

As indicated in the preamble to the proposal to justify the calibration of the 5 percent cap, the Board collected data from U.S. GSIBs and determined that covered BHCs have outstanding certain third-party operational liabilities that may rank pari passu with eligible LTD and that could not be eliminated without substantial cost and complexity. These liabilities include (among other things) tax payables, compensation payables, and accrued benefit plan obligations. For the eight current U.S. GSIBs, the value of these operating liabilities ranges from 1 percent to 4 percent of the sum of the covered BHC's equity and long-term debt, which provides a reasonable proxy for the amount of eligible external TLAC that a covered BHC would have had under the proposal.

The 5 percent cap was calibrated to allow these existing operational liabilities to continue while limiting the growth of these and other liabilities at the covered BHC so that the problems discussed above may be avoided or mitigated. In particular, several covered BHCs may need to limit the value of structured notes that they have outstanding. This result would be consistent with the overall rationale for the clean holding company requirements in the final rule because, as noted, such structured notes are not liabilities for the performance of vital services (for example, vendor liabilities) and because their presence at the holding company could create undue complexity during resolution. For these reasons, the rationale for the calibration remains appropriate and the expanded scope of debt that counts as eligible LTD, discussed above, should address the comments regarding calibration.

As in the proposal, the cap under the final rule does not apply to (1) eligible external TLAC; (2) instruments that were eligible external TLAC when issued and have ceased to be eligible (because their remaining maturity is less than one year) as long as the holder of the instrument does not have a currently exercisable put right; or (3) payables (such as dividend- or interest-related payables) that are associated with such liabilities. As described in the proposal, the cap on other third-party liabilities is intended to limit the amount of third party liabilities that should not be subjected to losses as part of an orderly resolution (*e.g.,* vendor liabilities) relative to the amount of liabilities that both could be subjected to losses (*e.g.,* LTD) and is pari passu with the liabilities that should not be subjected to losses. Imposing losses only on certain creditors within the same priority shrinks the pool of resources available to other creditors of the same priority and therefore makes it more likely that the distribution would conflict with the no-creditor-worse-off requirements of Title II of the Dodd-Frank Act and Chapter 11 of the U.S. Bankruptcy Code. The final rule also clarifies that if a covered BHC chooses to contractually subordinate all of its long-term debt, the cap on unrelated liabilities does not apply.

Cap on Liabilities of Covered IHCs. The proposal would not have applied the 5 percent cap to covered IHC's because internal LTD would have been contractually subordinated to all third-party liabilities of the covered IHC. Therefore, treating internal LTD differently from vendor liabilities and other third-party liabilities that had the potential to be important to a holding company following resolution would not have violated the no-creditor-worse-off principle. However, as described above, the final rule provides covered IHCs with the option to choose structural subordination or contractual subordination of external and internal long-term debt issued by covered IHCs, as requested by many commenters. The commenters that requested structural subordination generally recognized that covered IHCs that are permitted to adopt structural subordination would need to be subject to a cap in a manner similar to covered BHCs.

The final rule adopts different caps for non-resolution covered IHCs and resolution covered IHCs because resolution covered IHCs are able to issue eligible debt externally to third-parties under the final rule whereas non-resolution covered IHCs must issue eligible long-term debt internally to certain foreign affiliates. For non-resolution covered IHCs, the final rule provides that the aggregate amount of unrelated liabilities that a non-resolution covered IHC owes to persons that are not affiliates of the covered IHC

[110] In addition, the definition captures debt instruments that have more than one embedded derivative (or similar embedded feature) or are not treated as debt under generally accepted accounting principles.

[111] *See also* discussion of structured notes in section II.E.3.a.

[112] *See, e.g.,* 11 U.S.C. 1129(a)(7); 12 U.S.C. 5390(d)(2).

may not exceed 5 percent of the covered IHC's total loss-absorbing capacity amount. The cap for non-resolution covered IHCs thus functions as a cap on unrelated liabilities to non-affiliates like the cap for covered BHCs. Some non-resolution covered IHCs may have external debt outstanding that would not count as eligible LTD (since these firms must issue internal LTD), the amount of which could be well above the 5 percent cap. Non-resolution covered IHCs have two years to conform any external debt issuance to the requirements of the final rule. Contractual subordination is also available as another possible alternative for non-resolution covered IHCs to conform to the final rule.

The 5 percent cap for non-resolution covered IHCs does not include liabilities owed to foreign affiliates because the eligible long-term debt held by the parent FBO generally should convert to equity, either through actions of the parent or the Board. Therefore, in contrast to resolution covered IHCs (discussed below), concern about the short-term liabilities owed to the FBO parent or other affiliated parties is minimal.

In the case of resolution covered IHCs, the final rule adopts a cap equal to 5 percent of the covered IHC's total loss-absorbing capacity on the aggregate amount of unrelated liabilities that a resolution covered IHC may owe to any person other than a subsidiary of the covered IHC. The cap for resolution covered IHCs applies to unrelated liabilities owed to parents and sister affiliates, as well as third parties, because these IHCs have the option to issue external LTD. Thus, these firms may owe significant amounts of short-term debt or other unrelated liabilities to the FBO parent or another affiliate that would remain outstanding when the IHC enters resolution, because such entities are not anticipated to support the IHC under the resolution plan of the parent FBO.[113] The cap on unrelated liabilities owed to parents and sister affiliates limits the amount of these liabilities that would remain outstanding upon the conversion of long-term debt to equity. Moreover, resolution covered IHCs could choose to issue all eligible LTD, whether internal or external, as contractually subordinated debt to avoid the cap altogether.

As with covered BHCs, debt issued prior to December 31, 2016 with standard acceleration clauses or issued under foreign law counts as eligible LTD for purposes of the LTD requirements and TLAC requirements of the final rule. As such, this outstanding debt would not be included as an unrelated liability subject to the cap under the final rule.

F. Disclosure Requirements (Sections 252.65 and 252.167 of the Final Rule)

The final rule, like the proposal, requires each covered BHC to publicly disclose a description of the financial consequences to unsecured debtholders of the covered BHC's entry into a resolution proceeding in which the covered BHC is the only entity that would enter resolution. In addition, the final rule adopts a new section requiring resolution covered IHCs that issue external debt to be subject to the same disclosure requirement applicable to covered BHCs.

Consistent with the disclosure requirements imposed by the Board's capital rules, the covered BHC or covered IHC is permitted to make this disclosure on its Web site or in more than one public financial report or other public regulatory report, provided that the covered BHC or covered IHC publicly provides a summary table specifically indicating the location(s) of this disclosure.[114] Because the disclosure requirement is primarily intended to inform holders of a covered BHC's or covered IHCs' eligible external LTD that they are subject to loss ahead of other creditors of the covered BHC or covered IHC or its subsidiaries, the proposal would also require the covered BHC or covered IHC to disclose the required information in the offering documents for all of its eligible external LTD.

A few commenters argued that comprehensive and clear disclosure is essential to ensure that potential investors are fully informed of the risks of the long-term debt and aware of potential losses. These commenters contended that the risks of misleading investors without such meaningful disclosure could lead to investors grossly underpricing the risk of these new instruments. Certain commenters recommended that the Board prescribe text for a specific warning about the nature of the debt and only allow the debt to be sold to qualified, sophisticated investors. One commenter, for example, urged the Board to mandate comprehensive, plain English disclosures to accompany this new debt with a front page warning in large red lettering to make clear in one sentence ''If the bank fails, your full investment is subject to a complete loss.'' A few commenters also suggested that the contract should describe expressly how and when the regulators could or would convert the debt, including the possible future scenarios where this debt might become convertible in Title I bankruptcy. One commenter argued that unless the Board specifies the circumstances and mechanism by which this unsecured debt will absorb losses, the mere disclosure of an ''expectation'' that this debt will absorb losses will be insufficient to force holders of the debt to take this expectation seriously and price for risk accordingly. Another commenter recommended that the required disclosure should include a list of liabilities of both eligible and non-eligible TLAC, and its relative position in the creditor hierarchy.

The Board has long supported meaningful public disclosure by banking organizations, with the objective of improving market discipline and encouraging sound risk-management practices.[115] By helping holders of eligible external LTD and other unsecured debt issued by a covered BHC or covered IHC to understand that they will be allowed to suffer losses in a resolution and generally will absorb losses ahead of the creditors of the covered BHC or covered IHC's subsidiaries, the disclosure requirement of the final rule should encourage potential investors to carefully assess the covered BHC or covered IHC's risk profile when making investment decisions. This careful assessment should lead to an improvement in the market pricing of the unsecured debt of covered BHCs and covered IHCs, including eligible external LTD, providing supervisors and market participants with more accurate market signals about the financial condition and risk profile of the covered BHC or covered IHC. In response to comments, the final rule does not specify the exact circumstances under which eligible LTD will convert to equity—such a provision would be inconsistent with the intent and purpose of the final rule that such debt be available to absorb losses in a flexible manner. However, the final rule states that the Board may order that internal debt be converted into equity only if the Board determines that the covered IHC is in default or danger of default.

[113] This inclusion of liabilities owed to parents of the resolution covered IHC also is on par with the cap on liabilities of covered BHCs, which would include liabilities held by shareholders of the covered BHC.

[114] *See* 12 CFR 217.62(a), 12 CFR 217.172(c)(1).

[115] *See, e.g.,* 78 FR 62018, 62128–29 (October 11, 2013).

V. Regulatory Capital Deduction for Investments in the Unsecured Debt of Covered BHCs

The final rule does not include the proposal's requirement for a Board-regulated institution to deduct from its regulatory capital the amount of any investment in, or exposure to, unsecured debt issued by a covered BHC, including unsecured debt instruments that do not qualify as eligible external LTD. A number of comments urged the Board to, among other things, increase or have separate thresholds for deductions of unsecured debt holdings, allow for deductions of the unsecured debt holdings to be applied to outstanding eligible external LTD instead of regulatory capital, and recognize an exemption for market-making activity in the debt instruments. Certain commenters recommended that the Board postpone the effective date of these requirements.

The Board is considering these comments, as well as a recent standard related to the regulatory capital treatment of TLAC holdings that was issued by the BCBS.[116] The Board intends to work with the OCC and FDIC towards a proposed interagency approach regarding the regulatory capital treatment of debt instruments issued by covered BHCs.

VI. Transition Periods

Under the proposal, the Board generally would have required covered BHCs to achieve compliance with the rule as of January 1, 2019. However, the proposal would have phased in the risk-weighted assets component of the external TLAC requirement in two stages: 16 percent effective January 1, 2019 and 18 percent effective January 1, 2022.

Similarly, under the proposal, the Board generally would have required covered IHCs to achieve compliance as of January 1, 2019. However, the proposal would have phased in the risk-weighted assets component of the internal TLAC requirement applicable to resolution covered IHCs in the same manner as for covered BHCs: 16 percent effective January 1, 2019 and 18 percent effective January 1, 2022.

Certain commenters requested that the leverage component of TLAC be subject to a phase-in until January 1, 2022, like the risk-weighted asset component under the proposal and consistent with the FSB standard. Other commenters urged the Board to adopt a phase-in period for LTD in the final rule or delay other aspects of the proposal.

Other than the certification regarding resolution strategy for FBO GSIBs that is due on June 30, 2017, the requirements of the final rule will become effective on January 1, 2019, which will give firms approximately two years from the date of the issuance of the final rule to comply. In this respect, the final rule eliminates the proposed January 1, 2022, phase-in for the risk-weighted asset component of the TLAC requirements. The Board has monitored the shortfalls of covered firms as described above and noted significant declines in the amount of additional capital and long-term debt necessary to meet the requirements of the final rule. Based on available information and given the relatively small estimated shortfalls, requiring full compliance by 2019 should have only a modest incremental impact. In particular, the phase-in period was provided in part to allow firms additional time to adjust their capital structures and issue additional long-term debt. Furthermore, the final rule will grandfather a significant portion of outstanding long-term debt that would not otherwise qualify as eligible internal or external LTD, which significantly reduces the additional time necessary for firms to come into full compliance with the rule.

Consistent with the proposal, firms that become covered BHCs after the date on which the final rule is issued will be required to comply with it on the later of three years after becoming covered BHCs and the effective date applicable to firms that are covered BHCs as of the date on which the final rule is issued.

Also consistent with the proposal, an intermediate holding company controlled by a foreign banking organization becomes subject to the requirements of the final rule on the later of January 1, 2019, and three years from the date on which the foreign banking organization becomes a foreign GSIB and the foreign banking organization is required to establish an intermediate holding company pursuant to section 252.153 of Regulation YY.

VII. Consideration of Domestic Internal TLAC Requirements and Public Reporting Requirements for Eligible Internal TLAC and LTD

In the proposed rule, the Board indicated that it intends to propose for public comment a requirement that covered BHCs and covered IHCs report publicly their amounts of TLAC and LTD on a regular basis. The Board also indicated its consideration of imposing domestic internal TLAC requirements between certain holding companies and their subsidiaries to ensure firms have in place adequate mechanisms for transferring severe losses up to their operating subsidiaries from the holding company. Such requirements would complement this final rule and enhance the prospects for a successful SPOE resolution of a covered BHC or of the parent foreign GSIB of a covered IHC. The Board received a number of comments on potential public reporting and eligible internal TLAC and LTD requirements. If the Board determines that it would be appropriate to propose public reporting requirements related to TLAC and LTD, or domestic internal TLAC requirements, the Board will invite public comment at that time.

VIII. Regulatory Analysis

A. Paperwork Reduction Act

Certain provisions of the final rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 through 3521). The Board reviewed the final rule under the authority delegated to the Board by OMB. The disclosure requirements are found in § 252.65 and § 252.167 and the reporting requirements are found in § 252.153(b)(5) and 252.164. These information collection requirements would implement section 165 of the Dodd Frank Act, as described in the Abstract below. In accordance with the requirements of the PRA, the Board may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control number for this collection is 7100–0350.

The final rule would revise the Reporting, Recordkeeping, and Disclosure Requirements Associated with Enhanced Prudential Standards (Regulation YY) (Reg YY; OMB No. 7100–0350). In addition, as permitted by the PRA, the Board is extending for three years, with revision, the Reporting, Recordkeeping, and Disclosure Requirements Associated with Enhanced Prudential Standards (Regulation YY) (Reg YY; OMB No. 7100–0350). The Board received no comments on the PRA.

The Board has a continuing interest in the public's opinions of collections of information. At any time, commenters may submit comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden to the **ADDRESSES** section. All comments will become a matter of public record.

[116] Basel Committee on Banking Supervision, Standard TLAC Holdings Amendments to the Basel III standard on the definition of capital (October 2016), available at: *https://www.bis.org/bcbs/publ/d387.pdf.*

A copy of the comments may also be submitted to the OMB desk officer: By mail to U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503 or by facsimile to 202–395–5806, Attention, Federal Reserve Desk Officer.

Revision, With Extension, of the Following Information Collection

Title of Information Collection: Reporting, Recordkeeping, and Disclosure Requirements Associated with Enhanced Prudential Standards (Regulation YY).

Agency Form Number: Reg YY.

OMB Control Number: 7100–0350.

Frequency of Response: Annual, semiannual, quarterly, one-time, and on occasion.

Affected Public: Businesses or other for-profit.

Respondents: State member banks, U.S. bank holding companies, savings and loan holding companies, nonbank financial companies, foreign banking organizations, U.S. intermediate holding companies, foreign saving and loan holding companies, and foreign nonbank financial companies supervised by the Board.

Abstract: Section 165 of the Dodd-Frank Act requires the Board to implement enhanced prudential standards for bank holding companies with total consolidated assets of $50 billion or more, including global systemically important foreign banking organizations with $50 billion or more in U.S. non-branch assets. Section 165 of the Dodd-Frank Act also permits the Board to establish such other prudential standards for such banking organizations as the Board determines are appropriate.

Disclosure Requirements

Section 252.65 of the final rule would require a U.S. global systemically important BHC to publicly disclose a description of the financial consequences to unsecured debtholders of the global systemically important BHC entering into a resolution proceeding in which the global systemically important BHC is the only entity that would be subject to the resolution proceeding. A global systemically important BHC must provide the disclosure required of this section: (1) In the offering documents for all of its eligible debt securities; and (2) either on the global systemically important BHC's Web site, or in more than one public financial report or other regulatory reports, provided that the global systemically important BHC publicly provides a summary table specifically indicating the location(s) of this disclosure. Section 252.167 of the final rule would impose these requirements on certain intermediate holding companies of non-U.S. global systemically important BHC that issue long term debt to third parties.

Reporting Requirements

Section 252.153(b)(5) of the final rule would require each top-tier foreign banking organization that controls a U.S. intermediate holding company to submit to the Board by January 1 of each calendar year through the U.S. intermediate holding company: (1) Notice of whether the home country supervisor (or other appropriate home country regulatory authority) of the top-tier foreign banking organization of the U.S. intermediate holding company has adopted standards consistent with the BCBS assessment methodology for identifying global systemically important banking organizations; and (2) notice of whether the top-tier foreign banking organization prepares or reports the indicators used by the BCBS assessment methodology to identify a banking organization as a global systemically important banking organization and, if it does, whether the top-tier foreign banking organization has determined that it has the characteristics of a global systemically important banking organization under the BCBS assessment methodology.

Section 252.164 of the final rule would require each top-tier global systemically important foreign banking organization with U.S. non-branch assets that equal or exceed $50 billion to submit to the Board a certification indicating whether the planned resolution strategy of the top-tier foreign banking organization involves the U.S. intermediate holding company or its subsidiaries entering resolution, receivership, insolvency, or similar proceedings in the United States. The rule requires the top-tier foreign banking organization to update this certification when its resolution strategy changes.

Estimated Paperwork Burden for Proposed Revisions

Estimated Number of Respondents:

Disclosure Burden

Section 252.65—8 respondents.

Section 252.167—3 respondents.

Reporting Burden

Section 252.153(b)(5)—15 respondents.

Section 252.164—8 respondents.

Estimated Burden per Response:

Disclosure Burden

Section 252.65—1 hour (annual), 5 hours (one-time burden).

Section 252.167—1 hour (annual), 5 hours (one-time burden).

Reporting Burden

Section 252.153(b)(5)—10 hours (annual).

Section 252.164—10 hours.

Total estimated one-time burden: 55 hours.

Current estimated annual burden for Reporting, Recordkeeping, and Disclosure Requirements Associated with Enhanced Prudential Standards (Regulation YY): 118,546 hours.

Proposed revisions estimated annual burden: 241 hours.

Total estimated annual burden: 118,842 hours.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), generally requires that an agency prepare and make available an initial regulatory flexibility analysis in connection with a notice of proposed rulemaking.

The Board solicited public comment on this rule in a notice of proposed rulemaking [117] and has since considered the potential impact of this rule on small entities in accordance with section 604 of the RFA. Based on the Board's analysis, and for the reasons stated below, the Board believes the final rule will not have a significant economic impact on a substantial number of small entities.

Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with assets of $550 million or less (small banking organizations).[118] As of June 30, 2016, there were approximately 3,203 top-tier small bank holding companies. As the threshold for forming an intermediate holding company in the United States is $50 billion in total U.S. non-branch assets, there would be no small covered IHCs.

1. Statement of the Need for, and Objectives of the Final Rule

As discussed in the **SUPPLEMENTARY INFORMATION**, the final rule is designed to improve the resolvability of covered BHCs and covered IHCs by requiring

[117] 80 FR 74,926 (Nov. 30, 2015).

[118] *See* 13 CFR 121.201. Effective July 14, 2014, the Small Business Administration revised the size standards for banking organizations to $550 million in assets from $500 million in assets. 79 FR 33647 (June 12, 2014).

such institutions maintain outstanding a minimum amount of loss-absorbing instruments, including a minimum amount of unsecured long-term debt, and imposing restrictions on the corporate practices and liabilities of such organizations. The Board is not finalizing at this time the provisions of the proposed rule that would have required small state member banks and certain SLHCs and BHCS to make deductions from regulatory capital for investments in eligible external long-term debt of covered BHCs. As such, the final rule will only apply to entities that are not small entities as further explained below.

2. Summary of the Significant Issues Raised by Public Comment on the Board's Initial Analysis, the Board's Assessment of Any Such Issues, and a Result of Such Comments

The Board did not receive a comments to the initial regulatory flexibility analysis relating to the elements of the proposal that are being finalized at this time. The final rule does not impact small entities as described below.

3. Small Entities Affected by the Final Rule and Compliance Requirements

The provisions of the final rule will apply to a top-tier bank holding company domiciled in the United States with $50 billion or more in total consolidated assets and has been identified as a GSIB, and to a U.S. intermediate holding company of a foreign GSIB. Bank holding companies and U.S. intermediate holding companies of foreign GSIBs that are subject to the proposed rule therefore substantially exceed the $550 million asset threshold at which a banking entity would qualify as a small banking organization.

4. Significant Alternatives to the Final Rule

In light of the foregoing, the Board does not believe that this final rule will have a significant negative economic impact on any small entities and therefore believes that there are no significant alternatives to the final rule that would reduce the impact on small entities.

C. Invitation for Comments on Use of Plain Language

Section 722 of the Gramm-Leach Bliley Act of 1999 requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board received no comments on these matters and believes that the final rule is written plainly and clearly.

List of Subjects in 12 CFR Part 252

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons stated in the **SUPPLEMENTARY INFORMATION**, the Board amends part 252 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 252—ENHANCED PRUDENTIAL STANDARDS (REGULATION YY)

■ 1. The authority citation for part 252 is revised to read as follows:

Authority: 12 U.S.C. 321–338a, 481–486, 1467a, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 1844(c), 3101 *et seq.,* 3101 note, 3904, 3906–3909, 4808, 5361, 5362, 5365, 5366, 5367, 5368, 5371.

■ 2. In § 252.2:
■ a. Redesignate paragraphs (t) through (z) as paragraphs (bb) through (hh), respectively;
■ b. Redesignate paragraphs (n) through (s) as paragraphs (u) through (z), respectively;
■ c. Redesignate paragraphs (i) through (m) as paragraphs (j) through (n), respectively;
■ d. Add new paragraphs (i) and (o) through (t), and add paragraph (aa).

The additions read as follows:

§ 252.2 Definitions.

* * * * *

(i) *Credit enhancement* means a qualified financial contract of the type set forth in section 210(c)(8)(D)(ii)(XII), (iii)(X), (iv)(V), (v)(VI), or (vi)(VI) of Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5390(c)(8)(D)(ii)(XII), (iii)(X), (iv)(V), (v)(VI), or (vi)(VI)) or a credit enhancement that the Federal Deposit Insurance Corporation determines by regulation is a qualified financial contract pursuant to section 210(c)(8)(D)(i) of Title II of the act (12 U.S.C. 5390(c)(8)(D)(i)).

* * * * *

(o) *Global methodology* means the assessment methodology and the higher loss absorbency requirement for global systemically important banks issued by the Basel Committee on Banking Supervision, as updated from time to time.

(p) *Global systemically important banking organization* means a global systemically important bank, as such term is defined in the global methodology.

(q) *Global systemically important foreign banking organization* means a top-tier foreign banking organization that is identified as a global systemically important foreign banking organization under § 252.153(b)(4).

(r) *Home country,* with respect to a foreign banking organization, means the country in which the foreign banking organization is chartered or incorporated.

(s) *Home country resolution authority,* with respect to a foreign banking organization, means the governmental entity or entities that under the laws of the foreign banking organization's home county has responsibility for the resolution of the top-tier foreign banking organization.

(t) *Home country supervisor,* with respect to a foreign banking organization, means the governmental entity or entities that under the laws of the foreign banking organization's home county has responsibility for the supervision and regulation of the top-tier foreign banking organization.

* * * * *

(aa) *Top-tier foreign banking organization,* with respect to a foreign bank, means the top-tier foreign banking organization or, alternatively, a subsidiary of the top-tier foreign banking organization designated by the Board.

* * * * *

■ 3. Add subpart G to read as follows:

Subpart G—External Long-term Debt Requirement, External Total Loss-absorbing Capacity Requirement and Buffer, and Restrictions on Corporate Practices for U.S. Global Systemically Important Banking Organizations

Sec.
252.60 Applicability.
252.61 Definitions.
252.62 External long-term debt requirement.
252.63 External total loss-absorbing capacity requirement and buffer.
252.64 Restrictions on corporate practices of U.S. global systemically important banking organizations.
252.65 Disclosure requirements.

§ 252.60 Applicability.

(a) *General applicability.* This subpart applies to any U.S. bank holding company that is identified as a global systemically important BHC.

(b) *Initial applicability.* A global systemically important BHC shall be subject to the requirements of this subpart beginning on the later of:

(1) January 1, 2019; or

(2) 1095 days (three years) after the date on which the company becomes a global systemically important BHC.

§ 252.61 Definitions.

For purposes of this subpart:

Additional tier 1 capital has the same meaning as in 12 CFR 217.20(c).

Common equity tier 1 capital has the same meaning as in 12 CFR 217.20(b).

Common equity tier 1 capital ratio has the same meaning as in 12 CFR 217.10(b)(1) and 12 CFR 217.10(c), as applicable.

Common equity tier 1 minority interest has the same meaning as in 12 CFR 217.2.

Default right (1) Means any:

(i) Right of a party, whether contractual or otherwise (including rights incorporated by reference to any other contract, agreement or document, and rights afforded by statute, civil code, regulation and common law), to liquidate, terminate, cancel, rescind, or accelerate the agreement or transactions thereunder, set off or net amounts owing in respect thereto (except rights related to same-day payment netting), exercise remedies in respect of collateral or other credit support or property related thereto (including the purchase and sale of property), demand payment or delivery thereunder or in respect thereof (other than a right or operation of a contractual provision arising solely from a change in the value of collateral or margin or a change in the amount of an economic exposure), suspend, delay or defer payment or performance thereunder, modify the obligations of a party thereunder or any similar rights; and

(ii) Right or contractual provision that alters the amount of collateral or margin that must be provided with respect to an exposure thereunder, including by altering any initial amount, threshold amount, variation margin, minimum transfer amount, the margin value of collateral or any similar amount, that entitles a party to demand the return of any collateral or margin transferred by it to the other party or a custodian or that modifies a transferee's right to reuse collateral or margin (if such right previously existed), or any similar rights, in each case, other than a right or operation of a contractual provision arising solely from a change in the value of collateral or margin or a change in the amount of an economic exposure; and

(2) Does not include any right under a contract that allows a party to terminate the contract on demand or at its option at a specified time, or from time to time, without the need to show cause.

Discretionary bonus payment has the same meaning as under 12 CFR 217.2.

Distribution has the same meaning as under 12 CFR 217.2.

Global systemically important BHC has the same meaning as in 12 CFR 217.2.

Eligible debt security means, with respect to a global systemically important BHC:

(1) A debt instrument that:

(i) Is paid in, and issued by the global systemically important BHC;

(ii) Is not secured, not guaranteed by the global systemically important BHC or a subsidiary of the global systemically important BHC, and is not subject to any other arrangement that legally or economically enhances the seniority of the instrument;

(iii) Has a maturity of greater than or equal to 365 days (one year) from the date of issuance;

(iv) Is governed by the laws of the United States or any State thereof;

(v) Does not provide the holder of the instrument a contractual right to accelerate payment of principal or interest on the instrument, except a right that is exercisable on one or more dates that are specified in the instrument or in the event of:

(A) A receivership, insolvency, liquidation, or similar proceeding of the global systemically important BHC; or

(B) A failure of the global systemically important BHC to pay principal or interest on the instrument when due and payable that continues for 30 days or more;

(vi) Does not have a credit-sensitive feature, such as an interest rate that is reset periodically based in whole or in part on the global systemically important BHC's credit quality, but may have an interest rate that is adjusted periodically independent of the global systemically important BHC's credit quality, in relation to general market interest rates or similar adjustments;

(vii) Is not a structured note; and

(viii) Does not provide that the instrument may be converted into or exchanged for equity of the global systemically important BHC; and

(2) A debt instrument issued prior to December 31, 2016 that:

(i) Is paid in, and issued by the global systemically important BHC;

(ii) Is not secured, not guaranteed by the global systemically important BHC or a subsidiary of the global systemically important BHC, and is not subject to any other arrangement that legally or economically enhances the seniority of the instrument;

(iii) Has a maturity of greater than or equal to 365 days (one year) from the date of issuance;

(iv) Does not have a credit-sensitive feature, such as an interest rate that is reset periodically based in whole or in part on the global systemically important BHC's credit quality, but may have an interest rate that is adjusted periodically independent of the global systemically important BHC's credit quality, in relation to general market interest rates or similar adjustments;

(v) Is not a structured note; and

(vi) Does not provide that the instrument may be converted into or exchanged for equity of the global systemically important BHC.

External TLAC buffer means, with respect to a global systemically important BHC, the sum of 2.5 percent, any applicable countercyclical capital buffer under 12 CFR 217.11(b) (expressed as a percentage), and the global systemically important BHC's method 1 capital surcharge.

GAAP means generally accepted accounting principles as used in the United States.

GSIB surcharge has the same meaning as in 12 CFR 217.2.

Method 1 capital surcharge means, with respect to a global systemically important BHC, the most recent method 1 capital surcharge (expressed as a percentage) the global systemically important BHC was required to calculate pursuant to subpart H of Regulation Q (12 CFR 217.400 through 217.406).

Outstanding eligible external long-term debt amount is defined in § 252.62(b).

Person has the same meaning as in 12 CFR 225.2.

Qualified financial contract has the same meaning as in section 210(c)(8)(D) of Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5390(c)(8)(D)).

Structured note means a debt instrument that:

(1) Has a principal amount, redemption amount, or stated maturity that is subject to reduction based on the performance of any asset, entity, index, or embedded derivative or similar embedded feature;

(2) Has an embedded derivative or similar embedded feature that is linked to one or more equity securities, commodities, assets, or entities;

(3) Does not specify a minimum principal amount that becomes due upon acceleration or early termination; or

(4) Is not classified as debt under GAAP, provided that an instrument is not a structured note solely because it is one or both of the following:

(i) An instrument that is not denominated in U.S. dollars; or

(ii) An instrument where interest payments are based on an interest rate index.

Supplementary leverage ratio has the same meaning as in 12 CFR 217.10(c)(4).

Tier 1 minority interest has the same meaning as in 12 CFR 217.2.

Tier 2 capital has the same meaning as in 12 CFR 217.20(d).

Total leverage exposure has the same meaning as in 12 CFR 217.10(c)(4)(ii).

Total risk-weighted assets means the greater of total risk-weighted assets as calculated under 12 CFR part 217, subpart D (the standardized approach) or 12 CFR part 217, subpart E (the internal ratings-based and advanced measurement approaches).

§ 252.62 External long-term debt requirement.

(a) *External long-term debt requirement.* Except as provided under paragraph (c) of this section, a global systemically important BHC must maintain an outstanding eligible external long-term debt amount that is no less than the amount equal to the greater of:

(1) The global systemically important BHC's total risk-weighted assets multiplied by the sum of 6 percent plus the global systemically important BHC's GSIB surcharge (expressed as a percentage); and

(2) 4.5 percent of the global systemically important BHC's total leverage exposure.

(b) *Outstanding eligible external long-term debt amount.* (1) A global systemically important BHC's outstanding eligible external long-term debt amount is the sum of:

(i) One hundred (100) percent of the amount due to be paid of unpaid principal of the outstanding eligible debt securities issued by the global systemically important BHC in greater than or equal to 730 days (two years);

(ii) Fifty (50) percent of the amount due to be paid of unpaid principal of the outstanding eligible debt securities issued by the global systemically important BHC in greater than or equal to 365 days (one year) and less than 730 days (two years); and

(iii) Zero (0) percent of the amount due to be paid of unpaid principal of the outstanding eligible debt securities issued by the global systemically important BHC in less than 365 days (one year).

(2) For purposes of paragraph (b)(1) of this section, the date on which principal is due to be paid on an outstanding eligible debt security is calculated from the earlier of:

(i) The date on which payment of principal is required under the terms governing the instrument, without respect to any right of the holder to accelerate payment of principal; and

(ii) The date the holder of the instrument first has the contractual right to request or require payment of the amount of principal, provided that, with respect to a right that is exercisable on one or more dates that are specified in the instrument only on the occurrence of an event (other than an event of a receivership, insolvency, liquidation, or similar proceeding of the global systemically important BHC, or a failure of the global systemically important BHC to pay principal or interest on the instrument when due), the date for the outstanding eligible debt security under this paragraph (b)(2)(ii) will be calculated as if the event has occurred.

(3) After notice and response proceedings consistent with 12 CFR part 263, subpart E, the Board may order a global systemically important BHC to exclude from its outstanding eligible long-term debt amount any debt security with one or more features that would significantly impair the ability of such debt security to take losses.

(c) *Redemption and repurchase.* A global systemically important BHC may not redeem or repurchase any outstanding eligible debt security without the prior approval of the Board if, immediately after the redemption or repurchase, the global systemically important BHC would not meet its external long-term debt requirement under paragraph (a) of this section, or its external total loss-absorbing capacity requirement under § 252.63(a).

§ 252.63 External total loss-absorbing capacity requirement and buffer.

(a) *External total loss-absorbing capacity requirement.* A global systemically important BHC must maintain an outstanding external total loss-absorbing capacity amount that is no less than the amount equal to the greater of:

(1) 18 percent of the global systemically important BHC's total risk-weighted assets; and

(2) 7.5 percent of the global systemically important BHC's total leverage exposure.

(b) *Outstanding external total loss-absorbing capacity amount.* A global systemically important BHC's outstanding external total loss-absorbing capacity amount is the sum of:

(1) The global systemically important BHC's common equity tier 1 capital (excluding any common equity tier 1 minority interest);

(2) The global systemically important BHC's additional tier 1 capital (excluding any tier 1 minority interest); and

(3) The global systemically important BHC's outstanding eligible external long-term debt amount plus 50 percent of the amount due to be paid of unpaid principal of outstanding eligible debt securities issued by the global systemically important BHC in, as calculated in § 252.62(b)(2), greater than or equal to 365 days (one year) but less than 730 days (two years).

(c) *External TLAC buffer*—(1) *Composition of the External TLAC risk-weighted buffer.* The external TLAC risk-weighted buffer is composed solely of common equity tier 1 capital.

(2) *Definitions.* For purposes of this paragraph, the following definitions apply:

(i) *Eligible retained income.* The eligible retained income of a global systemically important BHC is the global systemically important BHC's net income for the four calendar quarters preceding the current calendar quarter, based on the global systemically important BHC's FR Y–9C, net of any distributions and associated tax effects not already reflected in net income. Net income, as reported in the FR Y–9C, reflects discretionary bonus payments and certain distributions that are expense items (and their associated tax effects).

(ii) *Maximum external TLAC risk-weighted payout ratio.* The maximum external TLAC risk-weighted payout ratio is the percentage of eligible retained income that a global systemically important BHC can pay out in the form of distributions and discretionary bonus payments during the current calendar quarter. The maximum external TLAC risk-weighted payout ratio is based on the global systemically important BHC's external TLAC risk-weighted buffer level, calculated as of the last day of the previous calendar quarter, as set forth in Table 1 to § 252.63.

(iii) *Maximum external TLAC risk-weighted payout amount.* A global systemically important BHC's maximum external TLAC risk-weighted payout amount for the current calendar quarter is equal to the global systemically important BHC's eligible retained income, multiplied by the applicable maximum external TLAC risk-weighted payout ratio, as set forth in Table 1 to § 252.63.

(iv) *Maximum external TLAC leverage payout ratio.* The maximum external TLAC leverage payout ratio is the percentage of eligible retained income that a global systemically important BHC can pay out in the form of distributions and discretionary bonus payments during the current calendar quarter. The maximum external TLAC leverage payout ratio is based on the global systemically important BHC's external TLAC leverage buffer level, calculated as of the last day of the

previous calendar quarter, as set forth in Table 2 to § 252.63.

(v) *Maximum external TLAC leverage payout amount.* A global systemically important BHC's maximum external TLAC leverage payout amount for the current calendar quarter is equal to the global systemically important BHC's eligible retained income, multiplied by the applicable maximum TLAC leverage payout ratio, as set forth in Table 2 to § 252.63.

(3) *Calculation of the external TLAC risk-weighted buffer level.* (i) A global systemically important BHC's external TLAC risk-weighted buffer level is equal to the global systemically important BHC's common equity tier 1 capital ratio (expressed as a percentage) minus the greater of zero and the following amount:

(A) 18 percent; minus

(B) The ratio (expressed as a percentage) of the global systemically important BHC's additional tier 1 capital (excluding any tier 1 minority interest) to its total risk-weighted assets; and minus

(C) The ratio (expressed as a percentage) of the global systemically important BHC's outstanding eligible external long-term debt amount to total risk-weighted assets.

(ii) Notwithstanding paragraph (c)(3)(i) of this section, if the ratio (expressed as a percentage) of a global systemically important BHC's external total loss-absorbing capacity amount as calculated under paragraph (b) of this section to its risk-weighted assets is less than or equal to 18 percent, the global systemically important BHC's external TLAC risk-weighted buffer level is zero.

(4) *Limits on distributions and discretionary bonus payments.* (i) A global systemically important BHC shall not make distributions or discretionary bonus payments or create an obligation to make such distributions or payments during the current calendar quarter that, in the aggregate, exceed the maximum external TLAC risk-weighted payout amount or the maximum external TLAC leverage payout amount.

(ii) A global systemically important BHC with an external TLAC risk-weighted buffer level that is greater than the external TLAC risk-weighted buffer and an external TLAC leverage buffer that is greater than 2.0 percent, in accordance with paragraph (c)(5) of this section, is not subject to a maximum external TLAC risk-weighted payout amount or a maximum external TLAC leverage payout amount.

(iii) Except as provided in paragraph (c)(4)(iv) of this section, a global systemically important BHC may not make distributions or discretionary bonus payments during the current calendar quarter if the global systemically important BHC's:

(A) Eligible retained income is negative; and

(B) External TLAC risk-weighted buffer level was less than the external TLAC risk-weighted buffer as of the end of the previous calendar quarter or external TLAC leverage buffer level was less than 2.0 percent as of the end of the previous calendar quarter.

(iv) Notwithstanding the limitations in paragraphs (c)(4)(i) through (iii) of this section, the Board may permit a global systemically important BHC to make a distribution or discretionary bonus payment upon a request of the global systemically important BHC, if the Board determines that the distribution or discretionary bonus payment would not be contrary to the purposes of this section, or to the safety and soundness of the global systemically important BHC. In making such a determination, the Board will consider the nature and extent of the request and the particular circumstances giving rise to the request.

(v)(A) A global systemically important BHC is subject to the lowest of the maximum payout amounts as determined under 12 CFR 217.11(a)(2), the maximum external TLAC risk-weighted payout amount as determined under this paragraph, and the maximum external TLAC leverage payout amount as determined under this paragraph.

(B) Additional limitations on distributions may apply to a global systemically important BHC under 12 CFR 225.4, 225.8, and 263.202.

(5) *External TLAC leverage buffer*—(i) *General.* A global systemically important BHC is subject to the lower of the maximum external TLAC risk-weighted payout amount as determined under paragraph (c)(2)(iii) of this section and the maximum external TLAC leverage payout amount as determined under paragraph (c)(2)(v) of this section.

(ii) *Composition of the external TLAC leverage buffer.* The external TLAC leverage buffer is composed solely of tier 1 capital.

(iii) *Calculation of the external TLAC leverage buffer level.* (A) A global systemically important BHC's external TLAC leverage buffer level is equal to the global systemically important BHC's supplementary leverage ratio (expressed as a percentage) minus the greater of zero and the following amount:

(*1*) 7.5 percent; minus

(*2*) The ratio (expressed as a percentage) of the global systemically important BHC's outstanding eligible external long-term debt amount to total leverage exposure.

(B) Notwithstanding paragraph (c)(5)(iii) of this section, if the ratio (expressed as a percentage) of a global systemically important BHC's external total loss-absorbing capacity amount as calculated under paragraph (b) of this section to its total leverage exposure is less than or equal to 7.5 percent, the global systemically important BHC's external TLAC leverage buffer level is zero.

TABLE 1 TO § 252.63—CALCULATION OF MAXIMUM EXTERNAL TLAC RISK-WEIGHTED PAYOUT AMOUNT

External TLAC risk-weighted buffer level	Maximum External TLAC risk-weighted payout ratio (as a percentage of eligible retained income)
Greater than the external TLAC risk-weighted buffer	No payout ratio limitation applies.
Less than or equal to the external TLAC risk-weighted buffer, *and* greater than 75 percent of the external TLAC risk-weighted buffer.	60 percent.
Less than or equal to 75 percent of the external TLAC risk-weighted buffer, *and* greater than 50 percent of the external TLAC risk-weighted buffer.	40 percent.
Less than or equal to 50 percent of the external TLAC risk-weighted buffer, *and* greater 25 percent of the external TLAC risk-weighted buffer.	20 percent.
Less than or equal to 25 percent of the external TLAC risk-weighted buffer	0 percent.

TABLE 2 TO § 252.63—CALCULATION OF MAXIMUM EXTERNAL TLAC LEVERAGE PAYOUT AMOUNT

External TLAC leverage buffer level	Maximum External TLAC leverage payout ratio (as a percentage of eligible retained income)
Greater than 2.0 percent	No payout ratio limitation applies.
Less than or equal to 2.0 percent, and greater than 1.5 percent	60 percent.
Less than or equal to 1.5 percent, and greater than 1.0 percent	40 percent.
Less than or equal to 1.0 percent, and greater than 0.5 percent	20 percent.
Less than or equal to 0.5 percent	0 percent.

§ 252.64 Restrictions on corporate practices of U.S. global systemically important banking organizations.

(a) *Prohibited corporate practices.* A global systemically important BHC may not directly:

(1) Issue any debt instrument with an original maturity of less than 365 days (one year), including short term deposits and demand deposits, to any person, unless the person is a subsidiary of the global systemically important BHC;

(2) Issue any instrument, or enter into any related contract, with respect to which the holder of the instrument has a contractual right to offset debt owed by the holder or its affiliates to a subsidiary of the global systemically important BHC against the amount, or a portion of the amount, owed by the global systemically important BHC under the instrument;

(3) Enter into a qualified financial contract that is not a credit enhancement with a person that is not a subsidiary of the global systemically important BHC;

(4) Enter into an agreement in which the global systemically important BHC guarantees a liability of a subsidiary of the global systemically important BHC if such liability permits the exercise of a default right that is related, directly or indirectly, to the global systemically important BHC becoming subject to a receivership, insolvency, liquidation, resolution, or similar proceeding other than a receivership proceeding under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5381 through 5394) unless the liability is subject to requirements of the Board restricting such default rights or subject to any similar requirements of another U.S. federal banking agency; or

(5) Enter into, or otherwise begin to benefit from, any agreement that provides for its liabilities to be guaranteed by any of its subsidiaries.

(b) *Limit on unrelated liabilities.* (1) The aggregate amount, on an unconsolidated basis, of unrelated liabilities of a global systemically important BHC owed to persons that are not affiliates of the global systemically important BHC may not exceed 5 percent of the systemically important BHC's external total loss-absorbing capacity amount, as calculated under § 252.63(b).

(2) For purposes of paragraph (b)(1) of this section, an unrelated liability is any non-contingent liability of the global systemically important BHC owed to a person that is not an affiliate of the global systemically important BHC other than:

(i) The instruments that are used to satisfy the global systemically important BHC's external total loss-absorbing capacity amount, as calculated under § 252.63(b);

(ii) Any dividend or other liability arising from the instruments that are used to satisfy the global systemically important BHC's external total loss-absorbing capacity amount, as calculated under § 252.63(b);

(iii) An eligible debt security that does not provide the holder of the instrument with a currently exercisable right to require immediate payment of the total or remaining principal amount; and

(iv) A secured liability, to the extent that it is secured, or a liability that otherwise represents a claim that would be senior to eligible debt securities in Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5390(b)) and the Bankruptcy Code (11 U.S.C. 507).

(c) A Covered BHC is not subject to paragraph (b) of this section if all of the eligible debt securities issued by the Covered BHC would represent the most subordinated debt claim in a receivership, insolvency, liquidation, or similar proceeding of the Covered BHC.

§ 252.65 Disclosure requirements.

(a) A global systemically important BHC must publicly disclose a description of the financial consequences to unsecured debtholders of the global systemically important BHC entering into a resolution proceeding in which the global systemically important BHC is the only entity that would be subject to the resolution proceeding.

(b) A global systemically important BHC must provide the disclosure required by paragraph (a) of this section:

(1) In the offering documents for all of its eligible debt securities; and

(2) Either:

(i) On the global systemically important BHC's Web site; or

(ii) In more than one public financial report or other public regulatory reports, provided that the global systemically important BHC publicly provides a summary table specifically indicating the location(s) of this disclosure.

■ 4. Add § 252.153(b)(4), (5), and (6) to read as follows:

§ 252.153 U.S. intermediate holding company requirement for foreign banking organizations with U.S. non-branch assets of $50 billion or more.

* * * * *

(b) * * *

(4) For purposes of this part, a top-tier foreign banking organization with U.S. non-branch assets that equal or exceed $50 billion is a global systemically important foreign banking organization if any of the following conditions are met:

(i) The top-tier foreign banking organization determines, pursuant to paragraph (b)(6) of this section, that the top-tier foreign banking organization has the characteristics of a global systemically important banking organization under the global methodology; or

(ii) The Board, using information available to the Board, determines:

(A) That the top-tier foreign banking organization would be a global systemically important banking organization under the global methodology;

(B) That the top-tier foreign banking organization, if it were subject to the Board's Regulation Q, would be identified as a global systemically important BHC under 12 CFR 217.402 of the Board's Regulation Q; or

(C) That the U.S. intermediate holding company, if it were subject to 12 CFR 217.402 of the Board's Regulation Q, would be identified as a global systemically important BHC.

(5) Each top-tier foreign banking organization that controls a U.S. intermediate holding company shall submit to the Board by January 1 of each calendar year through the U.S. intermediate holding company:

(i) Notice of whether the home country supervisor (or other appropriate home country regulatory authority) of the top-tier foreign banking organization of the U.S. intermediate holding company has adopted standards consistent with the global methodology; and

(ii) Notice of whether the top-tier foreign banking organization prepares or reports the indicators used by the global methodology to identify a banking organization as a global systemically important banking organization and, if it does, whether the top-tier foreign banking organization has determined that it has the characteristics of a global systemically important banking organization under the global methodology pursuant to paragraph (b)(6) of this section.

(6) A top-tier foreign banking organization that controls a U.S. intermediate holding company and prepares or reports for any purpose the indicator amounts necessary to determine whether the top-tier foreign banking organization is a global systemically important banking organization under the global methodology must use the data to determine whether the top-tier foreign banking organization has the characteristics of a global systemically important banking organization under the global methodology.

* * * * *

■ 5. Add subpart P to read as follows:

Subpart P—Covered IHC Long-Term Debt Requirement, Covered IHC Total Loss absorbing Capacity Requirement and Buffer, and Restrictions on Corporate Practices for Intermediate Holding Companies of Global Systemically Important Foreign Banking Organizations

Sec.

252.160 Applicability.
252.161 Definitions.
252.162 Covered IHC long-term debt requirement.
252.163 Internal debt conversion order.
252.164 Identification as a resolution Covered IHC or a non-resolution Covered IHC
252.165 Covered IHC total loss-absorbing capacity requirement and buffer.
252.166 Restrictions on corporate practices of intermediate holding companies of global systemically important foreign banking organizations.
252.167 Disclosure requirements for resolution Covered IHCs.

§ 252.160 Applicability.

(a) *General applicability.* This subpart applies to a U.S. intermediate holding company that is required to be established pursuant to § 252.153 and is controlled by a global systemically important foreign banking organization (Covered IHC).

(b) *Initial applicability.* A Covered IHC is subject to the requirements of §§ 252.162, 252.163, 252.165, 252.166, and 252.167 beginning on the later of:

(1) January 1, 2019; and

(2) 1095 days (three years) after the earlier of the date on which:

(i) The U.S. non-branch assets of the global systemically important foreign banking organization that controls the Covered IHC equaled or exceeded $50 billion; and

(ii) The foreign banking organization that controls the Covered IHC became a global systemically important foreign banking organization.

(c) *Applicability of § 252.164.* Section 252.164 applies to a global systemically important foreign banking organization with U.S. non-branch assets that equal or exceed $50 billion.

§ 252.161 Definitions.

For purposes of this subpart:

Additional tier 1 capital has the same meaning as in 12 CFR 217.20(c).

Average total consolidated assets means the denominator of the leverage ratio as described in 12 CFR 217.10(b)(4).

Common equity tier 1 capital has the same meaning as in 12 CFR 217.20(b).

Common equity tier 1 capital ratio has the same meaning as in 12 CFR 217.10(b)(1) and 12 CFR 217.10(c), as applicable.

Common equity tier 1 minority interest has the same meaning as in 12 CFR 217.2.

Covered IHC is defined in § 252.160.

Covered IHC TLAC buffer means, with respect to a Covered IHC, the sum of 2.5 percent and any applicable countercyclical capital buffer under 12 CFR 217.11(b) (expressed as a percentage).

Covered IHC Total loss-absorbing capacity amount is defined in § 252.165(c).

Default right (1) Means any:

(i) Right of a party, whether contractual or otherwise (including rights incorporated by reference to any other contract, agreement or document, and rights afforded by statute, civil code, regulation and common law), to liquidate, terminate, cancel, rescind, or accelerate such agreement or transactions thereunder, set off or net amounts owing in respect thereto (except rights related to same-day payment netting), exercise remedies in respect of collateral or other credit support or property related thereto (including the purchase and sale of property), demand payment or delivery thereunder or in respect thereof (other than a right or operation of a contractual provision arising solely from a change in the value of collateral or margin or a change in the amount of an economic exposure), suspend, delay or defer payment or performance thereunder, modify the obligations of a party thereunder or any similar rights; and

(ii) Right or contractual provision that alters the amount of collateral or margin that must be provided with respect to an exposure thereunder, including by altering any initial amount, threshold amount, variation margin, minimum transfer amount, the margin value of collateral or any similar amount, that entitles a party to demand the return of any collateral or margin transferred by it to the other party or a custodian or that modifies a transferee's right to reuse collateral or margin (if such right previously existed), or any similar rights, in each case, other than a right or operation of a contractual provision arising solely from a change in the value of collateral or margin or a change in the amount of an economic exposure; and

(2) Does not include any right under a contract that allows a party to terminate the contract on demand or at its option at a specified time, or from time to time, without the need to show cause.

Discretionary bonus payment has the same meaning as under 12 CFR 217.2.

Distribution has the same meaning as under 12 CFR 217.2.

Eligible external debt security means:

(1) A debt instrument that:

(i) Is paid in, and issued by the Covered IHC to, and remains held by, a person that does not directly or indirectly control the Covered IHC and is not a wholly owned subsidiary;

(ii) Is not secured, not guaranteed by the Covered IHC or a subsidiary of the Covered IHC, and is not subject to any other arrangement that legally or economically enhances the seniority of the instrument;

(iii) Has a maturity of greater than or equal to 365 days (one year) from the date of issuance;

(iv) Is governed by the laws of the United States or any State thereof;

(v) Does not provide the holder of the instrument a contractual right to accelerate payment of principal or interest on the instrument, except a right that is exercisable on one or more dates that are specified in the instrument or in the event of:

(A) A receivership, insolvency, liquidation, or similar proceeding of the Covered IHC; or

(B) A failure of the Covered IHC to pay principal or interest on the

instrument when due and payable that continues for 30 days or more;

(vi) Does not have a credit-sensitive feature, such as an interest rate that is reset periodically based in whole or in part on the Covered IHC's credit quality, but may have an interest rate that is adjusted periodically independent of the Covered IHC's credit quality, in relation to general market interest rates or similar adjustments;

(vii) Is not a structured note; and

(viii) Does not provide that the instrument may be converted into or exchanged for equity of the covered IHC; and

(2) A debt instrument issued prior to December 31, 2016 that:

(i) Is paid in, and issued by the Covered IHC to, and remains held by, a person that does not directly or indirectly control the Covered IHC and is not a wholly owned subsidiary;

(ii) Is not secured, not guaranteed by the Covered IHC or a subsidiary of the Covered IHC, and not subject to any other arrangement that legally or economically enhances the seniority of the instrument;

(iii) Has a maturity of greater than or equal to 365 days (one year) from the date of issuance;

(iv) Does not have a credit-sensitive feature, such as an interest rate that is reset periodically based in whole or in part on the Covered IHC's credit quality, but may have an interest rate that is adjusted periodically independent of the Covered IHC's credit quality, in relation to general market interest rates or similar adjustments;

(v) Is not a structured note; and

(vi) Does not provide that the instrument may be converted into or exchanged for equity of the Covered IHC.

Eligible Covered IHC debt security with respect to a non-resolution Covered IHC means eligible internal debt securities issued by the non-resolution Covered IHC, and with respect to a resolution Covered IHC means eligible internal debt securities and eligible external debt securities issued by the resolution Covered IHC.

Eligible internal debt security means a debt instrument that:

(i) Is paid in, and issued by the Covered IHC;

(ii) Is not secured, not guaranteed by the Covered IHC or a subsidiary of the Covered IHC, and is not subject to any other arrangement that legally or economically enhances the seniority of the instrument;

(iii) Has a maturity of greater than or equal to 365 days (one year) from the date of issuance;

(iv) Is governed by the laws of the United States or any State thereof;

(v) Does not provide the holder of the instrument a contractual right to accelerate payment of principal or interest on the instrument, except a right that is exercisable on one or more dates that are specified in the instrument or in the event of:

(A) A receivership, insolvency, liquidation, or similar proceeding of the Covered IHC; or

(B) A failure of the Covered IHC to pay principal or interest on the instrument when due and payable that continues for 30 days or more;

(vi) Is not a structured note;

(vii) Is issued to and remains held by a company that is incorporated or organized outside of the United States, and directly or indirectly controls the Covered IHC or is a wholly owned subsidiary; and

(viii) Has a contractual provision that is approved by the Board that provides for the immediate conversion or exchange of the instrument into common equity tier 1 of the Covered IHC upon issuance by the Board of an internal debt conversion order.

GAAP means generally accepted accounting principles as used in the United States.

Internal debt conversion order means an order by the Board to immediately convert to, or exchange for, common equity tier 1 capital an amount of eligible internal debt securities of the Covered IHC specified by the Board in its discretion, as described in § 252.163.

Non-resolution Covered IHC means a Covered IHC identified as or determined to be a non-resolution Covered IHC pursuant to § 252.164.

Outstanding eligible Covered IHC long-term debt amount is defined in § 252.162(b).

Person has the same meaning as in 12 CFR 225.2.

Qualified financial contract has the same meaning as in section 210(c)(8)(D) of Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5390(c)(8)(D)).

Resolution Covered IHC means a Covered IHC identified as or determined to be a resolution Covered IHC pursuant to § 252.164.

Standardized total risk-weighted assets has the same meaning as in 12 CFR 217.2.

Structured note means a debt instrument that:

(1) Has a principal amount, redemption amount, or stated maturity that is subject to reduction based on the performance of any asset, entity, index, or embedded derivative or similar embedded feature;

(2) Has an embedded derivative or other similar embedded feature that is linked to one or more equity securities, commodities, assets, or entities;

(3) Does not specify a minimum principal amount that becomes due and payable upon acceleration or early termination; or

(4) Is not classified as debt under GAAP, provided that an instrument is not a structured note solely because it is one or both of the following:

(i) A non-dollar-denominated instrument, or

(ii) An instrument whose interest payments are based on an interest rate index.

Supplementary leverage ratio has the same meaning as in 12 CFR 217.10(c)(4).

Tier 1 minority interest has the same meaning as in 12 CFR 217.2.

Tier 2 capital has the same meaning as in 12 CFR 217.20(d).

Total leverage exposure has the same meaning as in 12 CFR 217.10(c)(4)(ii).

Total risk-weighted assets, with respect to a Covered IHC, is equal to the Covered IHC's standardized total risk-weighted assets.

U.S. non-branch assets has the same meaning as in 12 CFR 252.152(b)(2).

Wholly owned subsidiary means an entity, all of the outstanding ownership interests of which are owned directly or indirectly by a global systemically important foreign banking organization that directly or indirectly controls a Covered IHC, except that up to 0.5 percent of the entity's outstanding ownership interests may be held by a third party if the ownership interest is acquired or retained by the third party for the purpose of establishing corporate separateness or addressing bankruptcy, insolvency, or similar concerns.

§ 252.162 Covered IHC long-term debt requirement.

(a) *Covered IHC long-term debt requirement.* A Covered IHC must have an outstanding eligible Covered IHC long-term debt amount that is no less than the amount equal to the greatest of:

(1) 6 percent of the Covered IHC's total risk-weighted assets;

(2) If the Covered IHC is required to maintain a minimum supplementary leverage ratio, 2.5 percent of the Covered IHC's total leverage exposure; and

(3) 3.5 percent of the Covered IHC's average total consolidated assets.

(b) *Outstanding eligible Covered IHC long-term debt amount.* (1) A Covered IHC's outstanding eligible Covered IHC long-term debt amount is the sum of:

(i) One hundred (100) percent of the amount of the outstanding eligible Covered IHC debt securities issued by the Covered IHC due to be paid in greater than or equal to 730 days (two years); and

(ii) Fifty (50) percent of the amount of the outstanding eligible Covered IHC debt securities issued by the Covered IHC due to be paid in greater than or equal to 365 days (one year) and less than 730 days (two years); and

(iii) Zero (0) percent of the amount of the outstanding eligible Covered IHC debt securities issued by the Covered IHC due to be paid in less than 365 days (one year).

(2) For purposes of paragraph (b)(1) of this section, the date on which principal is due to be paid on an outstanding eligible Covered IHC debt security is calculated from the earlier of:

(i) The date on which payment of principal is required under the terms governing the instrument, without respect to any right of the holder to accelerate payment of principal; and

(ii) The date the holder of the instrument first has the contractual right to request or require payment of the amount of principal, provided that, with respect to a right that is exercisable on one or more dates that are specified in the instrument only on the occurrence of an event (other than an event of a receivership, insolvency, liquidation, or similar proceeding of the Covered IHC, or a failure of the Covered IHC to pay principal or interest on the instrument when due), the date for the outstanding eligible Covered IHC debt security under this paragraph (b)(2)(ii) will be calculated as if the event has occurred.

(3) After notice and response proceedings consistent with 12 CFR part 263, subpart E, the Board may order a Covered IHC to exclude from its outstanding eligible Covered IHC long-term debt amount any debt security with one or more features that would significantly impair the ability of such debt security to take losses.

(c) *Redemption and repurchase.* Without the prior approval of the Board, a Covered IHC may not redeem or repurchase any outstanding eligible Covered IHC debt security if, immediately after the redemption or repurchase, the Covered IHC would not have an outstanding eligible Covered IHC long-term debt amount that is sufficient to meet its Covered IHC long-term debt requirement under paragraph (a) of this section.

§ 252.163 Internal debt conversion order.

(a) The Board may issue an internal debt conversion order if:

(1) The Board has determined that the Covered IHC is in default or danger of default; and

(2) Any of the following circumstances apply:

(i) A foreign banking organization that directly or indirectly controls the Covered IHC or any subsidiary of the top-tier foreign banking organization has been placed into resolution proceedings (including the application of statutory resolution powers) in its home country;

(ii) The home country supervisor of the top-tier foreign banking organization has consented or not promptly objected after notification by the Board to the conversion or exchange of the eligible internal debt securities of the Covered IHC; or

(iii) The Board has made a written recommendation to the Secretary of the Treasury pursuant to 12 U.S.C. 5383(a) regarding the Covered IHC.

(b) For purposes of paragraph (a) of this section, the Board will consider:

(1) A Covered IHC in default or danger of default if

(i) A case has been, or likely will promptly be, commenced with respect to the Covered IHC under the Bankruptcy Code (11 U.S.C. 101 *et seq.*);

(ii) The Covered IHC has incurred, or is likely to incur, losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the Covered IHC to avoid such depletion;

(iii) The assets of the Covered IHC are, or are likely to be, less than its obligations to creditors and others; or

(iv) The Covered IHC is, or is likely to be, unable to pay its obligations (other than those subject to a bona fide dispute) in the normal course of business; and

(2) An objection by the home country supervisor to the conversion or exchange of the eligible internal debt securities to be prompt if the Board receives the objection no later than 24 hours after the Board requests such consent or non-objection from the home country supervisor.

§ 252.164 Identification as a resolution Covered IHC or a non-resolution Covered IHC.

(a) *Initial certification.* The top-tier global systemically important foreign banking organization with U.S. non-branch assets that equal or exceed $50 billion must certify to the Board on the later of June 30, 2017, or one year prior to the date on which a Covered IHC becomes subject to the requirements of this subpart pursuant to § 252.160(b) whether the planned resolution strategy of the top-tier foreign banking organization involves the Covered IHC or the subsidiaries of the Covered IHC entering resolution, receivership, insolvency, or similar proceedings in the United States.

(b) *Certification update.* The top-tier global systemically important foreign banking organization with U.S. non-branch assets that equal or exceed $50 billion must provide an updated certification to the Board upon a change in the resolution strategy described in the certification provided pursuant to paragraph (a) of this section.

(c) *Identification of a resolution Covered IHC.* A Covered IHC is a resolution Covered IHC if the most recent certification provided pursuant to paragraphs (a) and (b) of this section indicates that the top-tier foreign banking organization's planned resolution strategy involves the Covered IHC or the subsidiaries of the Covered IHC entering resolution, receivership, insolvency, or similar proceedings in the United States.

(d) *Identification of a non-resolution Covered IHC.* A Covered IHC is a non-resolution Covered IHC if the most recent certification provided pursuant to paragraphs (a) and (b) of this section indicates that the top-tier foreign banking organization's planned resolution strategy involves neither the Covered IHC nor the subsidiaries of the Covered IHC entering resolution, receivership, insolvency, or similar proceedings in the United States.

(e) *Board determination.* The Board may determine in its discretion that a non-resolution Covered IHC identified pursuant to paragraph (d) of this section is a resolution Covered IHC, or that a resolution Covered IHC identified pursuant to paragraph (c) of this section is a non-resolution Covered IHC.

(f) *Transition.* (1) A Covered IHC identified as a resolution Covered IHC pursuant to paragraph (b) of this section or determined by the Board to be a resolution Covered IHC pursuant to paragraph (e) of this section must comply with the requirements in this subpart applicable to a resolution Covered IHC within 365 days (one year) after such identification or determination, unless such time period is extended by the Board in its discretion.

(2) A Covered IHC identified as a non-resolution Covered IHC pursuant to paragraph (b) of this section or determined by the Board to be a non-resolution Covered IHC pursuant to paragraph (e) of this section must comply with the requirements in this subpart applicable to a non-resolution Covered IHC 365 days (one year) after such identification or determination, unless such time period is extended by the Board in its discretion.

§ 252.165 Covered IHC total loss-absorbing capacity requirement and buffer.

(a) *Covered IHC total loss-absorbing capacity requirement for a resolution Covered IHC.* A resolution Covered IHC must have an outstanding Covered IHC

total loss-absorbing capacity amount that is no less than the amount equal to the greatest of:

(1) 18 percent of the resolution Covered IHC's total risk-weighted assets;

(2) If the Board requires the resolution Covered IHC to maintain a minimum supplementary leverage ratio, 6.75 percent of the resolution Covered IHC's total leverage exposure; and

(3) Nine (9) percent of the resolution Covered IHC's average total consolidated assets.

(b) *Covered IHC total loss-absorbing capacity requirement for a non-resolution Covered IHC.* A non-resolution Covered IHC must have an outstanding Covered IHC total loss-absorbing capacity amount that is no less than the amount equal to the greatest of:

(1) 16 percent of the non-resolution Covered IHC's total risk-weighted assets;

(2) If the Board requires the non-resolution Covered IHC to maintain a minimum supplementary leverage ratio, 6 percent of the non-resolution Covered IHC's total leverage exposure; and

(3) Eight (8) percent of the non-resolution Covered IHC's average total consolidated assets.

(c) *Covered IHC Total loss-absorbing capacity amount.* (1) A non-resolution Covered IHC's Covered IHC total loss-absorbing capacity amount is equal to the sum of:

(i) The Covered IHC's common equity tier 1 capital (excluding any common equity tier 1 minority interest) held by a company that is incorporated or organized outside of the United States and that directly or indirectly controls the Covered IHC;

(ii) The Covered IHC's additional tier 1 capital (excluding any tier 1 minority interest) held by a company that is incorporated or organized outside of the United States and that directly or indirectly controls the Covered IHC; and

(iii) The Covered IHC's outstanding eligible Covered IHC long-term debt amount, plus 50 percent of the amount of unpaid principal of outstanding eligible Covered IHC debt securities issued by the Covered IHC due to be paid in greater than or equal to 365 days (one year) but less than 730 days (two years).

(2) A resolution Covered IHC's Covered IHC total loss-absorbing capacity amount is equal to the sum of:

(i) The Covered IHC's common equity tier 1 capital (excluding any common equity tier 1 minority interest);

(ii) The Covered IHC's additional tier 1 capital (excluding any tier 1 minority interest); and

(iii) The Covered IHC's outstanding eligible Covered IHC long-term debt amount, plus 50 percent of the amount of unpaid principal of outstanding eligible Covered IHC debt securities issued by the Covered IHC due to be paid in greater than or equal to 365 days (one year) but less than 730 days (two years).

(d) *Covered IHC TLAC buffer*—(1) *Composition of the Covered IHC TLAC buffer.* The Covered IHC TLAC buffer is composed solely of common equity tier 1 capital.

(2) *Definitions.* For purposes of this paragraph, the following definitions apply:

(i) *Eligible retained income.* The eligible retained income of a Covered IHC is its net income for the four calendar quarters preceding the current calendar quarter, based on the Covered IHC's FR Y–9C, or other applicable regulatory report as determined by the Board, net of any distributions and associated tax effects not already reflected in net income. Net income, as reported in the FR Y–9C, reflects discretionary bonus payments and certain distributions that are expense items (and their associated tax effects).

(ii) *Maximum Covered IHC TLAC payout ratio.* The maximum Covered IHC TLAC payout ratio is the percentage of eligible retained income that a Covered IHC can pay out in the form of distributions and discretionary bonus payments during the current calendar quarter. The maximum Covered IHC TLAC payout ratio is based on the Covered IHC's Covered IHC TLAC buffer level, calculated as of the last day of the previous calendar quarter, as set forth in Table 1 to § 252.165.

(iii) *Maximum Covered IHC TLAC payout amount.* A Covered IHC's maximum Covered IHC TLAC payout amount for the current calendar quarter is equal to the Covered IHC's eligible retained income, multiplied by the applicable maximum Covered IHC TLAC payout ratio, as set forth in Table 1 to § 252.165.

(3) *Calculation of the Covered IHC TLAC buffer level.* (i) A Covered IHC's Covered IHC TLAC buffer level is equal to the Covered IHC's common equity tier 1 capital ratio (expressed as a percentage) minus the greater of zero and the following amount:

(A) 16 percent for a non-resolution Covered IHC, and 18 percent for a resolution Covered IHC; minus

(B)(*1*) For a non-resolution Covered IHC, the ratio (expressed as a percentage) of the Covered IHC's additional tier 1 capital (excluding any tier 1 minority interest) held by a company that is incorporated or organized outside of the United States and that directly or indirectly controls the Covered IHC to the Covered IHC's total risk-weighted assets;

(*2*) For a resolution Covered IHC, the ratio (expressed as a percentage of the Covered IHC's additional tier 1 capital (excluding any tier 1 minority interest) to the Covered IHC's total-risk weighted assets; and minus

(C) The ratio (expressed as a percentage) of the Covered IHC's outstanding eligible Covered IHC long-term debt amount to total risk-weighted assets.

(ii)(A) Notwithstanding paragraph (d)(3)(i) of this section, with respect to a resolution Covered IHC, if the ratio (expressed as a percentage) of the resolution Covered IHC's Covered IHC total loss-absorbing capacity amount, as calculated under § 252.165(a), to the resolution Covered IHC's risk-weighted assets is less than or equal to, 18 percent, the Covered IHC's Covered IHC TLAC buffer level is zero.

(B) Notwithstanding paragraph (d)(3)(i) of this section, with respect to a non-resolution Covered IHC, if the ratio (expressed as a percentage) of the non-resolution Covered IHC's Covered IHC total loss-absorbing capacity amount, as calculated under § 252.165(b), to the Covered IHC's risk-weighted assets is less than or equal to 16 percent, the non-resolution Covered IHC's Covered IHC TLAC buffer level is zero.

(4) *Limits on distributions and discretionary bonus payments.* (i) A Covered IHC shall not make distributions or discretionary bonus payments or create an obligation to make such distributions or payments during the current calendar quarter that, in the aggregate, exceed the maximum Covered IHC TLAC payout amount.

(ii) A Covered IHC with a Covered IHC TLAC buffer level that is greater than the Covered IHC TLAC buffer is not subject to a maximum Covered IHC TLAC payout amount.

(iii) Except as provided in paragraph (d)(4)(iv) of this section, a Covered IHC may not make distributions or discretionary bonus payments during the current calendar quarter if the Covered IHC's:

(A) Eligible retained income is negative; and

(B) Covered IHC TLAC buffer level was less than the Covered IHC TLAC buffer as of the end of the previous calendar quarter.

(iv) Notwithstanding the limitations in paragraphs (d)(4)(i) through (iii) of this section, the Board may permit a Covered IHC to make a distribution or discretionary bonus payment upon a request of the Covered IHC, if the Board determines that the distribution or

discretionary bonus payment would not be contrary to the purposes of this section, or to the safety and soundness of the Covered IHC. In making such a determination, the Board will consider the nature and extent of the request and the particular circumstances giving rise to the request.

TABLE 1 TO § 252.165—CALCULATION OF MAXIMUM COVERED IHC TLAC PAYOUT AMOUNT

Covered IHC TLAC buffer level	Maximum Covered IHC TLAC payout ratio (as a percentage of eligible retained income)
Greater than the Covered IHC TLAC buffer	No payout ratio limitation applies.
Less than or equal to the Covered IHC TLAC buffer, *and* greater than 75 percent of the Covered IHC TLAC buffer.	60 percent.
Less than or equal to 75 percent of the Covered IHC TLAC buffer, *and* greater than 50 percent of the Covered IHC TLAC buffer.	40 percent.
Less than or equal to 50 percent of the Covered IHC TLAC buffer, *and* greater 25 percent of the Covered IHC TLAC buffer.	20 percent.
Less than or equal to 25 percent of the Covered IHC TLAC buffer	0 percent.

(v)(A) A Covered IHC is subject to the lowest of the maximum payout amounts as determined under 12 CFR 217.11(a)(2) and the maximum Covered IHC TLAC payout amount as determined under this paragraph.

(B) Additional limitations on distributions may apply to a Covered IHC under 12 CFR 225.4, 225.8, and 263.202.

§ 252.166 Restrictions on corporate practices of intermediate holding companies of global systemically important foreign banking organizations.

(a) *Prohibited corporate practices.* A Covered IHC may not directly:

(1) Issue any debt instrument with an original maturity of less than 365 days (one year), including short term deposits and demand deposits, to any person, unless the person is an affiliate of the Covered IHC;

(2) Issue any instrument, or enter into any related contract, with respect to which the holder of the instrument has a contractual right to offset debt owed by the holder or its affiliates to the Covered IHC or a subsidiary of the Covered IHC against the amount, or a portion of the amount, owed by the Covered IHC under the instrument;

(3) Enter into a qualified financial contract that is not a credit enhancement with a person that is not an affiliate of the Covered IHC;

(4) Enter into an agreement in which the Covered IHC guarantees a liability of an affiliate of the Covered IHC if such liability permits the exercise of a default right that is related, directly or indirectly, to the Covered IHC becoming subject to a receivership, insolvency, liquidation, resolution, or similar proceeding other than a receivership proceeding under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5381 through 5394) unless the liability is subject to requirements of the Board restricting such default rights or subject to any similar requirements of another U.S. federal banking agency; or

(5) Enter into, or otherwise benefit from, any agreement that provides for its liabilities to be guaranteed by any of its subsidiaries.

(b) *Limit on unrelated liabilities.* (1) The aggregate amount, on an unconsolidated basis, of unrelated liabilities of a Covered IHC may not exceed 5 percent of the Covered IHC's Covered IHC total loss-absorbing capacity amount, as calculated under § 252.165(c).

(2) For purposes of paragraph (b)(1) of this section, an unrelated liability includes:

(i) With respect to a non-resolution Covered IHC, any non-contingent liability of the non-resolution Covered IHC owed to a person that is not an affiliate of the non-resolution Covered IHC other than those liabilities specified in paragraph (b)(3) of this section, and

(ii) With respect to a resolution Covered IHC, any non-contingent liability of the resolution Covered IHC owed to a person that is not a subsidiary of the resolution Covered IHC other than those liabilities specified in paragraph (b)(3) of this section.

(3)(i) The instruments that are used to satisfy the Covered IHC's Covered IHC total loss-absorbing capacity amount, as calculated under § 252.165(a);

(ii) Any dividend or other liability arising from the instruments that are used to satisfy the Covered IHC's Covered IHC total loss-absorbing capacity amount, as calculated under § 252.165(c)(2);

(iii) An eligible Covered IHC debt security that does not provide the holder of the instrument with a currently exercisable right to require immediate payment of the total or remaining principal amount; and

(iv) A secured liability, to the extent that it is secured, or a liability that otherwise represents a claim that would be senior to eligible Covered IHC debt securities in Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5390(b)) and the Bankruptcy Code (11 U.S.C. 507).

(c) A Covered IHC is not subject to paragraph (b) of this section if all of the eligible Covered IHC debt securities issued by the Covered IHC would represent the most subordinated debt claim in a receivership, insolvency, liquidation, or similar proceeding of the Covered IHC.

§ 252.167 Disclosure requirements for resolution Covered IHCs.

(a) A resolution Covered IHC that has any outstanding eligible external debt securities must publicly disclose a description of the financial consequences to unsecured debtholders of the resolution Covered IHC entering into a resolution proceeding in which the resolution Covered IHC is the only entity in the United States that would be subject to the resolution proceeding.

(b) A resolution Covered IHC must provide the disclosure required by paragraph (a) of this section:

(1) In the offering documents for all of its eligible external debt securities; and

(2) Either:

(i) On the resolution Covered IHC's Web site; or

(ii) In more than one public financial report or other public regulatory reports, provided that the resolution Covered IHC publicly provides a summary table specifically indicating the location(s) of this disclosure.

By order of the Board of Governors of the Federal Reserve System, January 6, 2017.

Robert deV. Frierson,

Secretary of the Board.

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Part III

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Qualifying Income From Activities of Publicly Traded Partnerships With Respect to Minerals or Natural Resources; Final Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9817]

RIN 1545–BM43

Qualifying Income From Activities of Publicly Traded Partnerships With Respect to Minerals or Natural Resources

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 7704(d)(1)(E) of the Internal Revenue Code (Code) relating to the qualifying income exception for publicly traded partnerships to not be treated as corporations for Federal income tax purposes. Specifically, these regulations define the activities that generate qualifying income from exploration, development, mining or production, processing, refining, transportation, and marketing of minerals or natural resources. These regulations affect publicly traded partnerships and their partners.

DATES: *Effective Date:* These regulations are effective January 19, 2017.

Applicability Date: For dates of applicability, see § 1.7704–4(g).

FOR FURTHER INFORMATION CONTACT: Caroline E. Hay, (202) 317–5279 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1 under section 7704(d)(1)(E) of the Code relating to qualifying income from certain activities with respect to minerals or natural resources.

Congress enacted section 7704 as part of the Omnibus Budget Reconciliation Act of 1987 (Section 10211(a), Public Law 100–203, 101 Stat. 1330 (1987)). The following year, Congress clarified section 7704 in the Technical and Miscellaneous Revenue Act of 1988 (Section 2004(f), Public Law 100–647, 102 Stat. 3342 (1988)). Section 7704(a) provides that, as a general rule, publicly traded partnerships (PTPs) will be treated as corporations for Federal income tax purposes. In section 7704(c), Congress provided an exception to this rule if 90 percent or more of a PTP's gross income is ''qualifying income.'' Qualifying income is generally passive-type income, such as interest, dividends, and rent. Section 7704(d)(1)(E) provides, however, that qualifying income also includes income and gains derived from the exploration, development, mining or production, processing, refining, transportation, or marketing of minerals or natural resources.

There has been no prior guidance that PTPs can rely on that defines the specific activities that generate qualifying income in the mineral and natural resource industries. In order to obtain certainty that income from their activities constitutes qualifying income under section 7704(d)(1)(E), PTPs have sought opinion letters from legal counsel or private letter rulings (PLRs) from the IRS. For the first 20 years in which the legislation has been in force, demand for PLRs under section 7704(d)(1)(E) was minimal. The IRS issued only a few letters each year and often none. More recently, however, demand for PLRs has increased sharply, and in 2013, the IRS received more than 30 PLR requests under section 7704(d)(1)(E).

The increase in PLR requests has been driven by a combination of factors. First, legal counsel have told the Department of the Treasury (Treasury Department) and the IRS that they are reluctant to issue opinion letters unless a certain activity was clearly contemplated by Congress, which has required PTPs to seek PLRs as their activities expand beyond more traditional qualifying activities, for example because of technological advances, deconsolidation, and specialization. Second, investor demand for higher yields has increased the incentive to push for an expanded definition of qualifying income through PLR requests concerning novel or non-traditional activities. See Todd Keator, ''Hydraulically Fracturing'' Section 7704(d)(1)(E)—Stimulating Novel Sources of ''Qualifying Income'' for MLPs, 29 Tax Mgmt. Real Est. J. 223, 227 (2013). Third, a PLR may not be used as precedent, requiring each PTP to obtain its own PLR for activities similar to those of a competitor. See section 6110(k)(3).

Absent regulatory guidance prescribing a uniform framework for determining which activities generate qualifying income, the IRS has historically reviewed PLR requests one-by-one as they have arisen and without the benefit of codified or regulatory principles demarcating the outer boundary of activities that Congress intended to generate qualifying income. PLR requests often seek approval not only for activities that have been approved in a competitor's PLR, but also for additional activities similar to, but marginally different from, activities approved in earlier PLRs. The absence of regulatory guidance can make it difficult for the IRS to distinguish between such activities, creating the potential for treating similarly situated taxpayers differently or expanding the scope of qualifying income beyond what Congress intended. This risk of expansion persists and increases in the absence of regulatory guidance.

Given the increased demand for PLRs, the responsibility to treat all taxpayers equally, and the desire to apply section 7704(d)(1)(E) consistent with congressional intent, the Treasury Department and the IRS determined there was a clear public need for guidance in this area. In March 2014, the IRS announced a pause in issuing PLRs under section 7704(d)(1)(E), which it lifted on March 6, 2015. On May 6, 2015, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–132634–14) in the **Federal Register** (80 FR 25970) providing guidance on whether income from activities with respect to minerals or natural resources is qualifying income under section 7704(d)(1)(E). On June 18, 2015, the Treasury Department and the IRS published in the **Federal Register** (80 FR 34856) several non-substantive corrections to the proposed regulations.

The Treasury Department and the IRS received numerous written and electronic comments in response to the proposed regulations. All comments are available at *www.regulations.gov.* The Treasury Department and the IRS held a public hearing on the proposed regulations on October 27, 2015. In addition, the Treasury Department and the IRS met with industry representatives and worked extensively with IRS engineers specializing in petroleum, mining, and forestry to understand the relevant industries. The many comments, hearing, and meetings were invaluable in understanding the technical aspects of exploration, development, mining and production, processing, refining, transportation, and marketing of minerals and natural resources, and how these final regulations can best provide needed guidance. After consideration of all of the comments received, including the comments made at the hearing, the proposed regulations are adopted as final regulations as revised by this Treasury decision. In general, these final regulations follow the approach of the proposed regulations with some modifications based on the recommendations made in public comments. This preamble describes the comments received by the Treasury

Department and the IRS and the revisions made.

These final regulations are divided into seven parts. The first part establishes the basic rule that qualifying income includes income and gains from qualifying activities with respect to minerals or natural resources. Qualifying activities are either ''section 7704(d)(1)(E) activities'' or ''intrinsic activities.'' The second part defines ''mineral or natural resource'' consistent with the definition set forth in section 7704(d)(1) of the Code. The third part defines and identifies the specific component activities that are included in each of the section 7704(d)(1)(E) activities, that is, exploration, development, mining or production, processing, refining, transportation, and marketing. Where necessary, component activities are listed by type of mineral or natural resource. The fourth part provides rules for determining whether activities that are not section 7704(d)(1)(E) activities are nonetheless intrinsic activities, which are those that are specialized, essential, and require significant services by the PTP with respect to a section 7704(d)(1)(E) activity. The fifth and sixth parts provide, respectively, a rule regarding interpretations of sections 611 and 613 of the Code (dealing with depletion of minerals and natural resources) in relation to § 1.7704–4 and examples illustrating the provisions in § 1.7704–4. Finally, the last part provides that the final regulations apply to income received by a partnership in a taxable year beginning on or after January 19, 2017, but also contains a 10-year transition period for certain PTPs.

Summary of Comments and Explanation of Revisions

I. General Interpretation of Congressional Intent

These final regulations prescribe a uniform framework for determining which mineral and natural resource activities generate qualifying income based on the statutory language and congressional intent as interpreted by the Treasury Department and the IRS. In relevant part, section 7704(d)(1)(E) provides merely that ''income and gains derived from the exploration, development, mining or production, processing, refining, transportation (including pipelines transporting gas, oil, or products thereof), or the marketing of any mineral or natural resource (including fertilizer, geothermal energy, and timber)'' is qualifying income. The limited statutory text supplies only one relevant definition—for ''mineral or natural resource.'' See section 7704(d)(1). The legislative history regarding the specific text at issue is likewise brief and susceptible to different interpretations, as demonstrated by the comment letters received.

Although the statute and the legislative history do not provide definitions or a clear demarcation of the eight active terms and industry experts disagree on the scope of these terms, certain guiding principles can be gleaned. First, the Treasury Department and the IRS regard as particularly significant the fact that Congress passed section 7704 in whole to restrict the growth of PTPs, which it viewed as eroding the corporate tax base. See H.R. Rep. No. 100–391, at 1065 (1987) (''The recent proliferation of publicly traded partnerships has come to the committee's attention. The growth in such partnerships has caused concern about long-term erosion of the corporate tax base.'') Congress expressed alarm that the changes enacted in the Tax Reform of Act of 1986 that reflected their intent to preserve the corporate level of tax were ''being circumvented by the growth of publicly traded partnerships that are taking advantage of an unintended opportunity for disincorporation and elective integration of the corporate and shareholder levels of tax.'' Id. at 1066. Congress made an exception for passive-type income and ''certain types of natural resources'' because ''special considerations appl[ied].'' Id. at 1066, 1069. Well-established statutory construction principles direct that, because section 7704(d)(1)(E) was an exception to the general rule, it should be read narrowly. See, for example, *Comm'r* v. *Jacobson,* 336 U.S. 28, 49 (1949) (''The income taxed is described in sweeping terms and should be broadly construed in accordance with an obvious purpose to tax income comprehensively. The exemptions, on the other hand, are specifically stated and should be construed with restraint in the light of the same policy.'').

Second, the eight listed active terms in section 7704(d)(1)(E) represent stages in the extraction of minerals or natural resources and the eventual offering of certain products for sale. A mineral or natural resource may be explored for and, if found, is developed, mined or produced, processed, refined, transported, and ultimately marketed. Manufacturing is not an activity referenced in the statute, although as some might argue, processing and refining are forms of manufacturing. The omission of manufacturing is significant especially in light of other directives from the legislative history. Most importantly, the Conference Committee Report provides, by example, an endpoint to activities the income from which would be qualifying, by indicating that ''[o]il, gas, or products thereof are not intended to encompass oil or gas products that are produced by additional processing beyond that of petroleum refineries or field facilities, such as plastics or similar petroleum derivatives.'' H.R. Rep. No. 100–495, at 947 (1987). The Treasury Department and the IRS have interpreted this language to mean that Congress did not intend to include extended processing or manufacturing activities beyond getting an extracted mineral or natural resource to market in a form in which those products are generally sold.

This interpretation is reinforced by Congress's explanation in the legislative history that natural resources were granted an exception to the general rule of corporate taxation in section 7704 because the activities in those industries ''have commonly or typically been conducted in partnership form, and the committee considers that disruption of present practices in such activities is currently inadvisable due to general economic conditions in these industries.'' H.R. Rep. No. 100–391, at 1066 (1987). The committees responsible for drafting the legislation had previously held three days of hearings dedicated to reviewing the use and taxation of master limited partnerships (MLPs), another term for PTPs, and heard multiple witnesses discuss the use of partnerships and joint ventures to raise capital for oil and gas exploration, the difference between investing in wasting natural resource assets and investing in active businesses, the price of commodities, and the importance of natural resource development to the nation's security. See, for example, Master Limited Partnerships: Hearings Before the H. Subcomm. on Select Revenue Measures of the Comm. on Ways and Means, 100th Cong. 10 and 189 (1987) (statement of J. Roger Mentz, Asst. Sec. for Tax Policy, U.S. Dep't of the Treasury, expressing concern that the rise in MLPs was ''not limited to passive ownership or wasting assets such as oil and gas or natural resource properties,'' but instead were ''increasingly being used for active business enterprises,'' and statement of Christopher L. Davis, President, Investment Partnership Association, explaining that ''[o]il and gas exploration and development are among the riskiest of business ventures,'' but that partnerships had been ''an economical way to share the risks''). See also Master Limited

Partnerships: Hearing before the S. Subcomm. on Taxation and Debt Management of the Comm. on Finance, 100th Cong. 90 (1987) (statement of James R. Moffett, CEO, Freeport-McMoran, Inc., stating that the ''commodities in this country have been decimated'' and that the mining and natural resources businesses must be completely rebuilt). There was no testimony about the need to protect manufacturing industries.

These principles have informed the scope and approach of these final regulations and the responses to commenters in this Summary of Comments and Explanation of Revisions. The Treasury Department and the IRS have concluded that in using general terms without technical definitions, Congress did not intend a uniform definition of such terms across all minerals and natural resources. Rather, Congress meant to capture those activities customary to each industry that move a depletable asset to a point at which it is commonly sold, and did not mean to include those activities that create a new or different product through further, extended processing or manufacturing. Accordingly, these final regulations describe as qualifying income the income and gains from the activities performed to produce products typically found at field facilities and petroleum refineries or the equivalent for other natural resources, certain transportation and marketing activities with respect to those products, and intrinsic service activities that are specialized, essential, and require significant services with respect to exploration, development, mining and production, processing, refining, transportation, and marketing.

II. Definition of Mineral or Natural Resource

In section 7704(d)(1), Congress defined the term ''mineral or natural resource'' as ''any product of a character with respect to which a deduction for depletion is allowable under section 611; except that such term shall not include any product described in subparagraph (A) or (B) of section 613(b)(7).'' Products described in section 613(b)(7)(A) and (B) are soil, sod, dirt, turf, water, mosses, and minerals from sea water, the air, or other similar inexhaustible sources. The proposed regulations adopted, almost verbatim, this same definition, but also specifically included fertilizer, geothermal energy, and timber in the definition of mineral or natural resource, and explained that the regulations did not address industrial source carbon dioxide, fuels described in section 6426(b) through (e), any alcohol fuel defined in section 6426(b)(4)(A), or any biodiesel fuel as defined in section 40A(d)(1).

Many commenters recommended that the definition of mineral or natural resource be expanded to include not only products of a character with respect to which a deduction for depletion is allowable under section 611, but also ''products thereof.'' These commenters believed Congress intended the definition of mineral or natural resource to be read expansively, citing to the 1987 legislative history, which provides that: ''[N]atural resources include fertilizer[,] geothermal energy, and timber, as well as oil, gas or products thereof. . . . For this purpose, oil, gas, or products thereof means gasoline, kerosene, number 2 fuel oil, refined lubricating oils, diesel fuel, methane, butane, propane, and similar products which are recovered from petroleum refineries or field facilities.'' H.R. Rep. No. 100–495, at 946–947 (1987). The significance of these commenters' expansive definition is that, under this view, so long as a product was depletable at the time of its production or extraction, it remains a ''product thereof'' throughout its processing, refining, transportation, and marketing. Under this theory, a depletable product does not lose its status as a mineral or natural resource by being processed or refined, and can therefore be further processed or refined without limitation.

These final regulations do not adopt this recommendation. As originally passed in 1987, section 7704(d)(1)(E) did not define the term mineral or natural resource. Congress added the definition in 1988 (one year after the 1987 legislative history cited by the commenters) as part of the Technical and Miscellaneous Revenue Act of 1988. It is that same statutory definition added by Congress that these final regulations adopt almost word for word. Moreover, in the statutory text, the phrase ''products thereof'' is used only in a parenthetical describing transportation. See section 7704(d)(1)(E) (''income and gains derived from the . . . transportation (including pipelines transporting gas, oil, or products thereof)''). The 1988 legislative history likewise used the phrase ''products thereof'' in a limited manner, that is only when describing transportation and marketing. See, for example, H.R. Rep. No. 100–1104(II), at 17 (1988) (''In the case of transportation activities with respect to oil and gas and products thereof'') and S. Rep. 100–445, at 424 (1988) (''With respect to the marketing of minerals and natural resources (*e.g.,* oil and gas and products therefof [sic])''). Finally, defining mineral and natural resource without including products thereof is the most logical interpretation of the statute, taking into account the enumerated activities the statute contemplates to be undertaken with respect to those minerals or natural resources. One does not explore for gasoline, kerosene, or number 2 fuel oil, for example; rather, one explores for the depletable product, such as crude oil or natural gas. Once that crude oil or natural gas has been refined or processed, however, Congress intended to make clear that the ''products thereof'' (the gasoline, kerosene, number 2 fuel oil, etc.) could be transported and marketed and still give rise to qualifying income.

Commenters cautioned, however, that the Treasury Department and the IRS should take into account the words ''of a character'' in the definition of mineral or natural resource and the additional legislative history from 1988. That legislative history explained: ''The reference in the bill to products for which a depletion deduction is allowed is intended only to identify the minerals or natural resources and not to identify what income from them is treated as qualifying income. Consequently, whether income is taken into account in determining percentage depletion under section 613 does not necessarily determine whether such income is qualifying income under section 7704(d).'' S. Rep. No. 100–445, at 424 (1988). Commenters expressed the concern that the Treasury Department and the IRS would interpret the statutory definition to require those performing qualifying activities to have started with a depletable product themselves or otherwise be eligible to claim depletion deductions under section 611.

The Treasury Department and the IRS agree with the commenters that the definition of mineral or natural resource under section 7704(d)(1) does not require continual ownership or control of the depletable asset from extraction through each of the eight listed active terms, but that qualifying activities can take place beginning at different points along that progression of activities described by the active terms by those who purchase, take control of, or merely perform section 7704(d)(1)(E) activities with respect to partially processed or refined minerals or natural resources. Compare with §§ 1.611–1(b) and (c) and 1.613–1(a) (providing that annual depletion deductions are allowed only to the owner of an economic interest in mineral deposits or standing timber). In adding the definition of minerals or

natural resources to section 7704(d)(1), Congress meant to delineate the type of asset involved, and not to require any particular type of control or ownership of the property. See H.R. Rep. No. 100–1104(II), at 16 (1988) (''the Senate amendment includes as qualifying income of publicly traded partnerships the income from any depletable property (rather than from property eligible for percentage depletion . . .)''). The definitions of the eight listed active terms in these final regulations contemplate that qualifying income may arise from certain activities that may be performed on products altered by earlier qualifying activities.

In addition to the income and gains derived from certain activities related to minerals or natural resources, Congress expanded section 7704(d)(1)(E) in 2008 to include income and gains from certain activities related to industrial source carbon dioxide, fuels described in section 6426(b) through (e), alcohol fuel defined in section 6426(b)(4)(A), or biodiesel fuel as defined in section 40A(d)(1) as qualifying income. Because the IRS has not received many PLR requests related to these products, the preamble to the proposed regulations asked whether guidance is needed with respect to those activities and, if so, the specific items the guidance should address. In response, commenters suggested that although liquefied natural gas (LNG) and liquefied petroleum gas (LPG) are included within those fuels described in section 6426(b), they should also be specifically identified as natural resources under section 7704(d)(1)(E). In the alternative, commenters requested that the final regulations treat the liquefaction and regasification of natural gas as part of transportation.

These final regulations do not list LNG and LPG as natural resources since they are not a mineral or natural resource under the definition provided by Congress. Neither LNG nor LPG is found in mines, wells, or other natural deposits listed in section 611, but each is instead a result of processing or refining petroleum or natural gas, as well as of activities to prepare the processed or refined product for storage and transportation. The Treasury Department and the IRS thus agree with commenters that liquefaction and regasification of natural gas may be part of transportation as further discussed in section III.E of this Summary of Comments and Explanation of Revisions. Therefore, these final regulations include liquefying or regasifying natural gas on the list of qualifying transportation activities. Because the Treasury Department and the IRS received no other comments seeking guidance with respect to industrial source carbon dioxide, fuels described in section 6426(b) through (e), alcohol fuel defined in section 6426(b)(4)(A), or biodiesel fuel as defined in section 40A(d)(1), these final regulations do not provide any further guidance with respect to those items.

III. Section 7704(d)(1)(E) Activities

A. Replacement of Exclusive List

The proposed regulations provided that qualifying income included only income and gains from qualifying activities, which were defined to include section 7704(d)(1)(E) activities and intrinsic activities. The proposed regulations further provided an exclusive list of operations that comprised the section 7704(d)(1)(E) activities. Although the list could be expanded by the Commissioner through notice or other forms of published guidance, the proposed regulations specifically stated that ''[n]o other activities qualify as section 7704(d)(1)(E) activities.''

Numerous commenters objected to the use of an exclusive list of section 7704(d)(1)(E) activities. They argued that a static list would ignore technological advances in the dynamic mineral and natural resource industries and doubted the ability of the Treasury Department and the IRS to expeditiously issue guidance updating the list when needed. One commenter noted that an exclusive list is appropriate only when the universe of matters to be included or excluded is known, defined, considered, and categorized. The commenter questioned whether the Treasury Department and the IRS are aware of all of the current activities taking place in the mineral and natural resource industries. Illustrating these concerns, many commenters cited examples of activities they believed were omitted from the list (either through inadvertence or lack of knowledge). Rather than an exclusive list, some commenters recommended that the final regulations provide a general description of the eight listed active terms in section 7704(d)(1)(E) (that is, exploration, development, mining or production, processing, refining, transportation, and marketing), followed by a non-exclusive list of examples of qualifying activities and, where appropriate, non-qualifying activities. They suggested that such a list would provide helpful guidance to PTPs, while allowing other activities to be treated as qualifying, including through the issuance of PLRs.

Recognizing the practical difficulties of ensuring comprehensive coverage of the activities generating qualifying income, the Treasury Department and the IRS agree with commenters that the list of section 7704(d)(1)(E) activities should not be exclusive. Therefore, these final regulations provide a general definition of each of the eight listed active terms in section 7704(d)(1)(E) followed by a non-exclusive list of examples of each. The Treasury Department and the IRS anticipate that by setting forth the known activities that generate qualifying income, the guidance will be clearer and, as a result, the number of PLR requests the IRS receives will decrease. At the same time, the Treasury Department and the IRS do not intend that these final regulations be interpreted or applied in an expansive manner. Instead, they should be interpreted and applied in a manner that is consistent with their plain meaning and the overall intent of Congress to restrict this exception to treatment as a corporation under section 7704(a) as described in section I of this Summary of Comments and Explanation of Revisions.

B. Exploration and Development

The proposed regulations defined exploration as an activity performed to ascertain the existence, location, extent, or quality of any deposit of mineral or natural resource before the beginning of the development stage of the natural deposit by: (1) Drilling an exploratory or stratigraphic type test well; (2) conducting drill stem and production flow tests to verify commerciality of the deposit; (3) conducting geological or geophysical surveys; or (4) interpreting data obtained from geological or geophysical surveys. For minerals, exploration also included testpitting, trenching, drilling, driving of exploration tunnels and adits, and similar types of activities described in Rev. Rul. 70–287 (1970–1 CB 146), if conducted prior to development activities with respect to the minerals.

Separately, the proposed regulations defined development as an activity performed to make minerals or natural resources accessible by: (1) Drilling wells to access deposits of minerals or natural resources; (2) constructing and installing drilling, production, or dual purpose platforms in marine locations, or any similar supporting structures necessary for extraordinary non-marine terrain (such as swamps or tundra); (3) completing wells, including by installing lease and well equipment, such as pumps, flow lines, separators, and storage tanks, so that wells are capable of producing oil and gas and the

production can be removed from the premises; (4) performing a development technique such as, for minerals, stripping, benching and terracing, dredging by dragline, stoping, and caving or room-and-pillar excavation, and for oil and natural gas, fracturing; or (5) constructing and installing gathering systems and custody transfer stations.

One commenter noted that the proposed regulations provided a workable definition of exploration and development activities consistent with past standards of industry practice, but did not allow for changes in technologies developed in the future. Another commenter recommended expanding the list to include any activity the payment for which is: (1) A geological or geophysical cost under section 167(h); (2) an intangible drilling cost under section 263(c); or (3) a mine exploration or development cost under section 616(a) or 617(a). According to the commenter, the benefit of such a rule is that the relevant industries understand the costs covered by those Code provisions and the law in the area is well developed.

The only change made to the definitions of exploration and development in these final regulations is the addition of the word ''including'' to show that the list of activities is not exclusive, as discussed in section III.A of this Summary of Comments and Explanation of Revisions. These final regulations do not adopt the suggestion to include as a qualifying activity all services giving rise to costs under section 167(h), 263(c), 616(a), or 617(a). Some of the activities are already specifically included in the definitions of section 7704(d)(1)(E) activities, but others would expand the list of qualifying activities beyond that intended by Congress and allow service-provider PTPs to circumvent the intrinsic test in § 1.7704–4(d). As discussed in section I of this Summary of Comments and Explanation of Revisions, Congress enacted section 7704 to restrict the growth of PTPs due to ''concern about long-term erosion of the corporate tax base.'' H.R. Rep. No. 100–391, at 1065 (1987). Congress made an exception for natural resource activities in part because it recognized the fragile economic conditions in those industries at the time. Id. at 1066. Although Congress intended to benefit oil and gas developers, it did not intend to exempt, for example, construction and debris removal companies, suppliers, or other non-specialized service providers to those industries. Intangible drilling costs, for example, include amounts paid for fuel, repairs, hauling, and supplies. See §§ 1.263(c)–1 and 1.612–4(a). Although these costs may be necessarily incurred by oil and gas developers, that does not mean that a third-party service provider that receives payment for those services is performing activities giving rise to qualifying income.

C. Mining or Production

The proposed regulations defined mining or production as an activity performed to extract minerals or other natural resources from the ground by: (1) Operating equipment to extract natural resources from mines and wells; or (2) operating equipment to convert raw mined products or raw well effluent to substances that can be readily transported or stored (for example, passing crude oil through mechanical separators to remove gas, placing crude oil in settling tanks to recover basic sediment and water, dehydrating crude oil, and operating heater-treaters that separate raw oil well effluent into crude oil, natural gas, and salt water).

Generally, commenters sought to expand the definition of mining or production. They suggested that the regulations adopt the definition of mining from section 613, which includes not only the extraction of ores or minerals from the ground but also certain mining processes. See section 613(c)(2). Similarly, commenters suggested that the regulations define production to include not only the extraction of oil or natural gas from the well but also certain processing activities that occur post-production up to the ''depletion cut-off point'' established under sections 611 and 613. These commenters explained that the explicit reference in section 7704(d)(1) to the depletion rules in section 611 should be interpreted as meaning that all the terms in 7704(d)(1)(E) should be defined the same as the terms in section 611. A consequence of expanding the definition of mining or production to include certain processing activities, commenters reasoned, is that the definition of processing for purposes of section 7704(d)(1)(E) would necessarily encompass something more, further expanding qualifying activities as discussed in section III.D.3 of this Summary of Comments and Explanation of Revisions (concerning processing and refining of ores and minerals other than crude oil and natural gas). Finally, one commenter noted that, in addition to mining from the ground, minerals and natural resources can be extracted from waste deposits or residue from prior mining, and that such extraction should also be treated as mining or production. See section 613(c)(3) and § 1.613–4(i).

These final regulations do not adopt the suggestion to expand the definition of mining or production to include mining processes or other processing activities before the depletion cut-off point. Instead, these final regulations clarify the proposed regulations' definition of mining or production activities to include only extraction activities. In addition, the final regulations move activities that convert raw mined products or raw well effluent into products that can be readily transported or stored to the definition of processing. As a result, qualifying processing activities are included under the definition of processing in these final regulations. In its entirety, section 7704(d)(1)(E) covers a broader category of income than and contemplates a different end point of activities from those of sections 611 and 613, and therefore the definitions of mining and production are not interchangeable between the two regimes. Sections 611 and 613 describe what is gross income from the exhaustion of capital assets for purposes of applying the depletion rules. See section 611(a) and *United States* v. *Cannelton Sewer Pipe Co.,* 364 U.S. 76, 81–85 (1960). For purposes of section 613, mining, an upstream activity, generally includes those treatments normally applied to prepare an extracted mineral or natural resource to the point at which it is first marketable (which may involve a limited amount of processing and transportation), but no further. See section 613(c)(2). In contrast, section 7704(d)(1)(E) separately lists certain upstream, midstream, and downstream activities, encompassing a progression of stages of activities performed upon a mineral or natural resource up to the point at which products are typically produced at field facilities and petroleum refineries or the equivalent for other natural resources, as well as transportation and marketing thereafter. It would therefore be duplicative to define mining to include both mining and mining processes as defined in section 613 for purposes of section 7704(d)(1)(E). The reference in section 7704(d)(1) to section 611 merely defines the scope of included minerals and natural resources as discussed in section II of this Summary of Comments and Explanation of Revisions. Nothing in the statute indicates that other concepts in section 611 and 613 are intended to be incorporated as well.

These final regulations adopt the request that mining or production be defined to include the extraction of minerals or natural resources from the waste deposits or residue of prior

mining or production. The recycling of scrap or salvaged metals or minerals from previously manufactured products or manufacturing processes, however, is not considered to be the extraction of ores or minerals from waste or residue, and therefore does not give rise to qualifying income.

D. Processing and Refining

The proposed regulations combined the activities of processing and refining together in one definition that included both a general definition followed by specific rules for different categories of natural resources (natural gas, petroleum, ores and minerals, and timber). The vast majority of the comments received on the proposed regulations concerned the definition of processing or refining, addressing issues related to both the general definition and specific rules. Section III.D.1 of this Summary of Comments and Explanation of Revisions addresses the comments related to the general definition. Sections III.D.2 through III.D.4 of this Summary of Comments and Explanation of Revisions address comments related to the specific rules.

1. General Definition

The general definition of processing and refining in the proposed regulations stated that, except as otherwise provided, an activity was processing or refining if done to purify, separate, or eliminate impurities, but would not qualify if: (1) The PTP did not use a consistent Modified Accelerated Cost Recovery System (MACRS) class life for assets used in the activity (the MACRS consistency requirement); (2) the activity caused a substantial physical or chemical change in a mineral or natural resource (the physical and chemical change limitation); or (3) the activity transformed the extracted mineral or natural resource into a new or different mineral product or into a manufactured product (the manufacturing limitation).

a. Separate Definitions for Processing and Refining

Multiple commenters argued that the proposed regulations' use of a joint definition for processing and refining wrongly read the term ''processing'' out of the statute. These commenters reasoned that Congress used a comma between the terms to indicate that each term must be accorded significance and effect, in contrast to the ''or'' between mining (for ores and minerals) or production (for natural gas and crude oil), which described the same activity but with respect to different industries. Commenters noted that the version of the legislation that passed in the House did not include the term processing. Rather, it was added in conference and therefore must mean that the two terms are not synonymous. While some commenters admitted that it is not uncommon in the industry to use the words processing and refining interchangeably to refer to the same activities, they maintained that Congress intended to include a broader range of activities than either word alone would allow.

Although the Treasury Department and the IRS have determined that the terms can overlap, these final regulations adopt the suggestion of defining processing and refining separately in order to better clarify what activities generate qualifying income under section 7704(d)(1)(E). These final regulations generally define processing for purposes of section 7704(d)(1)(E) as an activity performed to convert raw mined or harvested products or raw well effluent to substances that can be readily transported or stored as further described in the specific rules for the different categories of natural resources. This definition captures the processing that is generally performed at the wellhead, mine, field facilities, or other location where mining processes are generally applied, as described in § 1.613–4(f)(1)(iii), because the legislative history contemplates that qualifying activities do not include activities that create products through additional processing beyond that of petroleum refineries or field facilities.

These final regulations do not provide a general definition of refining, but instead set forth the activities that qualify as refining activities under the specific rules for the different categories of natural resources. Consistent with the discussion in section III.D.1.e of this Summary of Comments and Explanation of Revisions, the Treasury Department and the IRS have concluded that refining does not have general application to all minerals and natural resources.

b. MACRS Consistency Requirement

Commenters argued that the requirement in the proposed regulations that a PTP use a consistent MACRS class life for assets generating qualifying income as a result of being used for processing or refining has no statutory support and would create uncertainty for PTPs and their investors. They stressed that it would be inappropriate to deny qualifying income treatment to a PTP whose activities met the definition of processing or refining merely because it, or a processor or refiner further upstream, failed to use the appropriate MACRS class life. Commenters also challenged the idea that the asset class lives in Rev. Proc. 87–56 (1987–2 CB 674) are helpful in distinguishing between qualifying and non-qualifying activities. Commenters raised similar concerns regarding the discussion of the North American Industry Classification System (NAICS) codes in the preamble of the proposed regulations to give examples of qualifying activities.

The proposed regulations included a MACRS requirement because the Treasury Department and the IRS believed MACRS provided a useful demarcation of those processing and refining activities typically performed by a field facility or a refinery, as compared to non-qualifying processing activities performed further downstream from those activities, such as petrochemical manufacturing or the manufacturing of pulp and paper. Compare, for example, Rev. Proc. 87–56, asset class 13.3 (Petroleum Refining) and asset class 28.0 (Manufacture of Chemicals); also, asset class 24.1 (Cutting of Timber) and asset class 26.1 (Manufacture of Pulp and Paper). In addition, the IRS released Rev. Proc. 87–56 six months before the passage of section 7704, making that demarcation contemporaneous with section 7704. After consideration of the comments received on this issue, however, the Treasury Department and the IRS are persuaded that the MACRS class lives are not comprehensive nor sufficiently detailed for every industry. Accordingly, these final regulations do not include a MACRS consistency requirement. Nor do these final regulations reference the NAICS codes. Notwithstanding the lack of a MACRS consistency requirement, MACRS or NAICS codes nevertheless may provide useful insight when determining whether an activity generates qualifying income as provided in these final regulations.

c. Physical and Chemical Change Limitation

Many commenters contended that the physical and chemical change limitation in the proposed regulations ignored decades-old authorities that such transformative changes are an understood and realistic part of processing and refining. See § 1.613A–7(s) (refining crude oil is ''any operation by which the physical or chemical characteristics of crude oil are changed''); IRM § 4.41.1.6.1 (modern refining operations may involve the ''separation of components plus the breaking down, restructuring, and recombining of hydrocarbon molecules''); Processing, *New Oxford*

American Dictionary, 1307 (2001 ed.) (to perform a series of mechanical or chemical operations on, in order to change or preserve it). Commenters also criticized the reference to § 1.613–4(g)(5) in the preamble of the proposed regulations, cited to show that the physical and chemical change limitation was consistent with definitions found elsewhere in the Code and regulations. They argued that the physical and chemical change prohibition in § 1.613–4(g)(5) is helpful only in determining what is not included in calculating gross income from the exhaustion of capital assets for purposes of applying the depletion rules, but not in distinguishing when an activity qualifies as processing or refining under section 7704(d)(1)(E).

The Treasury Department and the IRS agree with the commenters that processing and refining may cause a substantial physical or chemical change, depending on the mineral or natural resource at issue. Indeed, the specific rule in the proposed regulations for the processing or refining of petroleum recognized that refineries perform physical and chemical changes, for example when converting the physically separated components of crude oil into gasoline or other fuels. Accordingly, because the general definition is at odds with some of the specific rules for certain natural resources, these final regulations no longer include a general physical or chemical change limitation.

d. Manufacturing Limitation

Commenters criticized the manufacturing limitation in the proposed regulations, arguing that the activities that qualify as processing and refining under section 7704(d)(1)(E) are types of manufacturing. Many commenters elaborated that the proposed regulations wrongly focus on the output of an activity. These commenters maintained that the entire analysis should instead rest on whether or not the input is a mineral or natural resource, or a product thereof. That is, so long as an item was once a mineral or natural resource, the income derived from any further processing or refining of the item up to and, some argued, including a plastic is qualifying. Similar to the comments regarding the definition of mineral or natural resource discussed in section II of this Summary of Comments and Explanation of Revisions, these comments reflect a belief that the Treasury Department and the IRS have misinterpreted the statement in the legislative history that ''[o]il, gas, or products thereof are not intended to encompass oil or gas products that are produced by additional processing beyond that of petroleum refineries or field facilities,'' H.R. Rep. No. 100–495, at 947 (1987), as a limitation on processing and refining instead of a clarification of what is included as a natural resource that can be further processed and refined. As a corollary to the comments regarding output, some commenters argued that Congress knew how to, but did not, limit processing and refining to the creation of certain products, for example by specifying ''or any primary products thereof'' as it did when listing oil and gas as excluded property under the Foreign Sales Corporation provisions enacted in 1984. See section 927(a)(2)(C), now repealed.

As discussed in section I of this Summary of Comments and Explanation of Revisions, the Treasury Department and the IRS interpret the terms processing and refining in section 7704(d)(1)(E) and the legislative history as capturing those activities that produce the products typically found at field facilities and petroleum refineries, or the equivalent for other natural resources. The Treasury Department and the IRS do not construe the lack of the word ''primary'' in the legislative history as an indication that products produced through additional processing beyond the refinery or field facility should be included. Instead, the similarity between the list of products in the regulations under former section 927 and in the legislative history for section 7704(d)(1)(E) indicate that Congress understood processing and refining oil and natural gas to result in the products identified as primary products in the regulations under former section 927. Compare § 1.927(a)–1T(g)(2)(i) (defining ''primary product from oil'' as crude oil and all products derived from the destructive distillation of crude oil, including volatile products, light oils such as motor fuel and kerosene, distillates such as naphtha, lubricating oils, greases and waxes, and residues such as fuel oil) and § 1.927(a)–1T(g)(2)(ii) (defining ''primary product from gas'' as all gas and associated hydrocarbon components from gas or oil wells, whether recovered at the lease or upon further processing, including natural gas, condensates, liquefied petroleum gases such as ethane, propane, and butane, and liquid products such as natural gasoline) with the Conference Committee Report for section 7704(d)(1)(E), H.R. Rep. No. 100–495, at 947 (1987) (''gasoline, kerosene, number 2 fuel oil, refined lubricating oils, diesel fuel, methane, butane, propane'').

The Treasury Department and the IRS recognize, however, that the wording of the manufacturing limitation in the proposed regulations was vague and could cause confusion. Therefore, the general definitions of processing and refining in the final regulations no longer contain the specific language that made up the manufacturing limitation. Instead, the specific definitions for the processing and refining of natural gas and crude oil capture congressional intent by including only those activities that are generally performed at field facilities and petroleum refineries, or those that produce products typically found at field facilities and refineries. The definitions for processing and refining do not include additional processing or manufacturing activities, such as petrochemical manufacturing. The final regulations apply a similar end point for the processing and refining of ores, other minerals, and timber in a manner tailored to the type of resource at issue.

e. Specific Rules for Each Category of Natural Resource

Some commenters dismissed the need for industry specific rules. These commenters maintained that Congress did not limit qualifying income based on the different processes used for the various types of minerals and natural resources, and therefore one overarching definition should apply consistently across all resources.

The final regulations retain separate definitions for processing and refining of natural gas, crude oil, ores and other minerals, and timber. As a practical matter, the minerals and natural resources subject to depletion under section 611 are different, and there is no uniform way to address them. For example, geothermal energy is not processed or refined. The processing of timber necessarily differs from the processing of natural gas. The absence of specific rules for each type of natural resource would result in vague guidelines lacking clear distinctions between qualifying and non-qualifying activities. Furthermore, a more general approach would lead to an unwarranted expansion of the scope of qualifying income beyond that intended by Congress, since a general definition would need to encompass the activities of the resource with the broadest definition of processing and refining.

2. Natural Gas and Crude Oil

The proposed regulations defined processing or refining of natural gas as an activity performed to: (1) Purify natural gas, including by removal of oil or condensate, water, or non-hydrocarbon gases (including carbon dioxide, hydrogen sulfide, nitrogen, and

helium); (2) separate natural gas into its constituents which are normally recovered in a gaseous phase (methane and ethane) and those which are normally recovered in a liquid phase (propane, butane, pentane, and gas condensate); or (3) convert methane in one integrated conversion into liquid fuels that are otherwise produced from petroleum. The proposed regulations defined processing or refining of petroleum as an activity, the end product of which is not a plastic or similar petroleum derivative, performed to: (1) Physically separate crude oil into its component parts, including, but not limited to, naphtha, gasoline, kerosene, fuel oil, lubricating base oils, waxes and similar products; (2) chemically convert the physically separated components if one or more of the products of the conversion are recombined with other physically separated components of crude oil in a manner that is necessary to the cost-effective production of gasoline or other fuels (for example, gas oil converted to naphtha through a cracking process that is hydrotreated and combined into gasoline); or (3) physically separate products created in (1) and (2). The proposed regulations also provided a partial list of products that would not be treated as obtained through the qualified processing or refining of petroleum, including: (1) Heat, steam, or electricity produced by the refining processes; (2) products that are obtained from third parties or produced onsite for use in the refinery, such as hydrogen, if excess amounts are sold; and (3) any product that results from further chemical change of the product produced from the separation of crude oil if it is not combined with other products separated from the crude oil. For example, the proposed regulations indicated that production of petroleum coke from heavy (refinery) residuum qualifies as processing or refining, but any upgrading of petroleum coke (such as to anode-grade coke) does not qualify because it is further chemically changed.

Numerous commenters argued that the proposed regulations inappropriately favored (1) crude oil over natural gas, and (2) fuel products over other products. For example, under the proposed regulations, qualifying processing or refining included chemically converting the component parts of crude oil into products that would be combined into a fuel and products that could be separated further, sometimes resulting in olefins such as ethylene and propylene. In contrast, the proposed regulations recognized as qualifying only the conversion of one component of natural gas (methane) into a fuel, and did not treat as qualifying the creation of olefins from natural gas. Commenters asserted that there is no basis for differentiating between hydrocarbon sources for fuels or olefins, and that such differentiation causes difficulties for pipeline operators and marketers, who cannot tell if the fungible fuels or olefins come from qualifying crude oil processing or non-qualifying natural gas conversions. Also regarding this same language in the proposed regulations, one commenter asked that the phrase ''in one integrated conversion'' be clarified so as to not exclude multistep conversion techniques which result in gasoline. Similarly, commenters contended that the refining of lubricants, waxes, solvents, and asphalts should also be included as qualifying activities since they, like fuel, are products of petroleum refineries.

Two commenters stated that the proposed regulations were not consistent in favoring fuels since the sale of methanol was not treated as a qualifying activity. See proposed § 1.7704–4(e), *Example 3* (concluding that ''the production and sale of methanol, an intermediate product in the conversion [from methane to diesel], is not a section 7704(d)(1)(E) activity because methanol is not a liquid fuel otherwise produced from the processing of crude oil''). These commenters argued that the processing and sale of methanol should be a qualifying activity because it: (1) Is similar to methane or to natural gas liquids (NGLs), (2) is an intermediate product produced in the act of converting gas into gasoline, (3) is itself a fuel (albeit an alcohol fuel), and (4) can be produced from oil using typical refinery processes, catalysts, and equipment.

Rather than the definitions in the proposed regulations, commenters offered two different possible regulatory standards for determining whether an activity qualifies as the processing or refining of crude oil or natural gas: (1) Whether the activity is performed in a crude oil refinery; or (2) whether the activity produces a product of a type that is produced in a crude oil refinery. For the second recommended standard, some commenters suggested that the final regulations adopt the list of products produced by a refinery as compiled by the U.S. Energy Information Administration (EIA). In support of this second standard, one commenter said that using the EIA list would give effect to the congressional intent that oil and gas products necessitating processing beyond the type of processing that takes place in petroleum refineries should not give rise to qualifying income. Another commenter added that using the second standard would make the regulations administrable by avoiding inquiry into the nature and extent of the production process. Other commenters recommended that the final regulations provide a list of ''bad products,'' that is products of processing or refining that do not give rise to qualifying income, such as a list of plastic resins maintained by trade industry associations for the plastic industry.

In response to these comments, these final regulations make several changes. First, as discussed in section III.D.1.a of this Summary of Comments and Explanation of Revisions, these final regulations separately define processing and refining. Processing of natural gas and crude oil for purposes of section 7704(d)(1)(E) encompasses those activities that convert raw well effluent to substances that can be readily transported or stored, that is, what is generally performed at the wellhead or field facilities. For natural gas, processing is the purification of natural gas, including by removing oil or condensate, water, or non-hydrocarbon gases (such as carbon dioxide, hydrogen sulfide, nitrogen, and helium), and the separation of natural gas into its constituents which are normally recovered in a gaseous phase (methane and ethane) and those which are normally recovered in a liquid phase (propane, butane, pentane, and gas condensate). For crude oil, processing is the separation of crude oil by passing it through mechanical separators to remove gas, placing crude oil in settling tanks to recover basic sediment and water, dehydrating crude oil, and operating heater-treaters that separate raw oil well effluent into crude oil, natural gas, and salt water.

Second, consistent with the legislative history's limitation to products of petroleum refineries or field facilities, the Treasury Department and the IRS adopt the suggestion to list the qualifying products of a refinery for the definition of refining of natural gas and crude oil for purposes of 7704(d)(1)(E) and, for this purpose, look to information compiled by the EIA. The Treasury Department and the IRS have determined that the EIA currently provides an authoritative list of products of a refinery. Following the oil market disruption in 1973, Congress established the EIA in 1977 to collect, analyze, and disseminate comprehensive, independent and impartial energy information in order to assess the adequacy of energy resources to meet economic and social demands.

See 42 U.S.C. 7135(a). As part of that mandate, the EIA is required to gather information from persons engaged in ownership, control, exploration, development, extraction, refining or otherwise processing, storage, transportation, or distribution of mineral fuel resources. See 42 U.S.C. 7135(h)(4) and (6). These final regulations are informed by Form EIA–810, ''Monthly Refinery Report,'' and Form EIA–816, ''Monthly Natural Gas Liquids Report,'' which are the surveys that each refinery or natural gas processing plant must complete to report both finished and unfinished products of their operations.

Specifically, these final regulations define the refining of natural gas and crude oil as the further physical or chemical conversion or separation processes of products resulting from processing and refining activities, and the blending of petroleum hydrocarbons, to the extent they give rise to products listed in the definition of processing or the following products: ethane, ethylene, propane, propylene, normal butane, butylene, isobutane, isobutene, isobutylene, pentanes plus, unfinished naphtha, unfinished kerosene and light gas oils, unfinished heavy gas oils, unfinished residuum, reformulated gasoline with fuel ethanol, reformulated other motor gasoline, conventional gasoline with fuel ethanol—Ed55 and lower gasoline, conventional gasoline with fuel ethanol—greater than Ed55 gasoline, conventional gasoline with fuel ethanol—other conventional finished gasoline, reformulated blendstock for oxygenate (RBOB), conventional blendstock for oxygenate (CBOB), gasoline treated as blendstock (GTAB), other motor gasoline blending components defined as gasoline blendstocks as provided in § 48.4081–1(c)(3), finished aviation gasoline and blending components, special naphthas (solvents), kerosene-type jet fuel, kerosene, distillate fuel oil (heating oils, diesel fuel, ultra-low sulfur diesel fuel), residual fuel oil, lubricants (lubricating base oils), asphalt and road oil (atmospheric or vacuum tower bottom), waxes, petroleum coke, still gas, and naphtha less than 401 °F end-point, as well as any other products of a refinery that the Commissioner may identify through published guidance.

The final regulations have modified or clarified several of the terms from the EIA lists to ensure that the listed products are only those of the type produced in a petroleum refinery or traditional gas field processing plant. Thus, for example, the listed product ''lubricants'' includes the parenthetical ''lubricating base oils'' to clarify that refining does not include creating a lubricant not of the type produced in a petroleum refinery that has been mixed with non-petroleum hydrocarbons. The EIA reports are required to be filed only by refiners and natural gas processors; consequently, the EIA need not circumscribe the products to include solely those generally produced by a petroleum refinery or processing plant. The Treasury Department and the IRS modified the EIA list to more specifically identify those products solely produced by refineries and field facilities. In addition, the list in the final regulations must be read consistently with that view to include only those types of listed products that are generally produced in a petroleum refinery or natural gas processing plant. For example, a lubricant that is not of a type that is generally produced by a refiner is not within the product list. Therefore, the definitions have been slightly adjusted to reflect lubricants of a petroleum refinery as opposed to those from a manufacturer or entity that is adding more than the minimal amount permitted under additization (discussed in section III.H.5 of this Summary of Comments and Explanation of Revisions) of different minerals, natural resources, or other products to the lubricant.

Also, in adopting the approach of listing the products of a petroleum refinery or a natural gas processing plant, these final regulations no longer provide language regarding converting methane in one integrated conversion into liquid fuels or regarding the various acceptable chemical conversions with respect to crude oil. Activities are treated as refining to the extent they give rise to products listed in the regulation.

Adopting the EIA's list of products of a refinery resolved several other issues raised by commenters. These final regulations no longer differentiate between the refining of natural gas and the refining of crude oil, particularly in regard to the creation of olefins and certain liquid fuels. Although traditional gas field processing plants do not produce olefins or certain fuels from natural gas, these products are created in petroleum refineries (albeit in small quantities in the case of olefins). The Treasury Department and the IRS recognize that changes in technology have expanded the ways to create liquid fuels, and thus continue to be guided by the stated goal in the legislative history of including as qualifying those activities that create products ''which are recovered from petroleum refineries or field facilities.'' H.R. Rep. No. 100–495, at 947 (1987). Similarly, the final regulations no longer omit the refining of non-fuel products of a refinery, such as lubricants, waxes, solvents, and asphalts of the type produced in petroleum refineries.

Conversely, the EIA list does not include methanol as a product of a refinery or natural gas processing plant, and therefore these final regulations do not adopt commenters' suggestion to treat as qualifying the creation of methanol. Indeed, one commenter who recommended adopting the list of products produced by a refinery as compiled by the EIA acknowledged that the Treasury Department and the IRS would need to expand the EIA list to encompass methanol and synthesis gas since they are typically not produced at refineries. Given the EIA's expertise, the Treasury Department and the IRS decline to supplement the products of a refinery as identified by the EIA, and also note that alcohols (such as methanol) were specifically not included as a primary product of oil and gas in the regulations under the Foreign Sales Corporation provisions, whose list of oil and gas products is similar to that in the legislative history for section 7704(d)(1)(E). See § 1.927(a)–1T(g)(2)(iv) and discussion under section III.D.1.d of this Summary of Comments and Explanation of Revisions. Whether methanol is similar to NGLs, is a liquid fuel, or can be created using typical oil refining processes is immaterial to the determination of whether the manufacture of methanol is a qualifying activity. These final regulations, therefore, amend the reasoning in *Example 3,* now in § 1.7704–4(f), to reflect that methanol is not included among the listed products.

These final regulations also do not adopt the recommendation to treat as qualifying all activities performed in a refinery. Such a standard would allow PTPs to thwart Congress's limitation on qualifying activities by simply moving processes that are normally not conducted in a refinery within the refinery fence. For example, some refineries have added hydrogen production plants to their facilities, though Congress did not intend the generation of hydrogen for sale to be a qualifying activity. Indeed, these final regulations continue to provide that products of refining do not include products produced onsite for the use in the refinery, such as hydrogen, if excess amounts are sold. The Treasury Department and the IRS understand that some commenters suggested this broader definition of refining in order to include as qualifying the refining of non-fuel products (lubricants, waxes,

solvents, and asphalts). Their concern, however, is addressed to the extent those products are included in the list of products of a refinery, thus avoiding the need for a broad and potentially vague rule that would encompass all activities undertaken in a refinery.

Finally, these final regulations retain language similar to that in the proposed regulations clarifying that certain other products are not products of refining, including heat, steam or electricity produced by refining processes, products obtained from third parties or produced onsite for use in the refinery if excess amounts are sold, any product that results from further chemical change of a product on the list of products of a refinery that does not result in the same or another product listed as a product of a refinery, and plastics or similar petroleum derivatives. For this last item, these final regulations do not adopt the suggestion of some commenters to provide a non-exclusive list of non-qualifying plastic resins, as the Treasury Department and the IRS do not agree that providing such a list aids taxpayers. A list of some of the non-qualifying products is not relevant because the final regulations list all of the qualifying products and might create confusion if a product were not included on either list.

3. Ores and Minerals

The proposed regulations provided that an activity constituted processing or refining of ores and minerals if it met the definition of mining processes under § 1.613–4(f)(1)(ii) or refining under § 1.613–4(g)(6)(iii). In addition, the proposed regulations repeated part of the definition of refining found in § 1.613–4(g)(6)(iii) by stating that, generally, refining of ores and minerals is any activity that eliminates impurities or foreign matter from smelted or partially processed metallic and nonmetallic ores and minerals, as for example the refining of blister copper.

Commenters generally sought to expand the definition of processing and refining of ores and minerals. As discussed in greater detail in section III.C of this Summary of Comments and Explanation of Revisions, commenters maintained that section 7704(d)(1)(E) should use the definition of mining from section 613(c)(2). Because that definition already includes certain mining processes, commenters further argued that the definition of processing for section 7704(d)(1)(E) should include something more, specifically some or all of the ''nonmining processes'' listed in section 613(c)(5) and § 1.613–4(g). Moreover, they reasoned that unless the nonmining processes are included in the definition of processing, there is a hole between processing and refining, as defined in the proposed regulations, which could not have been intended. For example, the proposed regulations identified the refining of blister copper as a qualifying activity, but did not allow as qualifying the activity that precedes that step (that is, the smelting of the copper ore concentrate to produce the blister copper), which occurs after the mining processes identified in § 1.613–4(f)(2)(i)(*d*). Additionally, commenters elaborated that some of the nonmining processes under section 613(c)(5) are themselves activities that ''purify, separate, or eliminate impurities,'' thus falling within the general definition of processing provided in the proposed regulations. Some commenters argued that the coking of coal, the making of activated carbon, and the fine pulverization of magnetite should all be considered qualifying activities.

Based on the comments received, the Treasury Department and the IRS have determined that the definition of processing and refining of ores and minerals in the proposed regulations needed clarification. Like the final regulations on processing and refining of natural gas or crude oil, and as discussed in section III.D.1.a of this Summary of Comments and Explanation of Revisions, these final regulations separately define processing and refining of ores and minerals other than natural gas or crude oil.

Processing of ores and minerals other than natural gas or crude oil is defined in these final regulations as those activities that meet the definition of mining processes under § 1.613–4(f)(1)(ii), without regard to § 1.613–4(f)(2)(iv) (related to who is performing the processing). Accordingly, processing includes the activities generally performed at or near the point of extraction of the ores or minerals from the ground (generally within a 50-mile radius or greater if the Commissioner determines that physical or other requirements cause the plants or mills to be at a greater distance) that are normally applied to obtain commercially marketable mineral products. Therefore, this definition captures the concept of ''field facilities'' in the legislative history to section 7704(d)(1)(E).

Because the legislative history does not provide any examples of products produced from ores and minerals that may generate qualifying income, other than those relating to oil, gas, and fertilizer, the Treasury Department and the IRS have applied limitations to ores and minerals that are comparable to those specifically expressed by Congress regarding oil and gas. See H.R. Rep. No. 100–495, at 947 (1987) (''[o]il, gas, or products thereof are not intended to encompass oil or gas products that are produced by additional processing beyond that of petroleum refineries or field facilities, such as plastics or similar petroleum derivatives''). In contrast, commenters' suggestion to include nonmining processes in the definition of processing is not consistent with the Treasury Department's and the IRS's view of congressional intent because the term ''nonmining processes'' in § 1.613–4(g) is a catch-all category that includes any process applied beyond mining processes, including refining, blending, manufacturing, transportation, and storage. See § 1.613–4(g) (which lists various nonmining processes, and also provides that ''a process applied subsequent to a nonmining process (other than nonmining transportation) shall also be considered to be a nonmining process''). In addition to causing the definition of processing to be partly duplicative of other listed section 7704(d)(1)(E) activities, adopting this suggestion would mean that so long as a product started as a depletable product, any income derived from any manipulation of that product would be qualifying income. Such a result would be in direct conflict with the desire of Congress to restrict the scope of activities engaged in by PTPs. Therefore, these final regulations do not adopt that suggestion.

Nevertheless, in response to comments, these final regulations include some nonmining processes in the definition of refining of ores and minerals other than natural gas or crude oil. Refining of ores and minerals other than natural gas or crude oil is defined in these final regulations as those various processes subsequent to mining processes performed to eliminate impurities or foreign matter and which are necessary steps in the goal of achieving a high degree of purity from specified metallic ores and minerals which are not customarily sold in the form of the crude mineral product. The specified metallic ores and minerals identified in these final regulations are: Lead, zinc, copper, gold, silver, and any other ores or minerals that the Commissioner may identify through published guidance. These are the same metallic ores and minerals treated as ''not customarily sold in the form of the crude mineral product'' under section 613(c)(4)(D), except that fluorspar ores and potash are not included in these

regulations because they will be addressed in regulations specifically addressing fertilizer and uranium is not included because it is not purified to a high concentrate. Uranium is not mined to isolate pure uranium at the high-purity levels as is done with other metals such as lead, zinc, copper, gold, or silver, but, overwhelmingly, is instead mined to attain a uranium oxide (UO2) material for the manufacture of nuclear fuel pellets. This process rejects approximately 95–99 percent of the originally-extracted uranium ore (a U238 + U235 mixture), in order to raise the concentration of the desired uranium isotope (U235), in what the Treasury Department and the IRS have concluded is a manufacturing process.

Refining processes for these specified metallic ores and minerals include some non-mining processes (such as fine pulverization, electrowinning, electrolytic deposition, roasting, thermal or electric smelting, or substantially equivalent processes or combinations of processes) to the extent those processes are used to separate or extract the metal from the specified metallic ore for the primary purpose of producing a purer form of the metal, as for example the smelting of concentrates to produce Doré bars or refining of blister copper. Income from the smelting of iron, for example, is not qualifying income under the final regulations because iron is an ore or mineral customarily sold in the form of the crude mineral product, and thus not a product listed in section 613(c)(4)(D). Compare § 1.613–4(f)(2)(i)(c) and (d). In addition, these final regulations specifically provide that refining does not include the introduction of additives that remain in the metal, for example, in the manufacture of alloys of gold. Also, the application of nonmining processes as defined in § 1.613–4(g) to produce a specified metal that is considered a waste or by-product during the production of a non-specified metallic ore or mineral is not considered refining.

These final regulations provide a more detailed definition of refining than the proposed regulations and better articulate a common understanding of what refining includes, that is in a metallurgical sense. To eliminate uncertainty, these final regulations define refining to include only activities with respect to those ores and minerals that are generally refined to a high degree of purity, which are also those ores and minerals that normally require more processing before they are sold, as identified in § 613(c)(4) and § 1.613–4(f)(2)(i)(*d*). In addition, these final regulations also allow the necessary, preceding processes performed to eliminate impurities from the specified ores and minerals, thereby addressing commenters' concerns regarding a hole in processing activities in the proposed regulations. In providing this definition, the final regulations also effect congressional intent to limit qualifying income to certain activities that have ''commonly or typically been conducted in partnership form.'' H.R. Rep. No. 100–391, at 1066 (1987). Both in 1987 and since, large manufacturing operations such as smelting aluminum and manufacturing steel have generally been conducted by corporations. Despite the existence of hundreds of different ores and minerals, only a handful of businesses that work with ores and minerals other than natural gas or crude oil have operated as PTPs, perhaps reflecting a general understanding that expanded processing activities were not considered by Congress to be activities that could generate qualifying income. The Treasury Department and the IRS have determined that it would be inappropriate to expand the definition of refining of ores and minerals beyond that intended by Congress.

The final regulations do not recognize as qualifying activities the coking of coal or the making of activated carbon. The processing of coal, as contemplated by § 1.613–4(f)(2)(i)(*a*), includes the cleaning, breaking, sizing, dust allaying, treating to prevent freezing, and loading for shipment. At that point, the coal is ready for sale. Because Congress intended products resulting from processing to include only those products produced in field facilities or refineries, coking of coal is not a processing activity. Furthermore, coal is not refined into coke or activated carbon in the metallurgical sense in which ores are refined. Coal is itself the mineral or natural resource for purposes of sections 611 and 613 that is extracted from the ground. Unlike ores where extraction occurs in order to obtain the mineral at issue—for which refining may be required to separate the mineral from the ore rock—coal is extracted to be used substantially as is. Refining ores to obtain a purer form of the minerals found in rock is not analogous to coking coal to obtain carbon. Cokemaking and creating activated carbon are manufacturing processes used to create a new product. Refining is not changing a mineral into a new or different mineral product or creating a product that is, altogether, not a mineral.

Similarly, these final regulations do not include the fine pulverization of magnetite, as requested by a commenter. As discussed, Congress intended processing to include only those activities typically performed at the equivalent of field facilities for minerals and ores. Fine pulverization is generally not included as a mining process as it is not helpful in bringing the ores or minerals to shipping grade generally, although pulverization may qualify as a mining process if, with respect to the mineral or ore at issue, it is necessary to another process that is a mining process. See § 1.613–4(f)(2)(iii). These final regulations do not alter this treatment.

4. Timber

The proposed regulations provided that an activity constituted processing of timber if performed to modify the physical form of timber, including by the application of heat or pressure to timber, without adding any foreign substances. The proposed regulations specified that processing of timber did not include activities that added chemicals or other foreign substances to timber to manipulate its physical or chemical properties, such as using a digester to produce pulp. Products that resulted from timber processing included wood chips, sawdust, rough lumber, kiln-dried lumber, veneers, wood pellets, wood bark, and rough poles. Products that were not the result of timber processing included pulp, paper, paper products, treated lumber, oriented strand board/plywood, and treated poles.

Commenters argued that the proposed regulations wrongly limited the products of timber processing and restricted additives. These commenters noted that the proposed regulations departed from PLRs issued in the past that permitted pulping and other engineered wood products made with resins and treated with chemicals. Specific to pulping, commenters applied the general definition in the proposed regulations that provided for separation and purification to reason that the pulping of cut timber is merely separation into the component parts of wood—water, cellulose fibers, lignin, and hemicelluloses—through the addition of water and chemicals. Therefore, they argued, the specific rule for timber was more restrictive than the general rule for all natural resources. In contrast, one commenter acknowledged that the production of plywood and other engineered wood products should not generate qualifying income because a non-natural resource (that is, a synthetic adhesive) is a material input in the process that produces engineered wood products.

The final regulations do not adopt commenters' requests to expand the

definition of the processing of timber, but adopt the rule in the proposed regulations without change. As discussed in section I of this Summary of Comments and Explanation of Revisions, the Treasury Department and the IRS interpret the legislative history of section 7704(d)(1)(E) to mean that Congress did not intend to extend processing activities beyond those involved in getting a natural resource such as timber to market in a form generally sold. Potential products made from wood are numerous, and include: Pulp, paper and other paper products, certain chemicals (such as tar, tall oil, or turpentine), engineered wood products, lumber, sawdust, wood chips, and furniture. The point where processing turns into manufacturing is definable: The modification of the physical state of wood is a process, whereas the addition of chemicals in an attempt to manipulate the physical or chemical properties of wood is extended processing more akin to manufacturing, and thus beyond the scope of activities intended by Congress to generate qualifying income. The corollary of a field processing plant for timber is a sawmill or pellet mill. Sawmills produce lumber and lumber products (such as bark, sawdust, and wood chips) from felled logs. Pellet mills produce pellets from logs, chipped wood, lumber scraps, sawdust or pulpwood. These processes do not change the wood into a different product. The distinction between processing and manufacturing of timber is demonstrated in the MACRS class lives in Rev. Proc. 87–56, which separate the sawing of stock from logs (24.2 and 24.3) from the manufacture of furniture, pulp, and paper (24.4 and 26.1). Despite commenters' statements that pulping is like crude oil refining, timber is not commonly understood to be ''refined'' to a higher level of purity. Timber is simply ''processed''; therefore, these regulations do not include timber in the definition of refining.

E. Transportation

The proposed regulations provided that transportation was the movement of minerals or natural resources and products of mining, production, processing, or refining, including by pipeline, barge, rail, or truck, except for transportation (not including pipeline transportation) to a place that sells or dispenses to retail customers. Retail customers did not include a person who acquired oil or gas for refining or processing, or a utility. The following activities qualified as transportation under the proposed regulations: (i) Providing storage services; (ii) terminalling; (iii) operating gathering systems and custody transfer stations; (iv) operating pipelines, barges, rail, or trucks; and (v) construction of a pipeline only to the extent that a pipe was run to connect a producer or refiner to a preexisting interstate or intrastate line owned by the PTP (interconnect agreements).

Commenters requested both clarification and expansion of the definition of transportation in three main areas. First, commenters asked that the regulations explain who can generate qualifying income from transportation via pipeline and marine shipping. Specifically, different commenters sought assurances that those ''operating pipelines'' include operators who move the product, owners and lessors who receive income for use of their pipelines, and logistic service providers who schedule the movement of product on pipelines. Similarly, another commenter asked that the regulations specify that transportation under a time charter is a qualifying activity. Under such contractual arrangements, a PTP provides a crew and operates a marine vessel, though the customer (such as an oil and gas company) directs where the product is to be delivered. Essential to this request is the additional proposal that the term ''barges'' in the proposed regulations be read expansively to include marine transportation via other types of vessels, especially those that move under their own power rather than being pushed or towed.

To transport is ''to carry or convey (a thing) from one place to another,'' and transportation is ''the movement of goods or persons from one place or another by a carrier.'' *Black's Law Dictionary* (8th ed. 2004). As a general matter, these final regulations do not require ownership or control of the assets used to perform a listed activity so long as the action being performed is within the definition of a qualifying activity. Following this approach, those performing the physical work to move the product along a pipeline (such as taking delivery of the product, metering quantities, monitoring specifications, and actually controlling the movement of the product) or to transport the product via marine vessel (including operating the vessel under a time charter) are performing a qualifying activity. Also, given the dedicated use of pipelines in the oil and gas industry, these final regulations specifically allow as qualifying income the income owners and lessors receive for the use of their pipelines to transport minerals or natural resources. In contrast, a logistics service provider involved in scheduling services alone neither carries nor conveys, and is therefore not a transporter. A logistics service provider may, however, have qualifying income if it meets the intrinsic test described in further detail in section IV of this Summary of Comments and Explanation of Revisions. Additionally, these final regulations replace the word ''barge'' with ''marine vessel'' so as not to limit marine transportation to one type of watercraft.

The second area of concern raised by commenters dealt with the exception for transportation to retail customers. Commenters asked that the regulations clarify that certain transportation to retail customers is a qualifying activity. For example, citing to one sentence in the legislative history that ''[i]ncome from *any* transportation of oil or gas or products thereof by pipeline is treated as qualifying income,'' one commenter asserted that Congress intended to include as a qualifying activity the transportation of oil and gas by pipeline directly to homeowners. H.R. Conf. Rep. 100–1104(II), at 18 (1988) (emphasis added). Likewise, many other commenters asserted that Congress intended that the transportation and corresponding marketing of liquefied petroleum gas (primarily propane) to retail customers generate qualifying income. These commenters pointed to floor statements made by Senator Lloyd Bentsen and Representative Dan Rostenkowski after enactment of section 7704, which were specifically referenced in a footnote in the Conference Report to the Technical and Miscellaneous Revenue Act of 1988. See 133 Cong. Rec. S18651 (December 22, 1987), 133 Cong. Rec. H11968 (December 21, 1987), and H.R. Conf. Rep. 100–1104(II), at 18 (1988).

To provide more clarity, these final regulations explain when transportation to a place that sells to retail customers or transportation directly to retail customers is a qualifying activity. Specifically, these final regulations provide that transportation includes the movement of minerals or natural resources, and products produced under processing and refining, via pipeline to a place that sells to retail customers, but do not expand the list of qualifying activities to include the movement of such items via pipeline directly to retail customers. In addition, these final regulations provide that transportation includes the movement of liquefied petroleum gas via trucks, rail cars, or pipeline to a place that sells to retail customers as well as directly to retail customers.

These provisions implement Congressional intent as expressed in the

legislative history accompanying the Technical and Miscellaneous Revenue Act of 1988 which provided: ''in general, income from transportation of oil and gas and products thereof to a bulk distribution center such as a terminal or a refinery (whether by pipeline, truck, barge or rail) be treated as qualifying income. Income from any transportation of oil or gas or products thereof by pipeline is treated as qualifying income. Except in the case of pipeline transport, however, transportation of oil or gas or products thereof to a place from which it is dispensed or sold to retail customers is generally not intended to be treated as qualifying income. Solely for this purpose, a retail customer does not include a person who acquires the oil or gas for refining or processing, or partially refined or processed products thereof for further refining or processing, nor does a retail customer include a utility providing power to customers. For example, income from transporting refined petroleum products by truck to retail customers is not qualifying income.'' H.R. Conf. Rep. 100–1104(II), at 17–18 (1988). A footnote added that ''[i]ncome from transportation and marketing of liquefied petroleum gas in trucks and rail cars or by pipeline, however, may be treated as qualifying income,'' citing the floor statements identified by commenters. Id.

Although the legislative history supports much of what commenters have asked to be clarified, it does not support the proposal that the transportation by pipeline of oil, gas, and products thereof (other than liquefied petroleum gas) directly to homeowners is qualifying income. Although Congress stated that ''any'' transportation by pipeline qualifies, when read in context with the remainder of the paragraph, it is clear that Congress was discussing bulk transportation. See also S. Rep. 100–445, at 424 (1988) (''[i]n the case of transportation activities with respect to oil and gas and products thereof, the Committee intends that, in general, income from bulk transportation of oil and gas and products thereof be treated as qualifying income''). This treatment also parallels Congressional intent regarding marketing, which is a qualifying activity ''at the level of exploration, development, processing or refining,'' but not ''to end users at the retail level.'' Id.

The third area of comments on transportation were requests to include specific, additional activities in the list of examples, in this case, compression services, liquefaction and regasification, and the sale of renewable identification numbers (RINs). Each of these activities relates directly to the conveyance of certain oil and natural gas products and therefore these final regulations adopt commenters' suggestions to add them as examples to the list of qualifying transportation activities. Natural gas compression is a mechanical process whereby a volume of natural gas is compressed to a required high pressure in order to transport the gas though pipelines. A compression service provider selects appropriate compression equipment (for example, the number of compressors and the compressor configuration), then installs, operates, services, repairs, and maintains that equipment, typically working on a continuous basis. More than the mere sale of equipment, a compression service company is engaged in transportation activities by making natural gas move from one point to another.

Similarly, liquefaction and regasification are the process of transforming methane from a gas to a liquid (LNG) to facilitate its transportation and storage, and the process of reconverting the liquid to a gas, respectively. The regasified natural gas is fungible with natural gas that has not been liquefied and regasified. Moreover, in 2008, Congress amended section 7704(d)(1)(E) to add that income and gains from the transportation or storage of any fuel described in section 6426(d), which includes compressed or liquefied natural gas, generates qualifying income. See Public Law 110–343, 122 Stat. 3765, Section 208(a), and section 6426(d)(2)(C). Since the transportation and storage of LNG clearly is a qualifying activity, the liquefaction and regasification must also generate qualifying income.

Finally, RINs are part of a Congressionally-mandated program to ensure that transportation fuel sold in the U.S. contains a minimum percentage of renewable fuel. Generally, RINs are assigned to each gallon of renewable fuel, and are separated when the renewable fuel is combined with conventional fuel. Companies who blend such additives into conventional fuels are assigned annual quotas of RINs that they must acquire. Companies who acquire more RINs than needed in any year may sell the surplus to others who have not met their quota. Although it is not a direct, physical conveyance of a mineral or natural resource or product of processing and refining, the Treasury Department and the IRS agree that the sale of RINs gives rise to qualifying income as a part of transportation and marketing activities—that is, additization, as that activity is described in more detail in section III.H.5 of this Summary of Comments and Explanation of Revisions.

In addition to the three areas of comments discussed regarding transportation in this section III.E of this Summary of Comments and Explanation of Revisions, commenters also suggested that the final regulations expand the types of interconnect agreements that are treated as giving rise to qualifying transportation activities. Because these final regulations address all construction activities related to performing section 7704(d)(1)(E) activities in a new section regarding cost reimbursements, construction of pipelines is moved from the section on transportation and those comments are discussed in more detail in section III.H.1 of this Summary of Comments and Explanation of Revisions.

F. Marketing

The proposed regulations provided that an activity constituted marketing if it was performed to facilitate sale of minerals or natural resources and products of mining or production, processing, and refining, including by blending additives into fuels. The proposed regulations explained that marketing did not include activities and assets involved primarily in retail sales (sales made in small quantities directly to end users), which included, but were not limited to, operation of gasoline service stations, home heating oil delivery services, and local natural gas delivery services.

In addition to the comments received concerning retail sales of liquid petroleum gas addressed in section III.E of this Summary of Comments and Explanation of Revisions, one commenter recommended revising the definition of marketing to better reflect the common meaning of the word by including the act of selling and other activities designed to encourage sales, including the packaging of products. This same commenter also suggested rewording the exclusion for retail sales so that the regulation is more direct and involves an intent test. The commenter proposed eliminating the concepts relating to ''assets'' and ''involved'' in retail sales because they create uncertainty and changing the definition from ''sales made in small quantities directly to end users'' to ''sales to ultimate consumers to meet personal needs, rather than for commercial or industrial uses of the articles sold.''

Adopting some of these suggestions, these final regulations directly state that marketing is the bulk sale of minerals or natural resources, and products

produced through processing or refining, and includes activities that facilitate sales (such as packaging). These final regulations continue to provide that marketing generally does not include retail sales. These final regulations do not, however, change the definition of retail sales to create an intent-based test that looks to determine the purpose of the purchase. The final regulations are consistent with the legislative history, which clarified that, ''[w]ith respect to marketing of minerals and natural resources (*e.g.,* oil and gas and products therefof [sic]), the Committee intends that qualifying income be income from marketing at the level of exploration, development, processing or refining the mineral or natural resource. By contrast, income from marketing minerals and natural resources to end users at the retail level is not intended to be qualifying income. For example, income from retail marketing with respect to refined petroleum products (*e.g.,* gas station operations) is not intended to be treated as qualifying income.'' S. Rep. No. 100–445, at 424 (1988). This legislative history indicates that a small business owner who fills his delivery truck at the gas station before delivering his wares is still an end user at the retail level, even though the gasoline is used for commercial purposes.

G. Fertilizer

The final regulations reserve a paragraph for fertilizer under section 7704(d)(1)(E) activities in anticipation of a new notice of proposed rulemaking that will define fertilizer as well as explain what activities involving fertilizer will generate qualifying income. The Treasury Department and the IRS will address the comment received on fertilizer in those proposed regulations.

H. Additional Activities

The Treasury Department and the IRS received comments regarding certain other activities that are not exclusive to just one section 7704(d)(1)(E) activity, including seeking reimbursement for the costs of performing section 7704(d)(1)(E) activities, receiving income from passive interests, blending, and additization. These final regulations include these activities as qualifying activities, and clarify the extent to which these activities generate qualifying income. This preamble also discusses comments received concerning hedging, and requests further comments.

1. Cost Reimbursements

The list of section 7704(d)(1)(E) activities identified only the overarching pursuits undertaken by businesses engaged in the exploration, development, mining or production, processing, refining, transportation, or marketing of minerals or natural resources. The proposed regulations did not list as section 7704(d)(1)(E) activities the many other activities required to run a business, such as hiring employees, negotiating contracts, or acquiring assets used in the business. Normally those typical, administrative activities are considered to give rise to business costs, and are not understood to be the trade or business that generates income for those in the mineral and natural resource industries. Under the proposed regulations, however, a partnership could demonstrate that it performed intrinsic activities, meaning its activities were so closely tied to section 7704(d)(1)(E) activities that income therefrom should be considered derived from those section 7704(d)(1)(E) activities, and thus be treated as qualifying income. Intrinsic activities included limited, active services that closely supported section 7704(d)(1)(E) activities by being specialized, essential, and significant. The proposed regulations also identified a number of service activities that would not meet the requirements to be considered an intrinsic activity, including legal, financial, consulting, accounting, insurance, and other similar services, or activities that principally involved the design, construction, manufacturing, repair, maintenance, lease, rent, or temporary provision of property. This did not mean that a business performing intrinsic activities was prohibited from engaging in the typical activities required to operate its own business, only that supplying those services to others would not generate qualifying income under section 7704(d)(1)(E) for those businesses.

Commenters asked that the final regulations clarify two issues regarding these general services that are not specific to the mineral and natural resource industries. First, commenters recommended that the section 7704(d)(1)(E) activities be defined to include the functions (such as engineering, construction, operations, maintenance, security, billing, hiring, accounting, and tax financial reporting) that, taken in the aggregate, are necessary for the overall operation of the qualifying activity. Commenters thus recommended that the final regulations reflect more generally that income from performing the functions required for the operation of qualifying assets or qualifying businesses (including cost reimbursements) constitutes qualifying income, even if the operator does not own the underlying assets. As an illustration of this request, one commenter provided the example of a pipeline or processing facility operator that provides all of the services to run assets owned by a third party (such as contracting with customers for the use of the pipeline or processing facility, loading/unloading the product, performing tasks necessary to transport or process the product, metering quantities, and monitoring specifications), but also manages the construction of any assets necessary for the completion of the activities and handles all of the back-office functions such as payroll and other administrative services. Although the costs of providing that work may be imbedded in the charge to its client for operating the pipeline or processing facility, sometimes an operating partnership may instead send its client a bill with a separate line item for construction or back office expenses.

The Treasury Department and the IRS agree with commenters that operating income (including from construction and back-office functions) should constitute qualifying income so long as the activities to which the income is attributable are part of the partnership's business of performing the section 7704(d)(1)(E) activity. Whether the partnership adds the cost to a general overhead account or provides the client with a separate line item detailing that cost in its bill should not matter—that income is still derived from performing the section 7704(d)(1)(E) activity. A partnership performing a section 7704(d)(1)(E) activity that recoups its costs is markedly different from a business solely performing one of the services identified in the intrinsic activities section that are identified as not essential or not significant. Therefore, to clarify this issue, these final regulations provide that if the partnership is, itself, in the trade or business of performing a section 7704(d)(1)(E) activity, income received to reimburse the partnership for its costs incurred in performing that section 7704(d)(1)(E) activity, whether imbedded in the rate the partnership charges or separately itemized, is qualifying income. Reimbursable costs may include, but are not limited to, the cost of designing, constructing, installing, inspecting, maintaining, metering, monitoring, or relocating an asset used in that section 7704(d)(1)(E) activity, or of providing office functions

necessary to the operation of that section 7704(d)(1)(E) activity (such as staffing, purchasing supplies, billing, accounting, and financial reporting). For example, a pipeline operator that charges a customer for its cost to build, repair, or schedule flow on the pipelines that it operates will have qualifying income from such activity whether or not the operator itemizes those costs when it bills the customer.

Because these final regulations address reimbursement to a PTP for the construction of assets used by it to perform a section 7704(d)(1)(E) activity more generally, these final regulations remove the narrow provision under the definition of transportation that listed construction of a pipeline as a qualified activity but only to the extent that the pipe was run to connect a producer or refiner to a preexisting interstate or intrastate line owned by the partnership. Many commenters protested that the provisions were too limited, explaining that the Federal Energy Regulatory Commission, which regulates pipelines, may require pipelines to connect with other pipelines to facilitate the efficient movement of product, and that many other new and existing operations (such as gathering systems, utilities, power generation facilities, refineries, local distribution companies, or other commercial or governmental clients) may also wish to connect to pipelines. Based on the hearings held before the passage of section 7704 and the legislative history, it is clear that Congress was concerned about certain mineral and natural resource partnerships being able to acquire necessary capital to build the assets to be used in their section 7704(d)(1)(E) activities. Building a new facility or pipeline is capital intensive and, to the extent that a partnership passes some of those costs on to the client, the income from the reimbursement of those costs, when received, is a part of the partnership's income from performing the section 7704(d)(1)(E) activity.

The second issue raised by commenters is an extension of the first. Commenters suggested that management fees earned by a direct or indirect co-owner of a business performing a section 7704(d)(1)(E) activity should be treated as qualifying income. One commenter noted that the partner of the business may provide such legal, financial or accounting services for efficiency purposes or under agreement where one partner performs the section 7704(d)(1)(E) activities while another performs the administrative activities. These final regulations do not adopt this suggestion. To the extent a partner of a PTP is receiving a management fee (as distinguished from a distributive share of partnership income) for such administrative tasks as legal, financial or accounting services, it is no different than any other business providing a service to the PTP. Whether income from the services is qualifying will depend on whether the partner can demonstrate that it is performing an intrinsic activity as discussed in section IV of this Summary of Comments and Explanation of Revisions.

2. Hedging

The proposed regulations did not address whether income from hedging transactions was qualifying income. Several commenters noted this and specifically requested guidance on this question. Commenters noted that commodity prices are volatile and PTPs must hedge their risks to ensure consistent cash flows, both from an operational and working capital perspective, and from an investor demand perspective. Commenters recommended that the final regulations provide that income derived from any hedging transactions that are entered into by a PTP in the normal course of its trade or business and that manage the PTP's risk with respect to price fluctuations of the minerals or natural resources should be included as qualifying income. Other commenters would include income from any hedging transactions entered into by a PTP in order to manage its prudent business concerns, including transactions hedging interest rate risks and foreign currency transactions related to its qualifying activities. One commenter further recommended that a hedge of an aggregate risk with respect to both a qualifying activity and a non-qualifying activity should be considered income from the qualifying activity if substantially all of the risk hedged relates to the qualifying activity.

The Treasury Department and the IRS agree with commenters that hedging income, when it is derived from a section 7704(d)(1)(E) activity, should give rise to qualifying income under section 7704(d)(1)(E). Engaging in hedging activities is a common part of the industry and represents prudent business practice. However, because hedging transactions are generally used to fix the price of property with respect to a section 7704(d)(1)(E) activity, the Treasury Department and the IRS believe that both the income and gains, as well as the deductions and losses, with respect to hedges should be taken into account in determining the income from a section 7704(d)(1)(E) activity. These final regulations reserve on the issue of hedging while the Treasury Department and the IRS consider what types of hedging transactions would result in qualifying income and whether to adjust gross income for such hedging transactions. To that end, the Treasury Department and the IRS request comments on methods to account for the income and gains, as well as the deductions and losses, with respect to hedges. For example, future regulations may generally provide that income, deduction, gain, or loss from a hedging transaction entered into by the partnership primarily to manage risk of price changes or currency fluctuations with respect to ordinary property (as defined in § 1.1221–2(c)(2)) with respect to which qualifying income is derived from a section 7704(d)(1)(E) activity is treated as an adjustment to qualifying income, provided that the transaction is entered into in the ordinary course of the PTP's business and is clearly identified by the end of the day on which it is entered into. The principles of section 1221(b)(2)(B) and the regulations thereunder, regarding identification, recordkeeping, and the effect of identification and non-identification, would apply to hedging transactions entered into by the PTP.

For example, a partnership might have gain or loss on a forward contract that it enters into to hedge the price risk related to its sale of a commodity with respect to which qualifying income is derived from a qualifying activity. If the partnership has gain that is recognized on the hedge under its method of accounting, then such gain would be treated, for purposes of section 7704(c)(2), as an additional amount realized with respect to the commodity and would be treated under these rules as increasing the amount of qualifying income derived from the qualifying activity. Conversely, if the taxpayer recognizes loss under its accounting method with respect to the hedge, then the loss would be treated, for purposes of section 7704(c)(2), as a decrease in the amount realized on the commodity thus decreasing the qualifying income derived from the qualifying activity.

The Treasury Department and the IRS do not agree, however, that income from hedging with respect to an activity that is not a section 7704(d)(1)(E) activity should give rise to qualifying income under section 7704(d)(1)(E). Other types of hedges, however, may be included under other provisions of section 7704. For example, as noted by some of the commenters, the existing regulations under § 1.7704–3 provide that qualifying income includes (1) income from notional principal contracts (NPC) if the property, income, or cash flow

that measures the amount to which the partnership is entitled under the NPC would give rise to qualifying income if held or received directly by the partnership and (2) other substantially similar income from ordinary and routine investments to the extent determined by the Commissioner. See § 1.7704–3(a)(1).

3. Passive Interests

Income from passive interests was not addressed in the proposed regulations. Commenters suggested that income from passive, non-operating economic interests in minerals and natural resources (for example, royalty interests, net profits interests, rights to production payments, delay rental payments, and lease bonus payments) should be qualifying income. One commenter explained that passive economic interest owners have an economic interest in the minerals in place (for example, they are treated as the owner of the mineral or natural resource when it is in fact produced) and a right to share and participate in the proceeds derived from the production of the minerals and natural resources. Another commenter noted that surface damage payments may arise as a part of mining or production. For example, if surface ownership and mineral ownership are separate, a miner may pay royalties to both the surface owner and mineral owner. One commenter explained that several parties may derive income from exploration, development, mining, production, or marketing: (1) Owners of passive economic interests that themselves do not engage in the production operations associated with mineral or natural resource properties, but benefit from their respective shares of production revenue; (2) working interest owners (whether or not the ''operator'') that are responsible for the activities of exploring for, drilling for, and producing natural resources from the mineral properties, and (3) third-party service providers, who generally do not own an economic interest in the mineral properties, but charge the working interest owners fees or service charges. The commenter noted that the proposed regulations addressed income of working interest owners and third-party service providers, but not those with passive economic interests.

Because income from passive economic interests can be generated at many different stages throughout the process of getting minerals and natural resources to a marketable form, these final regulations include income from passive economic interests in minerals and natural resources as qualifying income.

4. Blending

Commenters raised several questions about the extent to which the blending of the same mineral or natural resource, or products thereof, was a qualifying activity. The proposed regulations referenced some blending activities by treating as a section 7704(d)(1)(E) activity the chemical conversion of the physically separated components of crude oil if one or more of the products of the conversion were recombined with other physically separated components of crude oil in a manner that was necessary to the cost-effective production of gasoline or other fuels. The proposed regulations also included ''blending additives into fuel'' as a marketing activity.

Commenters noted that terminal operators also perform blending services as a part of their transportation activities, and requested that the regulations be clarified to list blending as a transportation activity. Commenters explained that terminals may blend different grades of crude oil together to achieve the desired grade or quality of crude oil, or they may blend a diluent (such as diesel fuel, or a lighter grade of crude oil) into heavier crude oil to achieve a level of viscosity appropriate for the subsequent mode of transportation. Another commenter stated that refineries also perform some blending activities, and asked that income from such blending be treated as qualifying income. Commenters also raised concerns that the restriction in the proposed regulations to the blending of just fuels does not account for the other products of a refinery that may be produced through blending activities. In addition, one commenter noted that terminals for other natural resources perform blending activities. For example, the commenter explained that coal terminals may mix or homogenize grades of coal from different mines or mining regions with dissimilar characteristics (for example, higher sulfur coal and lower sulfur coal) to achieve coal that meets product specifications.

Expanding on this idea, some commenters asked for clarification that the combination of different minerals and natural resources, or products thereof, should also be a qualifying activity where all products combined are natural resources or products thereof. For example, one commenter suggested that the physical mixing of asphalt with aggregates to produce road paving material should be treated as processing provided that the primary purpose of the mixing is to enhance the inherent use of each of the products mixed. That commenter thought that a product would no longer be considered a natural resource if the product does not retain a majority of the physical and chemical characteristics of the mineral or natural resource from which it was produced.

These final regulations adopt the recommendation that qualifying income should include income from the blending of the same mineral or natural resource, or products thereof. Income from blending is thus added as a type of additional qualifying income because blending may be part of processing, refining, transportation, or marketing. In response to comments, these final regulations also provide that, for purposes of the blending rules in these regulations, products of crude oil and natural gas will be considered as from the same natural resource. These final regulations do not, however, expand the definition of processing or refining to include the combination of different minerals or natural resources, except as permitted under the rules related to additization, which are discussed in section III.H.5 of this Summary of Comments and Explanation of Revisions. Allowing the combination of different natural resources would greatly expand the scope of qualifying activities beyond that intended by Congress, and is akin to additional processing to the point of manufacturing a new product. For example, once asphalt is mixed with rock aggregate, it is no longer a product of a refinery or a product of mineral processing, but has become a new road paving product.

5. Additization

As they did for blending, commenters raised several questions about the extent to which the addition of a minimal amount of different minerals or natural resources or other materials to minerals or natural resources is a qualifying activity. The proposed regulations recognized that some additization was a qualifying activity, but only to the extent it was a marketing activity and only with respect to fuels.

The proposed regulations left undefined what additization included. One commenter recommended that the addition of additives to enhance, preserve, or complement the mineral or natural resource product, such as the chemical treatment of sand, should qualify. Another commenter recommended that additization activities that do not change a natural resource into a new product should give rise to qualifying income whether done as part of processing, refining, transportation, or marketing and no matter the type of product (allowing, for

example, additization with respect to lubricants or asphalt).

The Treasury Department and the IRS agree that it is appropriate to treat some additization services as qualifying activities. For example, certain additization may occur in order to safely transport a product (sand terminals, for example, may treat sand with a detergent to prevent dust as the sand travels by rail or truck to its final destination) or to comply with Federal, state, or local regulations concerning product specifications (as, for example, in the case of the addition of dyes to gasoline). However, the Treasury Department and the IRS remain concerned about distinguishing between products of refineries and field facilities, and products of additional processing. Accordingly, and consistent with some of the comments received, these final regulations distinguish between additives that are merely a small addition to a product of a refinery, field facility, or mill, and additives that may change the product into a new or different product. These final regulations thus provide rules regarding additization tailored to crude oil, natural gas, other ores and minerals, and timber.

With respect to crude oil, natural gas, and products thereof, commenters explained that the additives, which are typically not natural resources for the purposes of section 7704, are often required by applicable regulations or otherwise enhance motor fuel blend stock. These additives are added at the terminal because it allows products owned by different customers to be commingled for storage, but then customized for each customer as loaded into carriers for shipment. Typical additives include detergents, dyes, cetane improvers, cold flow improvers, fuel oil stabilizers, isotopic markers, lubricity/conductivity improvers, anti-icing agents, and proprietary gasoline additives. Ethanol is also typically blended into gasoline to satisfy EPA guidelines, and biodiesel is often blended into diesel fuel. Commenters noted that ethanol typically constitutes 10 percent of the blend but can be higher, while biodiesel typically constitutes 20 percent of the blend but can be lower or higher. Other additives typically make up a very small portion of the blended stock (typically less than 1 percent).

Commenters also argued that, just as additives were permitted in the proposed regulations with respect to fuels, additization should also be allowed for other products of oil and natural gas processing and refining. These commenters noted that there is no practical difference between adding ethanol, biodiesel, or other additives into fuels, and adding additives into lubricating oils and waxes. For example, commenters explained that lubricating oils, waxes, and other refined products may be blended together and with additives to provide increased anti-wear protection, reduce friction, extend oil life, improve corrosion protection, give the ability to separate from water, and reduce energy usage. Lubricants may also be mixed with a detergent and a thickener to produce greases in multiple grades and for many uses. These commenters also recommended that additization should not be limited to just a marketing activity as, for example, terminals and refineries both may perform additization activities.

The Treasury Department and the IRS agree that, since additization activities are commonly performed by refineries and by terminals with respect to all products of a refinery, additization should be treated as a qualifying activity that generates qualifying income. These final regulations adopt this change and provide that, to the extent the additives generally constitute less than 5 percent of the total volume for products of natural gas and crude oil and are added into the product by the terminal operator or upstream of the terminal operator, the additization activity generates qualifying income. As previously explained, added ethanol and biodiesel may constitute up to 20 percent of the total volume for products of natural gas and crude oil; therefore, the final regulations provide for a 20 percent threshold for ethanol and biodiesel. Although the Treasury Department and the IRS remain concerned that qualifying income not include the manufacture of new products beyond those generally produced in field facilities or refineries, the Treasury Department and the IRS have concluded that the small amount of additives discussed in some of the comments do not pose a risk if they are consistent with the limitations set forth in the final regulations.

In the case of minerals other than oil and gas, the final regulations provide that the addition of incidental amounts of material such as paper dots to identify shipments, anti-freeze to aid in shipping, or compounds to allay dust as required by law or reduce losses during shipping is permissible.

Regarding timber, one commenter noted that the treatment of lumber and poles with an immaterial amount of additives that protect or enhance the natural resource or that are necessary to meet environmental or regulatory standards should also constitute timber processing. This commenter noted that the proposed regulations included an intent-based test that looks to whether chemicals are added to ''manipulate'' physical or chemical properties of the timber. The commenter argued that there is no manipulation of physical or chemical properties of the timber in the case of relatively small amounts of additives, such as those that constitute five percent or less of the product. This commenter provided no examples of what types of treatment processes would be required under environmental or regulatory standards for lumber and poles, but did argue that, although wood pellets are commonly made without the addition of any non-timber additives, it is possible that customers or regulators may require the addition of an additive to reduce the emissions profile of wood pellets.

As previously discussed, these final regulations generally allow for small amounts of additives where required in order to comply with Federal, state, or local law when such additives do not rise to the level of a manufacturing activity. As such, the final regulations provide that, for timber, additization of incidental amounts of material as required by law is permissible, to the extent such additions do not create a new product. These final regulations clarify, however, that the application of chemicals and pressure to produce pressure treated wood does not give rise to qualifying income. This is a process generally completed at a separate site from the mill, and creates a new and different manufactured product.

IV. Intrinsic Activities

The proposed regulations provided that for purposes of section 7704(d)(1)(E), qualifying income includes only income and gains from qualifying activities with respect to minerals or natural resources. Qualifying activities were defined to include section 7704(d)(1)(E) activities and intrinsic activities. The preamble to the proposed regulations explained that the Treasury Department and the IRS believed that certain limited support activities intrinsic to section 7704(d)(1)(E) activities also gave rise to qualifying income because the income is ''derived from'' the section 7704(d)(1)(E) activities. The proposed regulations set forth three requirements for a support activity to be intrinsic to a section 7704(d)(1)(E) activity: The activity must be specialized to support the section 7704(d)(1)(E) activity, essential to the completion of the section 7704(d)(1)(E) activity, and require the provision of significant services to support the section 7704(d)(1)(E) activity. The

preamble further explained that the Treasury Department and the IRS intended that intrinsic activities constitute active support of section 7704(d)(1)(E) activities, and not merely the supply of goods.

A. General Issues

The intrinsic activities provision provided a way for businesses whose activities were not listed as section 7704(d)(1)(E) activities to demonstrate that they were so closely tied to section 7704(d)(1)(E) activities that they should be considered a part of the mineral or natural resource industries, and that their activities therefore generated qualifying income. Because these intrinsic activities were discussed as support or service activities, some commenters mistakenly believed that all service providers that did not own or possess control of the underlying mineral or natural resource (such as a subcontractor) must test whether their activities generated qualifying income solely under the intrinsic activities test, even if the activity being performed was listed as a section 7704(d)(1)(E) activity. For example, one commenter recommended an alternative intrinsic activity standard whereby activities of a service provider would qualify as intrinsic to a section 7704(d)(1)(E) activity if they would have qualified as a section 7704(d)(1)(E) activity, or an indispensable part thereof, if performed directly by the service recipient.

Conversely, one commenter argued that the simplest and most direct way to define what activities are qualifying for purposes of section 7704(d)(1)(E) is to require possession of the mineral or natural resource. This commenter argued that the Treasury Department and the IRS expanded the scope of qualifying income beyond that intended by Congress by accommodating additional support activities such as water delivery and disposal.

Like the proposed regulations, these final regulations do not contain any requirement that a PTP engaged in a section 7704(d)(1)(E) activity must own or possess control of the underlying mineral or natural resource. Such a requirement conflicts with some of the listed 7704(d)(1)(E) activities. For example, a PTP pipeline company may not own the products being transported. Many of the examples of activities defining each of the listed 7704(d)(1)(E) activities can be performed without having ownership or possession of the mineral or natural resource. Furthermore, the legislative history clarified that ''[t]he reference provided in the bill to depletable products is intended only to identify the minerals or natural resources and not to identify what income from them is treated as qualifying income. Consequently, whether income is taken into account in determining percentage depletion under section 613 is not necessarily relevant in determining whether such income is qualifying income under section 7704(d).'' H.R. Rep. No. 100–795, at 400 (1988). Because the activities listed in section 7704(d)(1)(E) may commonly be performed by persons without ownership of the underlying resource, the ownership requirements in sections 611 and 613 are not relevant in determining whether income is qualifying for purposes of section 7704(d)(1)(E). Finally, section 7704(d)(1)(E) provides that qualifying income is income ''derived from'' exploration, development, mining or production, processing, refining, transportation, and marketing. The intrinsic activities test applies to those PTPs who engage in activities other than those listed as a section 7704(d)(1)(E) activity but that may receive income ''derived from'' a section 7704(d)(1)(E) activity. Although the existence of the intrinsic activities test was especially important in the proposed regulations since the list of section 7704(d)(1)(E) activities was exclusive, the test retains purpose in the final regulations because it potentially allows as qualifying some activities that closely support, but do not specifically constitute, an enumerated section 7704(d)(1)(E) activity.

To the extent the commenter who suggested the alternative intrinsic activities standard was also asking that an activity be considered a qualifying activity when a subcontractor performs only a subset of the tasks of a larger qualifying activity, that suggestion ignores the main thrust of section 7704(d)(1)(E), which looks to the activity that is being performed that generates the income received. For example, this commenter argued that, because a refiner may use an air separation unit to separate air into its primary components for use in refining, a taxpayer that is solely engaged in providing air separation unit services to that refiner should have qualifying income. However, the use of air to produce nitrogen and oxygen is clearly not a section 7704(d)(1)(E) activity. Air is not a mineral or natural resource. See sections 7704(d)(1) and 613(b)(7)(B). A refinery may use such gases in its activities, but that does not mean the provision of the air separation unit to create the gases somehow should give rise to qualifying income solely because the nitrogen and oxygen are provided to a refinery. The provision and operation of an air separation unit would only qualify to the extent such activity meets the intrinsic test.

Aside from general criticism that the intrinsic activities provision was too subjective overall and challenging to apply in situations that require a high level of certainty, the remainder of the comments on the intrinsic activities provision requested changes to the requirements of two specific prongs of the test dealing with specialization and significant services, as discussed in sections IV.B and IV.C, respectively, of this Summary of Comments and Explanation of Revisions. The Treasury Department and the IRS received no comments recommending changes to the essential prong of the intrinsic activities test in the proposed regulations, which required that the activity be necessary to (a) physically complete the section 7704(d)(1)(E) activity (including in a cost-effective manner, such as by making the activity economically viable), or (b) comply with Federal, state, or local law regulating the section 7704(d)(1)(E) activity. These final regulations thus adopt the essential prong of the intrinsic activities test with no changes.

B. Specialization

The proposed regulations provided that an activity was specialized if the partnership provided personnel to perform or support a section 7704(d)(1)(E) activity and those personnel received training unique to the mineral or natural resource industry that was of limited utility other than to perform or support a section 7704(d)(1)(E) activity (hereinafter ''specialized personnel requirement''). In addition, to the extent that the activity included the sale, provision, or use of property, the proposed regulations required that either: (1) The property was primarily tangible property that was dedicated to, and had limited utility outside of, section 7704(d)(1)(E) activities and was not easily converted to another use (hereinafter ''specialized property requirement''); or (2) the property was used as an injectant to perform a section 7704(d)(1)(E) activity that was also commonly used outside of section 7704(d)(1)(E) activities (such as water, lubricants, and sand) and, as part of the activity, the partnership also collected and cleaned, recycled, or otherwise disposed of the injectant after use in accordance with Federal, state, or local regulations concerning waste products from mining or production activities (hereinafter ''injectants exception'').

Commenters identified concerns with all three parts of the specialization prong. Regarding the specialized personnel requirement, one commenter said it was unclear how much training was necessary for a skill to be considered specialized. Regarding the specialized property requirement, the same commenter criticized as vague the language about property having limited utility outside section 7704(d)(1)(E). Other commenters argued that the specialized property requirement should be removed entirely or that the use of specialized property should be treated as an indication that a certain activity was specialized rather than being required. They explained that service companies use a lot of equipment, some of which would not be specialized (for example, telephones, hammers, or bulldozers) in performing their duties. Finally, one commenter recommended that the specialization prong be amended to recognize that activities may be specialized if they support a section 7704(d)(1)(E) activity in a remote or difficult environment (for example, marine locations). This commenter described as an example of such activities allowing access to and use of its marine docks and terminals, as a support base for unrelated third-party oilfield service companies selling products and providing services in the Gulf of Mexico in support of production of oil and gas.

Overall, the Treasury Department and the IRS remain concerned that the final regulations provide a means to differentiate between the mere provision of general services, goods, or equipment to others and the active support of a section 7704(d)(1)(E) activity. The final regulations thus do not adopt the recommendation that the test be amended to include any support provided for section 7704(d)(1)(E) activities performed in remote or difficult environments. Support is a vague term that could include the provision of food or everyday supplies to workers on a marine platform. In addition, merely making docks available for use by third parties does not give rise to qualifying income under section 7704(d)(1)(E). The Treasury Department and the IRS continue to consider the specialized personnel and specialized property requirements important in insuring that the services or goods provided have a clear nexus to section 7704(d)(1)(E) activities.

The final regulations also do not adopt the suggestion to provide requirements for how much training is necessary to meet the specialized personnel requirement. Instead, these regulations retain the provision that personnel must have received training unique to the mineral or natural resource industry. The particular industry at issue would determine the type and amount of training necessary to perform the support activity. However, the Treasury Department and the IRS agree with commenters that the specialized property requirement in the proposed regulations was overly broad. These final regulations specifically provide that the use of non-specialized property typically used incidentally in operating a business will not cause a PTP to fail the specialized property requirement. However, these final regulations retain the restrictions in the specialized personnel requirement and the specialized property requirement that training provided for and property (other than property typically used incidentally in operating a business) involved in the activity must not have applications outside of section 7704(d)(1)(E) activities.

Commenters provided many suggestions for changes regarding the injectants exception. Multiple commenters recommended that sand should be removed from the examples of injectants because it is a natural resource, and therefore the bulk sale or wholesale of sand would, in itself, qualify as a section 7704(d)(1)(E) activity—marketing. These final regulations adopt this recommendation and remove sand as an example of an injectant in the injectants exception.

Another commenter recommended expanding the injectants exception to encompass the supply, cleaning, or recycling of all products required for any section 7704(d)(1)(E) activity, not just injectants. This commenter provided as an example the supply and recycling of sulfuric acid, used as a catalyst for purposes of alkylation (a process used to produce alkylates). These final regulations do not adopt this suggestion. A general rule that allows for supply, cleaning, and recycling of any good provided to others engaged in section 7704(d)(1)(E) activities is too broad and contrary to the stated goal of the intrinsic test in differentiating section 7704(d)(1)(E) support activities from the mere provision of a good. The Treasury Department and the IRS continue to consider it appropriate to limit the exception to just injectants because Federal, state, and local law require that producers recycle or otherwise properly dispose of injectants, such as water, after use in mining and production activities. Oilfield service companies providing that service are thus a required part of the mining and production process—their income is thus ''derived from'' the production activity. Expanding the injectants exception as requested would lead to many industrial waste recycling activities potentially being included in what is intended to be a limited exception for a legally required step in section 7704(d)(1)(E) activities. Thus, these regulations do not adopt this suggestion.

Commenters also had a number of comments specifically concerning water under the injectants exception. Multiple commenters noted that, although they generally supported the proposed regulations in their effort to provide a framework for the types of oilfield service activities that would generate qualifying income, as a practical matter, they believed that a requirement that a PTP perform both the water delivery and disposal activities at each well or development site in order for that water delivery service to qualify would be satisfied infrequently. These commenters also argued that, so long as they also are engaged in performing disposal services, their business model is not merely supplying a good, that is, water. Multiple commenters recommended that the injectants exception should not require that the product (in particular, water) that is delivered must be the product that is picked up and recycled—what these commenters described as a ''well by well'' approach. These commenters explained that it is common in the industry for a well operator to source its water supply and disposal service requirements with multiple providers and that it may be difficult or impossible for a PTP to satisfy the necessary ''well by well'' factual determination. Accordingly, commenters suggested several alternatives to the ''well by well'' approach.

One commenter recommended that water delivery services should qualify as intrinsic activities only if exclusively provided by a PTP to those engaged in one or more section 7704(d)(1)(E) activities in cases where the PTP's operations also include conducting necessary water disposal services on an ongoing or frequent basis, though not necessarily in the same location. Another commenter recommended that the injectants exception be met if the partnership providing the injectant also provides other specialized services with respect to such injectant at the wellsite, such as transporting the water to smaller temporary storage facilities at the wellsite, treating the water prior to it going downhole, and monitoring and testing the utilization of water throughout the transfer and pressure pumping process. This commenter

alternatively recommended that the regulations only require that there be delivery and clean up in the same geographic area (a ''basin by basin'' approach). Others suggested that mere water delivery should qualify so long as the water is delivered to those engaged in one or more section 7704(d)(1)(E) activities, or the water enhances the producers' ability to produce oil or gas (as opposed to being provided for other purposes). Finally, one commenter argued that the regulations should not require disposal in compliance with Federal, state, or local regulations since making a tax determination contingent on such compliance introduces a standard that would be difficult to administer.

The Treasury Department and the IRS do not find support for the argument that the mere delivery of water qualifies. Section 7704(d)(1) is clear that a mineral or natural resource does not include water; thus, income from the simple marketing and transportation of water is not qualifying income. As explained previously, the Treasury Department and the IRS have concluded that companies that provide water with legally required disposal services have a strong nexus to a section 7704(d)(1)(E) activity (in particular, mining and production). Some commenters share that belief and support the efforts of the Treasury Department and the IRS, agreeing that there is a difference between companies that simply provide water (the mere provision of a good) and those that provide both water and specialized services. Nor do the final regulations adopt the suggestion to remove the language that the injectants are disposed after use in accordance with Federal, state, or local regulations concerning waste products from mining or production activities. Although, for tax compliance purposes, the IRS will generally not confirm that the PTP actually disposed of the injectants as required under Federal, state, or local law, the injectants exception is based on the PTP providing disposal services where required by Federal, state, or local law.

The Treasury Department and the IRS agree with commenters that the injections exception should be revised to account for industry practice in which a miner or producer may not hire the same company to provide both water delivery and disposal services. Accordingly, these final regulations instead adopt the ''basin by basin'' approach recommended in comments—so long as the PTP provides the water exclusively to those engaged in section 7704(d)(1)(E) activities and both delivers and recycles within the same geographic area, the PTP's income from such activities is qualifying. The Treasury Department and the IRS have concluded that this requirement would provide a clear, administrable rule concerning when water delivery is not merely the delivery of a good, but part of the provision of specialized disposal services.

C. Significant Services

The proposed regulations provided that an activity requires significant services to support the section 7704(d)(1)(E) activity if it must be conducted on an ongoing or frequent basis by the partnership's personnel at the site or sites of the section 7704(d)(1)(E) activities. Alternatively, those services could be conducted offsite if the services are performed on an ongoing or frequent basis and are offered exclusively to those engaged in one or more section 7704(d)(1)(E) activities. Whether services are conducted on an ongoing or frequent basis is determined based on all the facts and circumstances, including recognized best practices in the relevant industry. Partnership personnel performed significant services only if those services were necessary for the partnership to perform an activity that is essential to the section 7704(d)(1)(E) activity, or to support the section 7704(d)(1)(E) activity. Finally, an activity did not constitute significant services with respect to a section 7704(d)(1)(E) activity if the activity principally involved the design, construction, manufacturing, repair, maintenance, lease, rent, or temporary provision of property.

One commenter argued that a facts and circumstances test to determine whether services are conducted on an ongoing basis is vague and would be subject to various interpretations. Another commenter recommended the removal of the significant services prong completely, arguing that the frequency with which an activity is performed is not relevant to determining whether an activity should qualify. Instead, the test should focus on the needs and activities of the operator, rather than the activities of the service provider. One commenter suggested that the proposed regulations wrongly listed repair and maintenance as activities that do not constitute significant services with respect to a section 7704(d)(1)(E) activity, arguing that the repair and maintenance of equipment and facilities are often required by the operator on a near-continuous basis under typical services agreements.

The Treasury Department and the IRS do not find support for the contention that the test should solely focus on the needs of the operator. Section 7704(d)(1) applies to determine whether a PTP's income is qualifying income; therefore, the focus of these regulations is on the activities performed by the PTP giving rise to the income at issue. The significant services prong is an important part of determining whether the activity performed by a support services PTP has the required nexus with a section 7704(d)(1)(E) activity. As such, these final regulations do not adopt these changes and retain the ''significant services'' prong of the intrinsic services test as well as the statement that significant services do not include an activity principally involving repair or maintenance of property.

One commenter recommended that the restriction that services conducted offsite must be offered exclusively to those engaged in performing section 7704(d)(1)(E) activities should be removed, since activities such as clean-up and disposal happen offsite and may be performed for service recipients other than those engaged in section 7704(d)(1)(E) activities. These final regulations modify this provision to provide that services may be conducted offsite if the services are offered to those engaged in one or more section 7704(d)(1)(E) activities. If the services are monitoring services, those services must be offered exclusively to those engaged in one or more section 7704(d)(1)(E) activities.

Finally, commenters also expressed concerns that it was not clear whether services are counted for purposes of the personnel requirement if they are provided by an affiliate, subcontractor, or independent contractor. These commenters noted that it is common for PTPs to work through related companies and subcontractors. One commenter recommended that the definition of ''qualifying activities'' in the regulations make clear that an activity is no less a qualifying activity because it is performed by a subcontractor or consists of a subset of the tasks of a larger qualifying activity.

The Treasury Department and the IRS agree that a PTP should be able to meet the personnel requirement through affiliates or subcontractors in addition to the PTP's own employees. This is true for purposes of satisfying the specialization prong (including determining whether the personnel have received specialized training) or the significant services prong. Accordingly, the final regulations adopt this change and clarify that these prongs can be met through employees of affiliates or

subcontractors, so long as they are being compensated by the PTP.

V. Effective Date

The proposed regulations provided that, except as otherwise provided, the regulations would apply to income earned by a partnership in a taxable year beginning on or after the date the final regulations are published in the **Federal Register**. An exception was made for certain income earned during a transition period, which would end on the last day of the partnership's taxable year that included the date that is ten years after the date the final regulations are published in the **Federal Register** (the Transition Period). That exception provided that a partnership could treat income from an activity as qualifying income during the Transition Period if: (a) The partnership received a private letter ruling from the IRS holding that the income from that activity is qualifying income; (b) prior to the publication of the final regulations, the partnership was publicly traded, engaged in the activity, and treated the activity as giving rise to qualifying income under section 7704(d)(1)(E), and that income was qualifying income under the statute as reasonably interpreted prior to the issuance of the proposed regulations; or (c) the partnership is publicly traded and engages in the activity after the issuance of the proposed regulations but before the date the final regulations are published in the **Federal Register** and the income from that activity is qualifying income under the proposed regulations.

Commenters objected that the Transition Period is not sufficient and that the IRS should allow PTPs that have received favorable PLRs that are contrary to these final regulations to continue to rely on them permanently. They argued that revoking a PLR sets a bad precedent that will cause taxpayers and investors not to rely on PLRs. They also argued that the revocation of a PLR would hurt them economically and would harm investors. Finally, some commenters requested that the final regulations clarify that a technical termination of a partnership under section 708(b)(1)(B) does not end the Transition Period.

The Transition Period is a reasonable amount of time for PTPs to rearrange their affairs as necessary and is consistent with comments made in Congress concerning the ten-year transition relief granted when section 7704(d)(1)(E) was added in 1987. The IRS may revoke a PLR when the letter is found to be in error or not in accord with the current views of the Service, or there is a material change in fact. If the revocation is as a result of an error or a change in view, this revocation may occur through the issuance of final regulations. See Section 11.04 of Rev. Proc. 2016–1, 2016–1 I.R.B. 1. Therefore, the final regulations do not adopt the suggestion that the IRS permanently allow PTPs with favorable PLRs that are contrary to these final regulations to continue to rely on them. The final regulations do, however, adopt the request for clarification that a technical termination does not end the Transition Period. This addition is consistent with statements made concerning the original 10-year transition period provided by Congress when section 7704(d)(1)(E) was added. See Joint Comm. on Taxation, 100th Cong., Description of the Technical Corrections Act of 1988 (H.R. 4333 and S. 2238), JCS–10–88, at 412 (1988) (''[i]t is intended that a publicly traded partnership not be treated as ceasing to be an existing partnership solely by reason of a termination of the partnership (within the meaning of section 708) caused by the sale or exchange through trading of 50 percent or more of the partnership interests.'')

Special Analyses

Certain IRS regulations, including these, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. Because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking that preceded these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

Drafting Information

The principal author of these regulations is Caroline E. Hay, Office of the Associate Chief Counsel (Passthroughs and Special Industries). 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 * * *

■ **Par. 2.** Section 1.7704–4 is added to read as follows:

§ 1.7704–4 Qualifying income—mineral and natural resources.

(a) *In general.* For purposes of section 7704(d)(1)(E), qualifying income is income and gains from qualifying activities with respect to minerals or natural resources as defined in paragraph (b) of this section. Qualifying activities are section 7704(d)(1)(E) activities (as described in paragraph (c) of this section) and intrinsic activities (as described in paragraph (d) of this section).

(b) *Mineral or natural resource.* The term mineral or natural resource (including fertilizer, geothermal energy, and timber) means any product of a character with respect to which a deduction for depletion is allowable under section 611, except that such term does not include any product described in section 613(b)(7)(A) or (B) (soil, sod, dirt, turf, water, mosses, or minerals from sea water, the air, or other similar inexhaustible sources). For purposes of this section, the term mineral or natural resource does not include industrial source carbon dioxide, fuels described in section 6426(b) through (e), any alcohol fuel defined in section 6426(b)(4)(A), or any biodiesel fuel as defined in section 40A(d)(1).

(c) *Section 7704(d)(1)(E) activities*—(1) *Definition.* Section 7704(d)(1)(E) activities include the exploration, development, mining or production, processing, refining, transportation, or marketing of any mineral or natural resource. Solely for purposes of section 7704(d), such terms are defined as provided in this paragraph (c).

(2) *Exploration.* An activity constitutes exploration if it is performed to ascertain the existence, location, extent, or quality of any deposit of mineral or natural resource before the beginning of the development stage of the natural deposit including by—

(i) Drilling an exploratory or stratigraphic type test well;

(ii) Conducting drill stem and production flow tests to verify commerciality of the deposit;

(iii) Conducting geological or geophysical surveys;

(iv) Interpreting data obtained from geological or geophysical surveys; or

(v) For minerals, testpitting, trenching, drilling, driving of exploration tunnels and adits, and

similar types of activities described in Rev. Rul. 70–287 (1970–1 CB 146), (see § 601.601(d)(2)(ii)(*b*) of this chapter) if conducted prior to development activities with respect to the minerals.

(3) *Development.* An activity constitutes development if it is performed to make accessible minerals or natural resources, including by—

(i) Drilling wells to access deposits of minerals or natural resources;

(ii) Constructing and installing drilling, production, or dual purpose platforms in marine locations, or any similar supporting structures necessary for extraordinary non-marine terrain (such as swamps or tundra);

(iii) Completing wells, including by installing lease and well equipment, such as pumps, flow lines, separators, and storage tanks, so that wells are capable of producing oil and gas, and the production can be removed from the premises;

(iv) Performing a development technique such as, for minerals other than oil and natural gas, stripping, benching and terracing, dredging by dragline, stoping, and caving or room-and-pillar excavation, and for oil and natural gas, fracturing; or

(v) Constructing and installing gathering systems and custody transfer stations.

(4) *Mining or production.* An activity constitutes mining or production if it is performed to extract minerals or natural resources from the ground including by operating equipment to extract minerals or natural resources from mines and wells, or to extract minerals or natural resources from the waste or residue of prior mining or production allowable under this section. The recycling of scrap or salvaged metals or minerals from previously manufactured products or manufacturing processes is not considered to be the extraction of ores or minerals from waste or residue.

(5) *Processing.* An activity constitutes processing if it is performed to convert raw mined or harvested products or raw well effluent to substances that can be readily transported or stored, as described in this paragraph (c)(5).

(i) *Natural gas.* An activity constitutes processing of natural gas if it is performed to—

(A) Purify natural gas, including by removal of oil or condensate, water, or non-hydrocarbon gases (such as carbon dioxide, hydrogen sulfide, nitrogen, and helium); and

(B) Separate natural gas into its constituents which are normally recovered in a gaseous phase (methane and ethane) and those which are normally recovered in a liquid phase (propane, butane, pentane, and heavier streams).

(ii) *Crude oil.* An activity constitutes processing of crude oil if it is performed to separate produced fluids by passing crude oil through mechanical separators to remove gas, placing crude oil in settling tanks to recover basic sediment and water, dehydrating crude oil, and operating heater-treaters that separate raw oil well effluent into crude oil, natural gas, and salt water.

(iii) *Ores and minerals other than natural gas or crude oil.* An activity constitutes processing of ores and minerals other than natural gas or crude oil if it meets the definition of mining processes under § 1.613–4(f)(1)(ii), without regard to § 1.613–4(f)(2)(iv).

(iv) *Timber.* An activity constitutes processing of timber if it is performed to modify the physical form of timber, including by the application of heat or pressure to timber, without adding any foreign substances. Processing of timber does not include activities that add chemicals or other foreign substances to timber to manipulate its physical or chemical properties, such as using a digester to produce pulp. Products that result from timber processing include wood chips, sawdust, rough lumber, kiln-dried lumber, veneers, wood pellets, wood bark, and rough poles. Products that are not the result of timber processing include pulp, paper, paper products, treated lumber, oriented strand board/plywood, and treated poles.

(6) *Refining.* An activity constitutes refining if the activity is set forth in this paragraph (c)(6).

(i) *Natural gas and crude oil.* (A) The refining of natural gas and crude oil includes the further physical or chemical conversion or separation processes of products resulting from activities listed in paragraph (c)(5)(i) and (ii) of this section, and the blending of petroleum hydrocarbons, to the extent they give rise to a product listed in paragraph (c)(5)(i) or (ii) of this section or to the products of a type produced in a petroleum refinery or natural gas processing plant listed in this paragraph (c)(6)(i)(A). Refining of natural gas and crude oil also includes the further physical or chemical conversion or separation processes and blending of the products listed in this paragraph (c)(6)(i)(A), to the extent that the resulting product is also listed in this paragraph (c)(6)(i)(A). The following products are of a type produced in a petroleum refinery or natural gas processing plant:

(*1*) Ethane.

(*2*) Ethylene.

(*3*) Propane.

(*4*) Propylene.

(*5*) Normal butane.

(*6*) Butylene.

(*7*) Isobutane.

(*8*) Isobutene.

(*9*) Isobutylene.

(*10*) Pentanes plus.

(*11*) Unfinished naphtha.

(*12*) Unfinished kerosene and light gas oils.

(*13*) Unfinished heavy gas oils.

(*14*) Unfinished residuum.

(*15*) Reformulated gasoline with fuel ethanol.

(*16*) Reformulated other motor gasoline.

(*17*) Conventional gasoline with fuel ethanol—Ed55 and lower gasoline.

(*18*) Conventional gasoline with fuel ethanol—greater than Ed55 gasoline.

(*19*) Conventional gasoline with fuel ethanol—other conventional finished gasoline.

(*20*) Reformulated blendstock for oxygenate (RBOB).

(*21*) Conventional blendstock for oxygenate (CBOB).

(*22*) Gasoline treated as blendstock (GTAB).

(*23*) Other motor gasoline blending components defined as gasoline blendstocks as provided in § 48.4081–1(c)(3) of this chapter.

(*24*) Finished aviation gasoline and blending components.

(*25*) Special naphthas (solvents).

(*26*) Kerosene-type jet fuel.

(*27*) Kerosene.

(*28*) Distillate fuel oil (heating oils, diesel fuel, and ultra-low sulfur diesel fuel).

(*29*) Residual fuel oil.

(*30*) Lubricants (lubricating base oils).

(*31*) Asphalt and road oil (atmospheric or vacuum tower bottom).

(*32*) Waxes.

(*33*) Petroleum coke.

(*34*) Still gas.

(*35*) Naphtha less than 401 °F end-point.

(*36*) Other products of a refinery that the Commissioner may identify through published guidance.

(B) For purposes of this section, the products listed in this paragraph (c)(6)(i)(B) are not products of refining:

(*1*) Heat, steam, or electricity produced by processing or refining.

(*2*) Products that are obtained from third parties or produced onsite for use in the refinery, such as hydrogen, if excess amounts are sold.

(*3*) Any product that results from further chemical change of a product listed in paragraph (c)(6)(i)(A) of this section that does not result in the same or another product listed in paragraph (c)(6)(i)(A) of this section (for example, production of petroleum coke from

heavy (refinery) residuum qualifies, but any upgrading of petroleum coke (such as to calcined coke) does not qualify because it is further chemically changed and does not result in the same or another product listed in paragraph (c)(6)(i)(A) of this section).

(*4*) Plastics or similar petroleum derivatives.

(ii) *Ores and minerals other than natural gas or crude oil.* (A) An activity constitutes refining of ores and minerals other than natural gas or crude oil if it is one of the various processes performed subsequent to mining processes (as defined in paragraph (c)(5)(iii) of this section) to eliminate impurities or foreign matter and which are necessary steps in achieving a high degree of purity from metallic ores and minerals which are not customarily sold in the form of the crude mineral product, as specified in paragraph (c)(6)(ii)(B) of this section. Refining processes include: fine pulverization, electrowinning, electrolytic deposition, roasting, thermal or electric smelting, or substantially equivalent processes or combinations of processes used to separate or extract the specified metals listed in paragraph (c)(6)(ii)(B) of this section from the ore for the primary purpose of producing a purer form of the metal, as for example the smelting of concentrates to produce Doré bars or refining of blister copper.

(B) For purposes of this section, the specified metallic ores or minerals which are not customarily sold in the form of the crude mineral product are—

(*1*) Lead;

(*2*) Zinc;

(*3*) Copper;

(*4*) Gold;

(*5*) Silver; and

(*6*) Any other ores or minerals that the Commissioner may identify through published guidance.

(C) Refining does not include the introduction of additives that remain in the metal, for example, in the manufacture of alloys of gold. Also, the application of nonmining processes as defined in § 1.613–4(g) in order to produce a specified metal that is considered a waste or by-product of production from a non-specified mineral deposit is not considered refining for purposes of this section.

(7) *Transportation*—(i) *General rule.* An activity constitutes transportation if it is performed to move minerals or natural resources, and products under paragraph (c)(4), (5), or (6) of this section, including by pipeline, marine vessel, rail, or truck. Except as provided in paragraph (c)(7)(ii) of this section, transportation does not include the movement of minerals or natural resources, and products produced under paragraph (c)(4), (5), or (6) of this section, directly to retail customers or to a place that sells or dispenses to retail customers. Retail customers do not include a person who acquires oil or gas for refining or processing, or a utility. Transportation includes the following activities:

(A) Providing storage services.

(B) Providing terminalling services, including the following: Receiving products from pipelines, marine vessels, railcars, or trucks; storing products; loading products to pipelines, marine vessels, railcars, or trucks for distribution; testing and treating, as well as blending and additization, if income from such activities would be qualifying income pursuant to paragraph (c)(10)(iv) and (v) of this section; and separating and selling excess renewable identification numbers acquired as part of additization services to comply with environmental regulations.

(C) Moving or carrying (whether by owner or operator) products via pipelines, gathering systems, and custody transfer stations.

(D) Operating marine vessels (including time charters), railcars, or trucks.

(E) Providing compression services to a pipeline.

(F) Liquefying or regasifying natural gas.

(ii) *Transportation to retail customers or to a place that sells to retail customers.* Transportation includes the movement of minerals or natural resources, and products under paragraph (c)(4), (5), or (6) of this section, via pipeline to a place that sells to retail customers. Transportation also includes the movement of liquefied petroleum gas via trucks, rail cars, or pipeline to a place that sells to retail customers or directly to retail customers.

(8) *Marketing*—(i) *General rule.* An activity constitutes marketing if it is the bulk sale of minerals or natural resources, and products under paragraph (c)(4), (5), or (6) of this section. Except as provided in paragraph (c)(8)(ii) of this section, marketing does not include retail sales (sales made in small quantities directly to end users), which includes the operation of gasoline service stations, home heating oil delivery services, and local natural gas delivery services.

(ii) *Retail sales of liquefied petroleum gas.* Retail sales of liquefied petroleum gas are included in marketing.

(iii) *Certain activities that facilitate sale.* Marketing also includes certain activities that facilitate sales that constitute marketing under paragraphs (c)(8)(i) and (ii) of this section, including packaging, as well as blending and additization, if income from blending and additization would be qualifying income pursuant to paragraph (c)(10)(iv) and (v) of this section.

(9) *Fertilizer.* [Reserved]

(10) *Additional activities.* The following types of income as described in paragraph (c)(10)(i) through (v) of this section will be considered derived from a section 7704(d)(1)(E) activity.

(i) *Cost reimbursements.* If the partnership is in the trade or business of performing a section 7704(d)(1)(E) activity, qualifying income includes income received to reimburse the partnership for its costs in performing that section 7704(d)(1)(E) activity, whether imbedded in the rate the partnership charges or separately itemized. Reimbursable costs may include the cost of designing, constructing, installing, inspecting, maintaining, metering, monitoring, or relocating an asset used in that section 7704(d)(1)(E) activity, or providing office functions necessary to the operation of that section 7704(d)(1)(E) activity (such as staffing, purchasing supplies, billing, accounting, and financial reporting). For example, a pipeline operator that charges a customer for its cost to build, repair, or schedule flow on the pipelines that it operates will have qualifying income from such activity whether or not it itemizes those costs when it bills the customer.

(ii) *Hedging.* [Reserved]

(iii) *Passive Interests.* Qualifying income includes income and gains from a passive interest or non-operating interest, including production royalties, minimum annual royalties, net profits interests, delay rentals, and lease-bonus payments, if the interest is in a mineral or natural resource as defined in paragraph (b) of this section. Payments received on a production payment will not be qualifying income if they are properly treated as loan payments under section 636.

(iv) *Blending.* Qualifying income includes income and gains from performing blending activities or services with respect to products under paragraph (c)(4), (5), or (6) of this section, so long as the products being blended are component parts of the same mineral or natural resource. For purposes of this paragraph (c)(10)(iv), products of oil and natural gas will be considered as from the same natural resource. Blending does not include combining different minerals or natural resources or products thereof together. However, see paragraph (c)(10)(v) of this

section for rules concerning additization.

(v) *Additization.* Qualifying income includes income and gains from providing additization services with respect to products under paragraph (c)(4), (5), or (6) of this section to the extent specifically permitted in this paragraph (c)(10)(v). The addition of additives described in paragraph (c)(10)(v)(A) through (C) of this section is permissible if the additives aid in the transportation of a product, enhance or protect the intrinsic properties of a product, or are necessary as required by federal, state, or local law (for example, to meet environmental standards), but only if such additives do not create a new product.

(A) The addition of additives to products of natural gas and crude oil is permissible, provided that such additives constitute less than 5 percent (except that ethanol or biodiesel may be up to 20 percent) of the total volume for products of natural gas and crude oil and are added into the product by the terminal operator or upstream of the terminal operator.

(B) In the case of ores and minerals other than natural gas or crude oil, the addition of incidental amounts of material such as paper dots to identify shipments, anti-freeze to aid in shipping, or compounds to allay dust as required by law or reduce losses during shipping is permissible.

(C) In the case of timber, additization of incidental amounts to comply with government regulations is permissible, to the extent such additization does not create a new product. For example, the pressure treatment of wood is impermissible because it creates a new product.

(d) *Intrinsic activities*—(1) *General requirements.* An activity is an intrinsic activity only if the activity is specialized to support a section 7704(d)(1)(E) activity, is essential to the completion of the section 7704(d)(1)(E) activity, and requires the provision of significant services to support the section 7704(d)(1)(E) activity. Whether an activity is an intrinsic activity is determined on an activity-by-activity basis.

(2) *Specialization.* An activity is a specialized activity if—

(i) The partnership provides personnel (including employees of the partnership, an affiliate, subcontractor, or independent contractor performing work on behalf of the partnership) to support a section 7704(d)(1)(E) activity and those personnel have received training in order to support the section 7704(d)(1)(E) activity that is unique to the mineral or natural resource industry and of limited utility other than to perform or support a section 7704(d)(1)(E) activity; and

(ii) To the extent that the activity involves the sale, provision, or use of specific property, either—

(A) The property is primarily tangible property that is dedicated to, and has limited utility outside of, section 7704(d)(1)(E) activities and is not easily converted (as determined based on all the facts and circumstances, including the cost to convert the property) to another use other than supporting or performing the section 7704(d)(1)(E) activities (except that the use of non-specialized property typically used incidentally in operating a business will not cause a partnership to fail this paragraph (d)(2)(ii)(A)); or

(B) If the property is used as an injectant to perform a section 7704(d)(1)(E) activity that is also commonly used outside of section 7704(d)(1)(E) activities (such as water and lubricants), the partnership provides the injectants exclusively to those engaged in section 7704(d)(1)(E) activities; the partnership is also in the trade or business of collecting, cleaning, recycling, or otherwise disposing of injectants after use in accordance with Federal, state, or local regulations concerning waste products from mining or production activities; and the partnership operates its injectant delivery and disposal services within the same geographic area.

(3) *Essential.* (i) An activity is essential to the section 7704(d)(1)(E) activity if it is required to—

(A) Physically complete a section 7704(d)(1)(E) activity (including in a cost-effective manner, such as by making the activity economically viable), or

(B) Comply with Federal, state, or local law regulating the section 7704(d)(1)(E) activity.

(ii) Legal, financial, consulting, accounting, insurance, and other similar services do not qualify as essential to a section 7704(d)(1)(E) activity.

(4) *Significant services.* (i) An activity requires significant services to support the section 7704(d)(1)(E) activity if those services must be conducted on an ongoing or frequent basis by the partnership's personnel at the site or sites of the section 7704(d)(1)(E) activities. Alternatively, those services may be conducted offsite if the services are performed on an ongoing or frequent basis and are offered to those engaged in one or more section 7704(d)(1)(E) activities. If the services are monitoring, those services must be offered exclusively to those engaged in one or more section 7704(d)(1)(E) activities. Whether services are conducted on an ongoing or frequent basis is determined based on all the facts and circumstances, including recognized best practices in the relevant industry.

(ii) Personnel perform significant services only if those services are necessary for the partnership to perform an activity that is essential to the section 7704(d)(1)(E) activity, or to support the section 7704(d)(1)(E) activity. Personnel include employees of the partnership, an affiliate, subcontractor, or independent contractor performing work on behalf of the partnership.

(iii) Services are not significant services with respect to a section 7704(d)(1)(E) activity if the services principally involve the design, construction, manufacturing, repair, maintenance, lease, rent, or temporary provision of property.

(e) *Interpretations of section 611 and section 613.* This section and interpretations of this section have no effect on interpretations of sections 611 and 613, or other sections of the Code, or the regulations thereunder; however, this section incorporates some of the interpretations under section 611 and 613 and the regulations thereunder as provided in this section.

(f) *Examples.* The following examples illustrate the provisions of this section:

Example 1. Petrochemical products sourced from an oil and gas well. (i) Z, a publicly traded partnership, chemically converts a mixture of ethane and propane (obtained from physical separation of natural gas) into ethylene and propylene through use of a steam cracker. Z sells the ethylene and propylene in bulk to a third party.

(ii) Ethylene and propylene are products of refining as provided in paragraph (c)(6)(i) of this section; therefore, Z is engaged in a section 7704(d)(1)(E) activity. The income Z receives from the sale of ethylene and propylene is qualifying income for purposes of section 7704(d)(1)(E).

Example 2. Petroleum streams chemically converted into refinery grade olefins byproducts. (i) Y, a publicly traded partnership, owns a petroleum refinery. The refinery physically separates crude oil, obtaining heavy gas oil. The refinery then uses a catalytic cracking unit to chemically convert the heavy gas oil into a liquid stream suitable for gasoline blending and a gas stream containing ethane, ethylene, and other gases. The refinery also further physically separates the gas stream, resulting in refinery-grade ethylene. Y sells the ethylene in bulk to a third party.

(ii) Y's activities give rise to products of refining as provided in paragraph (c)(6)(i) of this section; therefore, Y is engaged in a section 7704(d)(1)(E) activity. The income Y receives from the sales of ethylene is qualifying income for purposes of section 7704(d)(1)(E).

Example 3. Converting methane gas into synthetic fuels through chemical change. (i)

Y, a publicly traded partnership, chemically converts methane into methanol and synthesis gas, and further chemically converts those products into gasoline and diesel fuel. Y receives income from bulk sales of gasoline and diesel created during the conversion processes, as well as from sales of methanol.

(ii) With respect to the production of gasoline or diesel from methane, gasoline and diesel are products of refining as provided in paragraph (c)(6)(i) of this section; therefore, Y is engaged in a section 7704(d)(1)(E) activity. Y's income from the sale of gasoline and diesel is qualifying income for purposes of section 7704(d)(1)(E).

(iii) The income from the sale of methanol, an intermediate product in the conversion process, is not qualifying income for purposes of section 7704(d)(1)(E) because methanol is not a product of processing or refining as defined in paragraph (c)(5) and (6) of this section.

Example 4. Converting methanol into gasoline and diesel. (i) Assume the same facts as in *Example 3* of this paragraph (f), except Y purchases methanol and synthesis gas and chemically converts the methanol and synthesis gas into gasoline and diesel.

(ii) The chemical conversion of methanol and synthesis gas into gasoline and diesel is not refining as provided in paragraph (c)(6)(i) of this section because it is not the physical or chemical conversion or the separation or blending of products listed in paragraph (c)(6)(i)(A) of this section. Accordingly, the income from the sales of the gasoline and diesel is not qualifying income for purposes of section 7704(d)(1)(E).

Example 5. Delivery of refined products. (i) X, a publicly traded partnership, sells diesel to a government entity at wholesale prices and delivers those goods in bulk.

(ii) X's sale of a refined product to the government entity is a section 7704(d)(1)(E) activity because it is a bulk transportation and sale as described in paragraph (c)(7) and (8) of this section and is not a retail sale.

Example 6. Constructing a pipeline. (i) X, a publicly traded partnership, operates interstate and intrastate natural gas pipelines. Y, a corporation, is a construction firm. X pays Y to build a pipeline. X later seeks reimbursement for its cost to build the pipeline from A, a refiner who contracts with X to transport gasoline.

(ii) X, as an operator of pipelines, is engaged in transportation pursuant to paragraph (c)(7)(i)(C) of this section. The reimbursement X receives from A for X's cost to build the pipeline is qualifying income pursuant to paragraph (c)(10)(i) of this section because X receives the income to reimburse X for its costs in performing X's transportation activity and reimbursable costs may include construction costs. In contrast, Y is not in the trade or business of performing a 7704(d)(1)(E) activity, thus income Y received from X for building the pipeline is not qualifying income to Y.

Example 7. Delivery of water. (i) X, a publicly traded partnership, owns interstate and intrastate natural gas pipelines. X built a water delivery pipeline along the existing right of way for its natural gas pipeline to deliver water to A for use in A's fracturing activity. A uses the delivered water in fracturing to develop A's natural gas reserve in a cost-efficient manner. X earns income for transporting natural gas in the pipelines and for delivery of water.

(ii) X's income from transporting natural gas in its interstate and intrastate pipelines is qualifying income for purposes of section 7704(c) because transportation of natural gas is a section 7704(d)(1)(E) activity as provided in paragraph (c)(7)(i)(C) of this section.

(iii) The income X obtains from its water delivery services is not a section 7704(d)(1)(E) activity as provided in paragraph (c) of this section. However, because X's water delivery supports A's development of natural gas, a section 7704(d)(1)(E) activity, X's income from water delivery services may be qualifying income for purposes of section 7704(c) if the water delivery service is an intrinsic activity as provided in paragraph (d) of this section. An activity is an intrinsic activity if the activity is specialized to support the section 7704(d)(1)(E) activity, is essential to the completion of the section 7704(d)(1)(E) activity, and requires the provision of significant services to support the section 7704(d)(1)(E) activity. Under paragraph (d)(2)(ii)(B) of this section, the provision of water for use as an injectant in a section 7704(d)(1)(E) activity is specialized to that activity only if the partnership (1) provides the water exclusively to those engaged in section 7704(d)(1)(E) activities, (2) is also in the trade or business of cleaning, recycling, or otherwise disposing of water after use in accordance with Federal, state, or local regulations concerning waste products from mining or production activities, and (3) operates these disposal services within the same geographic area as that in which it delivers water. Because X does not perform such disposal services, X's water delivery activities are not specialized to support the section 7704(d)(1)(E) activity. Thus, X's water delivery is not an intrinsic activity. Accordingly, X's income from the delivery of water is not qualifying income for purposes of section 7704(c).

Example 8. Delivery of water and recovery and recycling of flowback. (i) Assume the same facts as in *Example 7* of this paragraph (f), except that X also collects and treats flowback at the drilling site in accordance with state regulations as part of its water delivery services and transports the treated flowback away from the site. In connection with these services, X provides personnel to perform these services on an ongoing or frequent basis that is consistent with best industry practices. X has provided these personnel with specialized training regarding the recovery and recycling of flowback produced during the development of natural gas, and this training is of limited utility other than to perform or support the development of natural gas.

(ii) The income X obtains from its water delivery services is not a section 7704(d)(1)(E) activity as provided in paragraph (c) of this section. However, because X's water delivery supports A's development of natural gas, a section 7704(d)(1)(E) activity, X's income from water delivery services may be qualifying income for purposes of section 7704(c) if the water delivery service is an intrinsic activity as provided in paragraph (d) of this section.

(iii) An activity is an intrinsic activity if the activity is specialized to support the section 7704(d)(1)(E) activity, is essential to the completion of the section 7704(d)(1)(E) activity, and requires the provision of significant services to support the section 7704(d)(1)(E) activity. Under paragraph (d)(2)(ii)(B) of this section, the provision of water for use as an injectant in a section 7704(d)(1)(E) activity is specialized to that activity only if the partnership (1) provides the water exclusively to those engaged in section 7704(d)(1)(E) activities, (2) is also in the trade or business of cleaning, recycling, or otherwise disposing of water after use in accordance with Federal, state, or local regulations concerning waste products from mining or production activities, and (3) operates these disposal services within the same geographical area as where it delivers water. X's provision of personnel is specialized because those personnel received training regarding the recovery and recycling of flowback produced during the development of natural gas, and this training is of limited utility other than to perform or support the development of natural gas. The provision of water is also specialized because water is an injectant used to perform a section 7704(d)(1)(E) activity, and X also collects and treats flowback in accordance with state regulations as part of its water delivery services. Therefore, X meets the specialization requirement. The delivery of water is essential to support A's development activity because the water is needed for use in fracturing to develop A's natural gas reserve in a cost-efficient manner. Finally, the water delivery and recovery and recycling activities require significant services to support the development activity because X's personnel provide services necessary for the partnership to perform the support activity at the development site on an ongoing or frequent basis that is consistent with best industry practices. Because X's delivery of water and X's collection, transport, and treatment of flowback is a specialized activity, is essential to the completion of a section 7704(d)(1)(E) activity, and requires significant services, the delivery of water and the transport and treatment of flowback is an intrinsic activity. X's income from the delivery of water and the collection, treatment, and transport of flowback is qualifying income for purposes of section 7704(c).

(g) *Effective/applicability date and transition rule.* (1) *In general.* Except as provided in paragraph (g)(2) of this section, this section applies to income earned by a partnership in a taxable year beginning on or after January 19, 2017. Paragraph (g)(2) of this section applies during the period that ends on the last day of the partnership's taxable year that includes January 19, 2027 (Transition Period).

(2) *Income during Transition Period.* A partnership may treat income from an activity as qualifying income during the Transition Period if—

(i) The partnership received a private letter ruling from the IRS holding that the income from that activity is qualifying income;

(ii) Prior to May 6, 2015, the partnership was publicly traded, engaged in the activity, and treated the activity as giving rise to qualifying income under section 7704(d)(1)(E), and that income was qualifying income under the statute as reasonably interpreted prior to May 6, 2015;

(iii) Prior to May 6, 2015, the partnership was publicly traded and had entered into a binding agreement for construction of assets to be used in such activity that would give rise to income that was qualifying income under the statute as reasonably interpreted prior to May 6, 2015; or

(iv) The partnership is publicly traded and engages in the activity after May 6, 2015 but before January 19, 2017, and the income from that activity is qualifying income under the proposed regulations (REG–132634–14) contained in the Internal Revenue Bulletin (IRB) 2015–21 (see *https://www.irs.gov/pub/irs-irbs/irb15-21.pdf*).

(3) *Relief from technical termination.* In the event of a technical termination under section 708(b)(1)(B) of a partnership that satisfies the requirements of paragraph (g)(2) of this section without regard to the technical termination, the resulting partnership will be treated as the partnership that satisfies the requirements of paragraph (g)(2) of this section for purposes of applying the Transition Period.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: January 12, 2017.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2017–01208 Filed 1–19–17; 4:15 pm]

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FEDERAL REGISTER

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Part IV

Office of Management and Budget

Regulatory Freeze Pending Review; Notice

OFFICE OF MANAGEMENT AND BUDGET

Memorandum for the Heads of Executive Departments and Agencies; Regulatory Freeze Pending Review

January 20, 2017.

FROM: Reince Priebus, Assistant to the President and Chief of Staff.

SUBJECT: Regulatory Freeze Pending Review.

The President has asked me to communicate to each of you his plan for managing the Federal regulatory process at the outset of his Administration. In order to ensure that the President's appointees or designees have the opportunity to review any new or pending regulations, I ask on behalf of the President that you immediately take the following steps:

1. Subject to any exceptions the Director or Acting Director of the Office of Management and Budget (the ''OMB Director'') allows for emergency situations or other urgent circumstances relating to health, safety, financial, or national security matters, or otherwise, send no regulation to the Office of the Federal Register (the ''OFR'') until a department or agency head appointed or designated by the President after noon on January 20, 2017, reviews and approves the regulation. The department or agency head may delegate this power of review and approval to any other person so appointed or designated by the President, consistent with applicable law.

2. With respect to regulations that have been sent to the OFR but not published in the **Federal Register**, immediately withdraw them from the OFR for review and approval as described in paragraph 1, subject to the exceptions described in paragraph 1. This withdrawal must be conducted consistent with OFR procedures.

3. With respect to regulations that have been published in the OFR but have not taken effect, as permitted by applicable law, temporarily postpone their effective date for 60 days from the date of this memorandum, subject to the exceptions described in paragraph 1, for the purpose of reviewing questions of fact, law, and policy they raise. Where appropriate and as permitted by applicable law, you should consider proposing for notice and comment a rule to delay the effective date for regulations beyond that 60-day period. In cases where the effective date has been delayed in order to review questions of fact, law, or policy, you should consider potentially proposing further notice-and-comment rulemaking. Following the delay in effective date:

(a) For those regulations that raise no substantial questions of law or policy, no further action needs to be taken; and

(b) for those regulations that raise substantial questions of law or policy, agencies should notify the OMB Director and take further appropriate action in consultation with the OMB Director.

4. Exclude from the actions requested in paragraphs 1 through 3 any regulations subject to statutory or judicial deadlines and identify such exclusions to the OMB Director as soon as possible.

5. Notify the OMB Director promptly of any regulations that, in your view, should be excluded from the directives in paragraphs 1 through 3 because those regulations affect critical health, safety, financial, or national security matters, or for some other reason. The OMB Director will review any such notifications and determine whether such exclusion is appropriate under the circumstances.

6. Continue in all circumstances to comply with any applicable Executive Orders concerning regulatory management.

As used in this memorandum, ''regulation'' has the meaning given to ''regulatory action'' in section 3(e) of Executive Order 12866, and also includes any ''guidance document'' as defined in section 3(g) thereof as it existed when Executive Order 13422 was in effect. That is, the requirements of this memorandum apply to ''any substantive action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking,'' and also covers any agency statement of general applicability and future effect ''that sets forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statutory or regulatory issue.''

This regulatory review will be implemented by the OMB Director. Communications regarding any matters pertaining to this review should be addressed to the OMB Director.

The OMB Director is authorized and directed to publish this memorandum in the **Federal Register**.

[FR Doc. 2017–01766 Filed 1–23–17; 2:00 pm]

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FEDERAL REGISTER

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Part V

The President

Proclamation 9570—National Day of Patriotic Devotion

Executive Order 13765—Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 9570 of January 20, 2017

National Day of Patriotic Devotion

By the President of the United States of America

A Proclamation

A new national pride stirs the American soul and inspires the American heart. We are one people, united by a common destiny and a shared purpose.

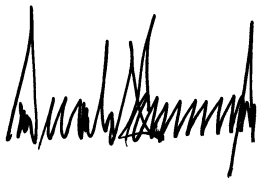
Freedom is the birthright of all Americans, and to preserve that freedom we must maintain faith in our sacred values and heritage.

Our Constitution is written on parchment, but it lives in the hearts of the American people. There is no freedom where the people do not believe in it; no law where the people do not follow it; and no peace where the people do not pray for it.

There are no greater people than the American citizenry, and as long as we believe in ourselves, and our country, there is nothing we cannot accomplish.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 20, 2017, as National Day of Patriotic Devotion, in order to strengthen our bonds to each other and to our country—and to renew the duties of Government to the people.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of January, in the year of our Lord two thousand seventeen, and of the Independence of the United States of America the two hundred and forty-first.



[FR Doc. 2017–01798
Filed 1–23–17; 2:00 pm]
Billing code 3295–F7–P

Presidential Documents

Executive Order 13765 of January 20, 2017

Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. It is the policy of my Administration to seek the prompt repeal of the Patient Protection and Affordable Care Act (Public Law 111–148), as amended (the ''Act''). In the meantime, pending such repeal, it is imperative for the executive branch to ensure that the law is being efficiently implemented, take all actions consistent with law to minimize the unwarranted economic and regulatory burdens of the Act, and prepare to afford the States more flexibility and control to create a more free and open healthcare market.

Sec. 2. To the maximum extent permitted by law, the Secretary of Health and Human Services (Secretary) and the heads of all other executive departments and agencies (agencies) with authorities and responsibilities under the Act shall exercise all authority and discretion available to them to waive, defer, grant exemptions from, or delay the implementation of any provision or requirement of the Act that would impose a fiscal burden on any State or a cost, fee, tax, penalty, or regulatory burden on individuals, families, healthcare providers, health insurers, patients, recipients of healthcare services, purchasers of health insurance, or makers of medical devices, products, or medications.

Sec. 3. To the maximum extent permitted by law, the Secretary and the heads of all other executive departments and agencies with authorities and responsibilities under the Act, shall exercise all authority and discretion available to them to provide greater flexibility to States and cooperate with them in implementing healthcare programs.

Sec. 4. To the maximum extent permitted by law, the head of each department or agency with responsibilities relating to healthcare or health insurance shall encourage the development of a free and open market in interstate commerce for the offering of healthcare services and health insurance, with the goal of achieving and preserving maximum options for patients and consumers.

Sec. 5. To the extent that carrying out the directives in this order would require revision of regulations issued through notice-and-comment rulemaking, the heads of agencies shall comply with the Administrative Procedure Act and other applicable statutes in considering or promulgating such regulatory revisions.

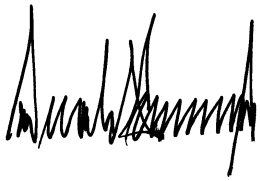
Sec. 6. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
January 20, 2017.

[FR Doc. 2017–01799
Filed 1–23–17; 2:00 pm]
Billing code 3295–F7–P

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