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Title 3—

The President

Proclamation 9300 of July 17, 2015

Captive Nations Week, 2015

By the President of the United States of America

A Proclamation

America was founded on the beliefs that the true source of legitimacy is the consent of the people; that every individual is born equal with inalienable rights; and that it is the responsibility of governments to uphold these rights. For more than two centuries, the United States has worked to give meaning to these fundamental tenets of freedom and democracy, and as we have striven to realize the promise of our Nation and cement our reputation as a beacon of opportunity throughout the world, we have also fought to expand democracy's reach—because we believe that self-determination is not just a Western value but a universal value, and that all people in all nations have the right to choose their own destiny.

When an Iron Curtain descended on women and men around the globe, America stood with those who held fast to democratic ideals. We fought to defend the inherent dignity of all people and our shared commitment to the values we cherish, and together we demonstrated to the world that tyranny and oppression are no match for the force of freedom. Decades later, upholding peace and security continues to be the responsibility of every nation. During Captive Nations Week, we stand in solidarity with those who still yearn for a stake in their future, and we renew our commitment to advancing freedom's cause.

Today, countries once ravaged by war are among the world's most advanced economies, dictatorships have given way to genuine democracies, and hundreds of millions of people have been lifted from poverty. Yet history reminds us that free nations cannot be complacent in pursuit of the vision we share. Around the globe, disputes over territory threaten to spiral into confrontation. The failure to uphold universal human rights denies justice to individuals and denies countries of reaching their full potential. The same technologies that empower citizens are also giving oppressive regimes new tools to stifle dissent. And economic inequality and extreme poverty are laying the foundation for instability.

The United States will continue to use every element of American power to bolster democracies throughout the world and support economic reforms that boost domestic demand, deliver broad prosperity, and invest in people. We are expanding our cooperation with emerging powers and economies and working to cultivate civil societies that hold leaders accountable—because governments exist to lift their people up, not to hold them down. And I continue to call for open and honest elections, and independent judiciaries that work to strengthen the rule of law.

True democracy, real prosperity, and lasting security are neither given nor imposed from the outside; they must be earned and built from within and renewed by every generation. Today, we rededicate ourselves to this important task and to the promise that wherever people are willing to do the hard work of building a democracy—wherever the longing for freedom stirs in human hearts—they will find a partner in the United States of America.

The Congress, by joint resolution approved July 17, 1959 (73 Stat. 212), has authorized and requested the President to issue a proclamation designating the third week of July of each year as ''Captive Nations Week.''

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim July 19 through July 25, 2015, as Captive Nations Week. I call upon the people of the United States to reaffirm our deep ties to all governments and people committed to freedom, dignity, and opportunity for all.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of July, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and fortieth.

[FR Doc. 2015–18095
Filed 7–21–15; 8:45 am]
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Rules and Regulations

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OFFICE OF MANAGEMENT AND BUDGET

2 CFR Parts 180 and 200

Guidance for Reporting and Use of Information Concerning Recipient Integrity and Performance

AGENCY: Executive Office of the President, Office of Management and Budget.

ACTION: Final guidance.

SUMMARY: The Office of Management and Budget (OMB) is issuing final guidance to Federal agencies to implement Section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (hereafter referred to as ''section 872''), as that statute applies to grants. As section 872 required, OMB and the General Services Administration (GSA) have established an integrity and performance system that includes governmentwide data with specified information related to the integrity and performance of entities awarded Federal grants and contracts. This system, currently designated as the Federal Awardee Performance and Integrity Information System (FAPIIS), integrates various sources of information on the eligibility of organizations for Government awards and is currently available at *https://www.fapiis.gov.*

This final guidance implements section 872's requirements for recipients and Federal awarding agencies to report information that will appear in the OMB-designated integrity and performance system and for Federal awarding agencies to consider information the system contains about a non-Federal entity before awarding a grant to that non-Federal entity. The final guidance for grants, which also applies to cooperative agreements, also addresses how the designated integrity and performance system and other information may be used in assessing recipient integrity.

DATES: This guidance is effective January 1, 2016.

FOR FURTHER INFORMATION CONTACT: Rhea Hubbard, Office of Federal Financial Management, Office of Management and Budget, *rhubbard@omb.eop.gov,* telephone (202) 395–2743.

SUPPLEMENTARY INFORMATION:

I. Background

A. This final guidance to Federal agencies implement Sections 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417, codified as amended at 41 U.S.C. 2313).

On February 18, 2010 (75 FR 7316), the Office of Management and Budget (OMB) proposed a number of changes to Title 2 of the Code of Federal Regulations (2 CFR). Since publication of the February 2010 **Federal Register** notice, OMB finalized the portion of the guidance at 2 CFR part 25, which includes requirements for obtaining a Universal Identifier and registering in the System for Award Management (SAM) formerly called the Central Contractor Registration system (CCR) in the **Federal Register** on September 14, 2010 [75 FR 55671]. Part 25 was expedited and finalized separately from the guidance being issued today because it was needed to support reporting of subawards made on or after October 1, 2010, as the next step in implementation of the Federal Funding Accountability and Transparency Act (''Transparency Act,'' Pub. L. 109–282, as amended). The preamble of the **Federal Register** notice that finalized 2 CFR part 25 included responses to the public comments that we received on the proposed requirements related to DUNS numbers and CCR (which subsequently became SAM and is accessible at *https://www.sam.gov*). The remainder of this notice therefore does not address that portion of the February 2010 **Federal Register** notice.

Also since publication of the February 2010 **Federal Register** notice, OMB published final guidance at 2 CFR part 200 titled Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards on December 26, 2013 [78 FR 78589]. This final guidance streamlined the Federal government's guidance on Administrative Requirements, Cost Principles, and Audit Requirements for Federal awards and provided a governmentwide framework for grants management. Part 200 incorporated portions of the proposed guidance at part 27 regarding notices of funding opportunities, see 2 CFR 200.203. Therefore this notice does not address certain portions of part 27 that were proposed in the February 2010 **Federal Register** notice. Further, OMB is no longer issuing parts 27, 35, and 77 separately. The final guidance incorporates the proposed guidance at parts 27, 35, and 77 into part 200. This approach is consistent with the intent for part 200 to serve as a governmentwide framework for grants management.

The February 2010 **Federal Register** notice proposed changes to governmentwide guidance for nonprocurement debarment and suspension remain reflected in the final guidance at 2 CFR part 180.

B. The major elements of the proposed guidance, which are addressed in this notice, are requirements for:

- Federal awarding agencies to report information to the designated integrity and performance system about any termination of an award due to a material failure to comply with the award terms and conditions; any administrative agreement with a non-Federal entity to resolve a suspension or debarment proceeding; and any finding that a non-Federal entity is not qualified to receive a given award, if the finding is based on criteria related to the non-Federal entity's integrity or prior performance under Federal awards.
- Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than $10,000,000 to provide information to the designated integrity and performance system about certain civil, criminal, and administrative proceedings that reached final disposition within the most recent five year period and that were connected with the award or performance of a Federal award.
- Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than $10,000,000 are required to disclose semiannually the information about the criminal, civil,

and administrative proceedings that section 872(c) describes.

• Federal awarding agencies, prior to making an award to a non-Federal entity, to determine whether that non-Federal entity is qualified to receive that particular award. In making the determination, the Federal awarding agency must take into consideration any information about the entity that is in the designated integrity and performance system.

• Notice of funding opportunities and Federal award terms and conditions to inform a non-Federal entity that it may submit comments to the designated integrity and performance system about any information that the Federal awarding agency had reported to the system about the non-Federal entity, for consideration by the Federal awarding agency in making future Federal awards to the non-Federal entity.

We received comments on these elements of the proposed guidance from four State agencies, seven Federal agencies or agency components, and three associations representing community health centers, academic institutions, and industrial firms, respectively. We considered all comments received and made some of the recommended improvements in developing the final guidance. Some of the more significant changes are to:

• Make the guidance for grants and cooperative agreements as consistent where practicable with the FAPIIS guidance in the Federal Acquisition Regulation (FAR) that applies to procurement contracts (48 CFR 9.104), thereby simplifying implementation for non-Federal entities that receive both Federal assistance and procurement awards;

• provide information on the legislative amendment to section 872, which was enacted after issuance of the proposed guidance, that requires making certain information in the designated integrity and performance system available to the public;

• provide information that must be included in a notice of funding opportunity regarding implementation of integrity and performance reporting;

• clarify the process that a Federal awarding agency follows when making a determination that a non-Federal entity is qualified to receive an award based on a review of information in the designated integrity and performance system and other sources;

• add wording to help ensure that all non-Federal entities, including applicants under programs that do not have program announcements, are fully aware of the potential effects of information about them in the designated integrity and performance system and their right to submit comments about the information; and

• add a requirement that Federal awarding agencies wait 14 calendar days after posting information to the non-public segment of the designated integrity and performance system before making the information available through the public segment of the system to be consistent with the acquisitions community's requirements.

Additional changes were made for clarity or completeness. For example, the simplified acquisition threshold set by the Federal Acquisition Regulation (FAR) at 48 CFR Subpart 2.1 (Definitions) is periodically adjusted for inflation in accordance with 41 U.S.C. 1908 and is now set at $150,000. Consequently, we updated the threshold citation throughout the guidance by including a reference to the definition available at 2 CFR 200.88. Also, several of the systems referred to in the guidance, namely the Central Contractor Registration (CCR) and the Excluded Parties List System (EPLS), have been migrated into SAM and no longer exist as stand-alone systems. Further, the General Services Administration (GSA) plans to migrate the currently designated integrity and performance system, FAPIIS, to SAM and the language describing the system in the final guidance is designed to accommodate future system changes. Additional system migrations to SAM and other central portals will make it easier for agencies and recipients to input and receive information through a central Web site.

C. The designated integrity and performance system integrates various sources of information regarding non-Federal entities to help Federal awarding agencies ensure that a thorough review of available databases with relevant information on to determine whether a recipient is qualified occurs before the issuance of Federal awards. In addition to the designated integrity and performance system, Federal awarding agencies are able to conduct matching to help determine qualification for Federal awards and payments through complementary efforts, such as the Do Not Pay working system maintained by the Department of the Treasury. While Treasury conducts matching against the Do Not Pay working system for all appropriate Federal payments, in accordance with the Improper Payments Elimination and Recovery Improvement Act of 2012, Federal awarding agencies are responsible for determining which of the Do Not Pay databases are appropriate to review for pre-award purposes. As required by 2 CFR part 180, Federal awarding agencies are required to check SAM Exclusions prior to the issuance of Federal awards, which is available directly through SAM or the Do Not Pay working system. Federal awarding agencies are not required to check the other databases that are part of the Do Not Pay working system for pre-award purposes where the Federal awarding agency has determined that the designated integrity and performance system (currently FAPIIS) and SAM provide more relevant information to making decisions on recipient qualification. As governmentwide systems continue to mature, there may be opportunities for further integration between the various systems.

D. Section 872 applies without distinguishing between for-profit and other recipients. Thus, notwithstanding 2 CFR 200.101(c) general permissive application of subparts A through E to for-profits, agencies must apply to for-profit recipients (in agencies' regulations, policies, or directly through the terms and conditions of Federal awards) the requirements reflected in this final guidance. OMB is considering governmentwide guidance to apply consistent treatment towards for-profit grant and cooperative agreement recipients, including the requirements of Section 872.

E. Since publishing the proposed guidance, Section 852 of the National Defense Authorization Act for Fiscal Year 2013 set forth additional requirements for the designated integrity and performance system to include, to the extent practicable, additional information on any parent, subsidiary, or successor entities to corporations included in the system. In order to address these additional requirements, OMB is considering publishing proposed guidance to implement Section 852 of the National Defense Authorization Act for Fiscal Year 2013.

II. Comments and Responses

Sections II. A through II. F of this preamble summarize the major comments and our responses. General comments that address more than one portion of the guidance are summarized in section II.A. Each of the other sections addresses comments pertaining to a specific portion of the proposed guidance.

A. General Comments

Comment: One State agency asked when GSA will establish the specifics of the FAPIIS data system and whether the specifics will be posted for comment.

Response: GSA continues to make improvements to enable the designated integrity and performance system to collect other information for use by Federal awarding agencies that must make determinations concerning recipient qualifications. The public opportunity to comment on specific information to be collected from contractors and recipients of assistance awards is through the Paperwork Reduction Act (PRA) clearance process. The PRA clearance for procurement contracts was addressed in the **Federal Register** documents with the FAR changes and approved under OMB Clearance Number 9000–0174. The PRA clearance for grants and cooperative agreements was addressed in the **Federal Register** documents issued October 1, 2010 [75 FR 60756], February 11, 2011 [76 FR 7851], and July 3, 2014 [79 FR 38028].

Comment: One industry association and one university association asked that we implement section 872 for grants in a manner that conforms with the implementation for procurement contracts, except where justified by the substantive differences between assistance and procurement. Noting that their constituents receive contracts, as well as grants, they recommended use of identical wording of any required questions or assurances, as well as electronic entry of data through the same system.

Response: We agree that conformity to the maximum extent practicable is important for requirements that are common to both recipients of grants and contractors. The award term and condition for grants and cooperative agreements therefore requires recipients to enter certain information through SAM, the same system that contractors use for that purpose. A recipient and contractor must answer identical questions in SAM and, if applicable, must provide the same information about the types of proceedings identified in section 872.

Comment: The industry and university associations and one Federal awarding agency responded to the invitation in the February 2010 **Federal Register** notice to comment on a possible expansion of the scope of the designated integrity and performance system to ''include recipient information from authoritative data sources not described in this guidance.'' One association recommended we not expand the scope to information not related to the performance of a Federal or State contract or grant. The other strongly suggested limiting it to information related to performance under Federal awards only. The Federal awarding agency recommended building the system to allow for future expansion to include data on integrity and performance information beyond what was delineated in the proposed guidance.

Response: OMB may expand the scope of the system to include information related to integrity and performance information beyond what was delineated in the proposed guidance.

Comment: A university association suggested that we reaffirm that the term ''recipient'' throughout the 2 CFR guidance proposed in the February 2010 **Federal Register** notice means the organization receiving an award, as it usually does in the assistance community, and does not also include associated individuals. They stated that the reaffirmation was especially important as it relates to recipient qualification matters addressed in subpart A of the proposed 2 CFR part 35.

Response: As defined at 2 CFR 200.86, the term ''recipient'' means ''a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program.'' Thus, the term does not include individuals such as the organization's employees or other individuals who may only be involved in performance of the project or program under the award because those individuals did not receive the Federal award directly from a Federal awarding agency.

Comment: The university association also recommended that we state in the guidance that information in the designated integrity and performance system is not subject to disclosure in response to Freedom of Information Act (FOIA) requests. They noted that the **Federal Register** notice for the final FAR rule on section 872 stated that the question of access to the data under FOIA would be determined on a case-by-case basis.

Response: After publication of the proposed guidance, section 872 was amended to require public disclosure of information in designated integrity and performance system other than past performance reviews. Actions posted in system on or after April 15, 2011, will be available to the public, as required by section 3010 of Public Law 111–212. Agencies' disclosure of information should be consistent with all applicable statutes that limit such disclosures. For example, heightened attention should be given to whether documentation includes information that involves privacy, security, proprietary business interests, and law enforcement investigations. Only information posted after April 15, 2011 will be subject to the disclosure requirements in section 3010 of Public Law 111–212.

B. Comments on Requirements in the Proposed 2 CFR Part 27 for Announcements of Funding Opportunities

Comment: Two Federal awarding agencies recommended we revise the guidance in the proposed § 27.210 that the form and content of agency program announcements must adhere to those of the standard announcement format contained in the appendix to part 27. They recommended that we instead require agencies' announcements to comply with a ''substantial conformance'' standard that would provide greater flexibility. The agencies were particularly concerned about the wording in Section II of Subdivision 1 of the announcement format stating that agencies' announcements should conform to the numbering convention in the standard format. They noted that wording could require them to modify information systems currently used in conjunction with program announcements and associated agency guidance documents.

Response: We removed the information on format because OMB reissued final guidance on notice of funding opportunities available at 2 CFR 200.203 and Appendix I to part 200. Further, the remaining portions of the proposed guidance at part 27 are incorporated into part 200.

Comment: One Federal awarding agency noted that we should narrow the scope of the proposed guidance for paragraph E.3 of the announcement format in the appendix to part 27. The proposed guidance for that paragraph required an agency to inform potential applicants that awarding officials would consider information in designated integrity and performance system prior to making awards. The commenter noted that the guidance should exempt announcements under which a Federal awarding agency anticipated no Federal awards with Federal funding in excess of the simplified acquisition threshold above which section 872 requires Federal awarding agencies to consider information in the system.

Response: We agree and Appendix I to Part 200 reflects that information regarding the designated integrity and performance system is included in notices of funding opportunities when the Federal awarding agency anticipates that any Federal award under a notice of funding opportunity may include, over the period of performance, a total

Federal share greater than the simplified acquisition threshold.

C. Comments on the Dollar Thresholds Related to Integrity and Performance Reporting

Comment: One State agency and two Federal awarding agencies sought further explanation of the differences between the three dollar thresholds related to the designated integrity and performance system—at the simplified acquisition threshold (currently $150,000); at $500,000; and at $10,000,000. One of the Federal awarding agencies suggested that implementation would be simpler if the three thresholds were the same.

Response: The three thresholds are consistent with the statutory requirements of section 872:

- $500,000—Subsection (b) of section 872 is the source of the $500,000 threshold. It essentially requires that the designated integrity and performance system contain information about each non-Federal entity: (1) That receives a Federal award of more than $500,000; and (2) about which there is a proceeding that must be reported as described in section 872. Therefore, the final guidance following this preamble states that Federal awarding agencies must include the award term and condition requiring the recipient to maintain its information in designated integrity and performance system for each Federal award where it is anticipated that the total Federal share will exceed $500,000 over the period of performance. Note that the award term and condition requires the non-Federal entity to provide the required information through the SAM (formerly CCR) and to provide the information specified in SAM.
- $10,000,000—The source of the $10,000,000 threshold is subsection (f) of section 872. Under that subsection (f) of section 872, a non-Federal entity receiving Federal awards with a total value more than $10,000,000 must submit any information about criminal, civil, and administrative proceedings that section 872 requires and update the information semiannually. Based on feedback or as necessary, OMB may revise the $10,000,000 threshold. Based on feedback, OMB may consider revising this affirmative disclosure threshold for grants and cooperative agreements to the extent legally permissible/consistent with the statute.
- $150,000—The third threshold relates to two requirements for the Federal awarding agency. The source of that threshold, which is at the simplified acquisition threshold set by the FAR at 48 CFR Subpart 2.1 and adjusted periodically to track inflation (currently $150,000), is subparagraph (e)(2)(A) of section 872, which requires the Federal awarding agency to consider information in the designated integrity and performance system before making a Federal award for more than that threshold amount. In addition to implementing that requirement, the final guidance requires the Federal awarding agency to report to the designated integrity and performance system any instance in which the Federal awarding agency does not award a grant or cooperative agreement above that threshold amount to a non-Federal entity based on a determination that the non-Federal entity is not qualified due to its prior record of integrity or performance under Federal awards. The latter requirement is analogous to the requirement for procurement contracts in paragraph (c)(5) of section 872.

Comment: An industry association and two Federal awarding agencies recommended clarifications of the term ''total value'' as used in relation to the integrity and performance requirements. The association recommended we adopt the FAR wording to specify that total value includes priced contract options, even if not yet executed. One Federal awarding agency suggested we clarify whether future funding obligations under a multi-year grant are included. The other Federal awarding agency noted that it was unclear whether the dollar thresholds in part 35 and the award term and condition in the appendix to part 35 were based on the Federal share of the funding or also included any recipient cost share or match.

Response: We agree with the comments and the final guidance located at part 200 is revised to provide the recommended clarifications. The final guidance clarifies that these thresholds are based on the Federal share of Federal awards and includes the value of all expected funding over the period of performance of the Federal award.

Comment: An industry association recommended that we amend the proposed section 35.275 and require Federal awarding agencies to include the award term and condition for integrity and performance reporting only in a grant or cooperative agreement with a total value expected to be greater than $500,000. The commenter noted that would be consistent with the FAR requirement for procurement contracts.

Response: We agree. The final guidance located at 2 CFR 200.210 is revised, as recommended.

D. Comments Related to Types of Information To Be Reported to the Designated Integrity and Performance System

Comment: One State agency asked who would determine what type of information about a recipient would be reported by the recipient, rather than the Federal awarding agency. The agency also asked when and how the recipient would be notified about its self-reporting requirements.

Response: The award term and condition in Appendix XII to 2 CFR part 200 includes the notification to the recipient that it must report certain information in order to comply with the integrity and performance reporting requirement. The details about the specific information that a recipient must provide are addressed in the guidance regarding the Entity Management area of SAM.

Comment: Four State agencies recommended clarifying the specific types of proceedings about which the proposed guidance required recipients to report to the designated integrity and performance system. Two agencies said that the proposed requirement for recipients to report on criminal, civil, and administrative proceedings was overly broad and some noted that State agencies can be parties to legal proceedings as part of their performance of grants that fund regulatory enforcement programs. One agency asked why the information was to be collected and what outcomes might result from a reported proceeding. Other questions were: Does the requirement apply to local governments or just to a recipient in the performance of its duties under an award; does a State agency have to report a fine assessed against it by another State agency; and what type of documentation must be submitted?

Response: No change was made. The governing statute, section 872, specifies the breadth of the reporting requirement. As for the purpose of collecting the information, the designated integrity and performance system gives a Federal awarding agency more information than is presently available about a potential recipient's record of performance under prior Federal awards and occurrences that may shed light on its integrity and business ethics. The information supports compliance with long-standing policy that the Federal Government protects the public interest and ensures the integrity of Federal programs by conducting business only with responsible persons.

Potential outcomes due to reported information depend on the nature of the information. A Federal awarding agency considers the information in the designated integrity and performance system about a non-Federal entity when determining that the non-Federal entity is qualified with respect to a particular Federal award. Information that the non-Federal entity is currently debarred or suspended precludes the making of the Federal award to the non-Federal entity in almost all cases, while other information may or may not lead the Federal awarding agency to determine that the non-Federal entity is not qualified for the Federal award. The Federal awarding agency also may notify other Federal awarding agencies about information in the designated integrity and performance system—*e.g.,* he or she would refer to a debarring official information about a matter that may be a cause for debarment.

With respect to the commenters' other questions:

- A local government must report if it has a Federal award with an award term and condition making it subject to the reporting requirement. It would not be required to report solely by virtue of being a subrecipient under a Federal award to a State agency.
- The requirement is broader than proceedings related to a recipient's performance under an award. A recipient also must report about proceedings related to the making of a Federal award (*e.g.,* a conviction for misuse of Federal appropriations to lobby for an award).
- A State agency must report a proceeding that results in a fine levied against it by another State agency if the violation or activity for which it is fined is in connection with the making of, or performance under, a Federal award.
- The recipient must provide the information about a proceeding that is required in SAM. No other documentation is required.

Comment: Two commenters made recommendations related to the proposed requirement for a recipient to report information to the designated integrity and performance system about proceedings related to State awards. One commenter recommended that the requirement be made parallel with the one for contractors in the FAR clause 52.209–7(c)(1), by requiring reporting only on proceedings related to Federal awards and not also those associated with State awards. The second commenter recommended we clarify that State funds appropriated to a State's institutions of higher education would not be a ''State award'' for this purpose.

Response: Due to the challenges associated with collecting State government information, the final guidance does not include the proposed requirement to collect information related to State award proceedings. Collection of information related State award proceedings may be considered in a subsequent phases of implementation. This approach is consistent with the FAR implementation of section 872 (75 FR 14059).

Comment: An industry association recommended conforming the definition of ''administrative proceeding'' with the definition of that term in the FAR implementation of section 872.

Response: We agree. The definition is revised to be consistent with the FAR definition in section 52.209–7 of 48 CFR part 52.

Comment: A Federal awarding agency suggested two changes related to the types of proceedings for which reporting is required. It suggested defining ''conviction'' analogously to 2 CFR part 180, to include any deferred prosecution agreement that included a statement of guilt on the part of the defendant. The agency also suggested eliminating vagueness from paragraph B.3.d(i) of the award term and condition in the appendix to part 35, by dropping the words ''it is practical to judge'' from the requirement for a recipient to report on ''any other criminal, civil, or administrative proceeding if it is practical for [the recipient] to judge that it could have led to'' a criminal conviction or finding of fault and liability that the recipient would have been required to report.

Response: We agree in part. We conformed the definition of ''conviction'' to the FAR definition, to parallel the implementation of section 872 for procurement contracts, rather than conforming it to the definition in 2 CFR part 180 that the commenter suggested. We removed the words ''it is practical to judge'' from the award term and condition, as recommended.

E. Other Comments on Requirements in 2 CFR Part 35 Concerning the Designated Integrity and Performance System and Recipient Qualification

Comment: One Federal awarding agency suggested amending the proposed section 35.10 to exclude open-ended entitlements and programs under which funding is allocated in accordance with mandatory formulas from coverage under part 35. The Federal awarding agency questioned whether recipient qualification was an appropriate consideration under those programs, generally known as ''mandatory programs,'' and noted that they were excluded from coverage under the nonprocurement suspension and debarment guidance in 2 CFR part 180.

Response: We understand that the nature of mandatory programs could make it more difficult than it would be under other programs to make a Federal award to an alternative recipient if the Federal awarding agency determined that a recipient was not qualified, as the program still must serve the intended beneficiaries. However, section 872 does not provide for an exclusion of those programs. Moreover, it would be important to protect both the investment of Federal funding and the interests of the beneficiaries in the event that a recipient was found not to be qualified.

Comment: One Federal awarding agency expressed concern that the association in the proposed section 35.110 between an awarding official's signature of an award document and his or her determination concerning the recipient's qualification could be misinterpreted as a requirement for a certification that the recipient is qualified. The agency noted that a certification would require the awarding official to have more information than one could reasonably expect to be available to him or her.

Response: The final guidance in part 200 no longer states that an awarding official's signature represents a determination that a recipient is qualified to receive a Federal award; however, Federal awarding agencies remain responsible for reviewing a potential recipient's records to determine whether the recipient meets the minimum standards as reflected in 2 CFR 200.205.

Comment: One Federal agency questioned whether the use of the terms ''qualified'' and ''disqualified'' in this part was consistent with the use of the term ''disqualified'' in 2 CFR part 180. The agency suggested defining at least one of the terms to avoid unnecessary confusion.

Response: We agree in part and made revisions of two types. First, we revised the wording in a number of places within part 200 to clarify that, under this guidance, each determination by Federal awarding agency of a non-Federal entity's qualification or disqualification pertains to the specific Federal award being contemplated at that time. It is possible for a Federal awarding agency to determine that a non-Federal entity is not qualified for one award and, depending on the reasons for that first determination, qualified for another award. For example, a Federal awarding agency

may determine that a non-Federal entity is: (1) Not qualified for a Federal award for a large and complex program, due to information in the designated integrity and performance system indicating an unsatisfactory record for performing under Federal awards for programs of that level of complexity; and (2) qualified for a second Federal award to carry out a simpler program. Further, Federal awarding agencies may make a Federal award to a recipient who does not fully meet these standards, if there are specific conditions that can appropriately mitigate the effects of the non-Federal entity's risk in accordance with § 200.207.

The other revisions were to replace the term ''disqualified'' in part 200 with ''not qualified,'' to remove any potential for confusion with that term as it is used and defined in 2 CFR part 180.

Comment: Two Federal awarding agencies and an association of health care centers raised questions and concerns about due process. The association expressed concern that: (1) A Federal awarding agency that determines that a non-Federal entity was not qualified for an award was not required to tell the non-Federal entity why it was not qualified; and (2) the identification of the non-Federal entity in designated integrity and performance system as a result of that determination could prevent it from receiving any Federal funding for five years. One Federal awarding agency asked if there was a process by which a non-Federal entity could appeal a Federal awarding agency's determination that it was not qualified for a Federal award, and the association and other Federal awarding agency recommended there be one.

Response: We agree in part. With respect to the first concern, we added a requirement in 2 CFR 200.212 for a Federal awarding agency to provide an explanation in the notification to a non-Federal entity about the determination that the non-Federal entity is not qualified for a Federal award.

With respect to the second concern that information in the designated integrity and performance system about a non-Federal entity could prevent it from receiving any Federal funding, we note that a Federal awarding agency's determination that a non-Federal entity is not qualified is related to a specific award that is being contemplated. As explained more fully in the response to the previous comment, that determination does not preclude the making of a different Federal award to the non-Federal entity. We revised the wording in multiple places in part 200 to clarify that connection with a specific Federal award.

On the matter of appeals of a Federal awarding agency's determination that a non-Federal entity is not qualified for a Federal award, we did not revise the guidance to require delay of individual Federal awards, to allow an opportunity for appeal after the Federal awarding agency makes the determination. A govermentwide requirement is impractical in light of the constraints under which many Federal programs operate, with firm schedules for program execution that are impelled by statute or needs for timely obligation of appropriated funds. Individual Federal awarding agencies may, if timing constraints for their programs permit, offer an opportunity for appeal or additional input to the Federal awarding agency prior to award. Also note that the commenters' concern should be addressed by the opportunities provided for the non-Federal entity's input. Sections 200.212 and 200.340 require Federal awarding agencies to notify non-Federal entities when information that may be used when Federal awarding agencies are making future funding decisions is entered into the designated performance and integrity system. Non-Federal entities whose information is entered will have the opportunity to comment on information included in the system.

We anticipate that Federal agencies' and recipients' current apprehension about the use of the designated integrity and performance system will abate over time, as they gain practical experience with the system and associated requirements. If lessons learned from the use of the designated integrity and performance system warrant further improvements to the system or clarifications to the guidance, we will carefully evaluate the existing guidance and revise the guidance, as appropriate.

Comment: Two Federal awarding agencies commented on the requirements in the proposed section 35.120 for a Federal awarding official to check SAM (formerly EPLS) and the designated integrity and performance system. One agency stated that it was important that Federal awarding agencies be required to check SAM (formerly EPLS) separately, as the designated integrity and performance system would not provide all of the information they required concerning non-Federal entities that were debarred, suspended, or otherwise excluded or disqualified from participation in covered Federal transactions. The other Federal awarding agency recommended including a table to make clear the different dollar thresholds for use of the two systems—SAM (formerly EPLS) must be checked before making any Federal covered transaction, regardless of award amount, while the requirement to check the designated integrity and performance system applies to a Federal award with a total value expected to exceed the simplified acquisition threshold.

Response: We agree in part and plan to provide further clarification to Federal awarding agencies regarding the relationship between various governmentwide systems. As discussed earlier in the preamble, GSA plans to integrate the designated integrity and performance system (currently FAPIIS) into SAM, so including a detailed chart in the final guidance outlining when a Federal awarding agency is required to check specific systems is not appropriate as the chart may become obsolete. Although a Federal awarding agency searching the current designated integrity and performance system about a potential recipient entity may receive information in response to the search, as well as information from other data systems accessed through the system, the current design does not ensure that the awarding official receives all the SAM information that he or she needs. For instance, FAPIIS does not reflect whether a non-Federal entity has an active SAM registration as required by 2 CFR part 25. As the commenters note, the awarding official also must check SAM Exclusions as required by 2 CFR part 180 prior to making a Federal award for an amount below the dollar threshold at which he or she is required to check the designated integrity and performance system. Therefore, it is imperative that a Federal awarding agency separately checks SAM prior to making an award at this time.

Comment: A Federal awarding agency noted the requirement in the proposed paragraph 35.120(a)(3)(ii) for a Federal awarding agency to check the SAM Exclusions (formerly EPLS) for potential subaward recipients if Federal approval of those subrecipients was required under the terms and conditions of the Federal award. It asked if a prime recipient was required to check the designated integrity and performance system for information about a non-Federal entity to which it intended to make a subaward.

Response: If the terms and conditions of the Federal award require the recipient to obtain Federal awarding agency approval of subawardees, the Federal awarding agency must check SAM Exclusions to verify whether a proposed subrecipient is debarred, suspended, or otherwise disqualified from the subaward. In addition, a recipient is always required under existing policy (2 CFR 180.300) to verify

that a non-Federal entity to which it intends to make a subaward is not excluded or disqualified from the transaction, whether or not Federal awarding agency approval of the subrecipient is required. Unlike a Federal awarding agency, however, 2 CFR 180.300 allows recipients multiple ways in which it can do the verification, checking SAM Exclusions being just one of those ways. While only Federal awarding agencies are required to consider information available through the designated integrity and performance system for awards expected to exceed the simplified acquisition threshold, a recipient and the general public are also able to check the system for information in doing checks of subrecipients.

Comment: A State agency, noting the same requirement in the proposed paragraph 35.120(a)(3)(ii) to check SAM (formerly EPLS), asked how the process works if a recipient does not know the identity of all subrecipients at the time it receives a Federal award. It asked if the Federal award includes a term requiring verification of subrecipients and whether that delays the making of subawards.

Response: The requirement stated in the proposed guidance is not reflected in the final guidance at 2 CFR part 200; however, this requirement is not new. The existing policy located at 2 CFR 180.425, states that a Federal awarding agency must check SAM Exclusions for potential subrecipients if its approval of the subrecipients is required. When that approval is required, the Federal awarding agency can check SAM Exclusions after the prime award is made if the subrecipients' identities are not known until then.

F. Comments on Proposed Amendments to the Nonprocurement Suspension and Debarment Guidance in 2 CFR Part 180

Comment: One Federal awarding agency recommended revising 2 CFR 180.520 to require suspending and debarring officials to enter information into SAM Exclusions (formerly EPLS) within three working days of taking a suspension or debarment action, a reduction from the current five days. The Federal awarding agency noted that this change was made in the FAR, in 48 CFR 9.404, as part of the implementation of the FAPIIS requirements for procurement contracts.

Response: We agree. We made the recommended change and similarly revised 2 CFR 180.655, to establish a three-day time period for suspending and debarring officials to report information about administrative agreements to the designated integrity and performance system.

Comment: Two Federal agencies suggested revising the requirement in the proposed section 2 CFR 180.655 for a Federal suspending or debarring official to report information to the designated integrity and performance system about each administrative agreement into which the Federal Government enters with a non-Federal entity in lieu of a suspension or debarment. One Federal awarding agency recommended delaying the effective date of the requirement until a planned update to the designated integrity and performance system added the capability to accept information about administrative agreements. The other Federal awarding agency suggested adding a requirement for reporting any modifications of administrative agreements to the designated integrity and performance system.

Response: We agree and have made changes in sections 2 CFR 180.655 and 180.660 that are responsive to the recommendations. In October 2010, the designated integrity and performance system gained the capability to accept information about administrative agreements. The system specifies the information that must be reported.

Comment: A Federal awarding agency recommended deleting the requirement in the proposed section 2 CFR 180.660 for a Federal suspending or debarring official to include information about the designated integrity and performance system in each administrative agreement into which he or she enters with a non-Federal entity in lieu of a suspension or debarment action. The Federal awarding agency stated that the express purpose of an administrative agreement is to preserve the non-Federal entity's eligibility to receive a Federal award. It added that the notice of funding opportunities under which Federal awards are made are the appropriate places to inform the non-Federal entity about Federal awarding agency's consideration of information that they receive through the designated integrity and performance system, including information about administrative agreements.

Response: We agree. We removed the proposed section 180.660 from the final guidance. Due to the removal of section 180.660, section 180.665 of the guidance proposed in the February 2010 **Federal Register** notice has been designated as section 180.660 in the final guidance.

Comment: The same Federal awarding agency recommended deleting the requirements in the proposed paragraphs 2 CFR 180.715(h) and 180.870(b)(2)(v) for a Federal suspending or debarring official to include information about the designated integrity and performance system in each notice of a suspension or debarment action. The Federal awarding agency noted that each notice already informs the suspended or debarred entity that the action results in its being listed in SAM Exclusions (formerly EPLS), with the mandatory effect of excluding it from covered transactions. The Federal awarding agency further noted that the availability of the information to a Federal awarding agency through the designated integrity and performance system, in addition to SAM, does not alter that mandatory effect. It suggested that adding information about designated integrity and performance system to the notice of suspension or debarment therefore could only confuse the matter.

Response: We agree. We removed the proposed amendments to sections 180.715 and 180.870 from the final guidance.

III. Next Steps

This final guidance is effective for Federal awards issued on or after January 1, 2016 that meet the thresholds as described in the preamble and to existing awards that are terminated on or after January 1, 2016 due to material failure to comply with the Federal award terms and conditions. Federal awarding agencies that have formally adopted 2 CFR parts 180 and 200 in their entirety in 2 CFR will begin implementing this final guidance on January 1, 2016. Federal awarding agencies who adopted 2 CFR parts 180 and 200 through another means must work with OMB to ensure their regulations or policies are updated effective January 1, 2016. OMB will collaborate with GSA to ensure that the user guides and other guidance materials regarding the designated integrity and performance system are updated to reflect use by the Federal assistance community. Applicants and recipients will see the agencies' implementation reflected in requirements identified in notice of funding opportunities or other agency releases with application instructions, as well as in the new award term and condition in Appendix XII to 2 CFR part 200.

List of Subjects

2 CFR Part 180

Administrative practice and procedure, Debarment and suspension, Grant programs, Loan programs,

Reporting and recordkeeping requirements.

2 CFR Part 200

Accounting, Auditing, Colleges and universities, State and local governments, Grant programs, Grants administration, Hospitals, Indians, Nonprofit organizations, Reporting and recordkeeping requirements.

David Mader,

Controller.

For the reasons stated in the preamble and under the authority of the Chief Financial Officer Act of 1990 (31 U.S.C. 503), the Office of Management and Budget amends 2 CFR parts 180 and 200 as set forth below:

TITLE 2—GRANTS AND AGREEMENTS

Chapter I—Office of Management and Budget Governmentwide Guidance for Grants and Agreements

PART 180—OMB GUIDELINES TO AGENCIES ON GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

■ 1. The authority citation for part 180 continues to read as follows:

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

§ 180.520 [Amended]

■ 2. Amend § 180.520(c) introductory text by removing the words ''generally within five working days,'' and adding in their place ''within three business days,''.

■ 3. Add § 180.650 to subpart F to read as follows:

§ 180.650 May an administrative agreement be the result of a settlement?

Yes, a Federal agency may enter into an administrative agreement with you as part of the settlement of a debarment or suspension action.

■ 4. Add § 180.655 to subpart F to read as follows:

§ 180.655 How will other Federal awarding agencies know about an administrative agreement that is the result of a settlement?

The suspending or debarring official who enters into an administrative agreement with you must report information about the agreement to the designated integrity and performance system within three business days after entering into the agreement. This information is required by section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (41 U.S.C. 2313).

■ 5. Add § 180.660 to subpart F to read as follows:

§ 180.660 Will administrative agreement information about me in the designated integrity and performance system accessible through SAM be corrected or updated?

Yes, the suspending or debarring official who entered information into the designated integrity and performance system about an administrative agreement with you:

(a) Must correct the information within three business days if he or she subsequently learns that any of the information is erroneous.

(b) Must correct in the designated integrity and performance system, within three business days, the ending date of the period during which the agreement is in effect, if the agreement is amended to extend that period.

(c) Must report to the designated integrity and performance system, within three business days, any other modification to the administrative agreement.

(d) Is strongly encouraged to amend the information in the designated integrity and performance system in a timely way to incorporate any update that he or she obtains that could be helpful to Federal awarding agencies who must use the system.

Chapter II—Office of Management and Budget Guidance

PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

■ 6. The authority citation for part 200 continues to read as follows:

Authority: 31 U.S.C. 503.

§ 200.0 [Amended]

■ 7. Amend § 200.0 by adding ''(accessible at *https://www.sam.gov*)'' after ''System for Award Management''.

■ 8. Revise § 200.113 to read as follows:

§ 200.113 Mandatory disclosures.

The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Non-Federal entities that have received a Federal award including the term and condition outlined in Appendix XII—Award Term and Condition for Recipient Integrity and Performance Matters are required to report certain civil, criminal, or administrative proceedings to SAM. Failure to make required disclosures can result in any of the remedies described in § 200.338 Remedies for noncompliance, including suspension or debarment. (See also 2 CFR part 180, 31 U.S.C. 3321, and 41 U.S.C. 2313.)

§ 200.203 [Amended]

■ 9. Amend § 200.203 paragraph (c)(5) by removing ''See also 2 CFR part 27 (forthcoming at time of publication).''

■ 10. Revise § 200.205 paragraph (a) to read as follows:

§ 200.205 Federal awarding agency review of risk posed by applicants.

(a) *Review of OMB-designated repositories of governmentwide data.* (1) Prior to making a Federal award, the Federal awarding agency is required by 31 U.S.C. 3321 and 41 U.S.C. 2313 note to review information available through any OMB-designated repositories of governmentwide eligibility qualification or financial integrity information as appropriate. See also suspension and debarment requirements at 2 CFR part 180 as well as individual Federal agency suspension and debarment regulations in title 2 of the Code of Federal Regulations.

(2) In accordance 41 U.S.C. 2313, the Federal awarding agency is required to review the publicly available information in the OMB-designated integrity and performance system accessible through SAM (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) prior to making a Federal award where the Federal share is expected to exceed the simplified acquisition threshold, defined in 41 U.S.C. 134, over the period of performance. At a minimum, the information in the system for a prior Federal award recipient must demonstrate a satisfactory record of executing programs or activities under Federal grants, cooperative agreements, or procurement awards; and integrity and business ethics. The Federal awarding agency may make a Federal award to a recipient who does not fully meet these standards, if it is determined that the information is not relevant to the current Federal award under consideration or there are specific conditions that can appropriately mitigate the effects of the non-Federal entity's risk in accordance with § 200.207 Specific conditions.

* * * * *

■ 11. In § 200.210, add paragraph (b)(1)(iii) to read as follows:

§ 200.210 Information contained in a Federal award.

* * * * *

(b) * * *
(1) * * *
(iii) Recipient integrity and performance matters. If the total Federal share of the Federal award may include more than $500,000 over the period of performance, the Federal awarding agency must include the term and condition available in Appendix XII—Award Term and Condition for Recipient Integrity and Performance Matters. See also § 200.113 Mandatory disclosures.
* * * * *

■ 12. In § 200.211, revise paragraph (b) and add paragraph (c) to read as follows:

§ 200.211 Public access to Federal award information.

* * * * *

(b) All information posted in the designated integrity and performance system accessible through SAM (currently FAPIIS) on or after April 15, 2011 will be publicly available after a waiting period of 14 calendar days, except for:
(1) Past performance reviews required by Federal Government contractors in accordance with the Federal Acquisition Regulation (FAR) 42.15;
(2) Information that was entered prior to April 15, 2011; or
(3) Information that is withdrawn during the 14-calendar day waiting period by the Federal Government official.
(c) Nothing in this section may be construed as requiring the publication of information otherwise exempt under the Freedom of Information Act (5 U.S.C 552), or controlled unclassified information pursuant to Executive Order 13556.

■ 13. Revise § 200.212 to read as follows:

§ 200.212 Reporting a determination that a non-Federal entity is not qualified for a Federal award.

(a) If a Federal awarding agency does not make a Federal award to a non-Federal entity because the official determines that the non-Federal entity does not meet either or both of the minimum qualification standards as described in § 200.205, Federal awarding agency review of risk posed by applicants, paragraph (a)(2), the Federal awarding agency must report that determination to the designated integrity and performance system accessible through SAM (currently FAPIIS), only if all of the following apply:
(1) The only basis for the determination described in paragraph (a) of this section is the non-Federal entity's prior record of executing programs or activities under Federal awards or its record of integrity and business ethics, as described in § 200.205 Federal awarding agency review of risk posed by applicants, paragraph (a)(2) (*i.e.,* the entity was determined to be qualified based on all factors other than those two standards), and
(2) The total Federal share of the Federal award that otherwise would be made to the non-Federal entity is expected to exceed the simplified acquisition threshold over the period of performance.
(b) The Federal awarding agency is not required to report a determination that a non-Federal entity is not qualified for a Federal award if they make the Federal award to the non-Federal entity and includes specific award terms and conditions, as described in § 200.207 Specific conditions.
(c) If a Federal awarding agency reports a determination that a non-Federal entity is not qualified for a Federal award, as described in paragraph (a) of this section, the Federal awarding agency also must notify the non-Federal entity that—
(1) The determination was made and reported to the designated integrity and performance system accessible through SAM, and include with the notification an explanation of the basis for the determination;
(2) The information will be kept in the system for a period of five years from the date of the determination, as required by section 872 of Public Law 110–417, as amended (41 U.S.C. 2313), then archived;
(3) Each Federal awarding agency that considers making a Federal award to the non-Federal entity during that five year period must consider that information in judging whether the non-Federal entity is qualified to receive the Federal award when the total Federal share of the Federal award is expected to include an amount of Federal funding in excess of the simplified acquisition threshold over the period of performance;
(4) The non-Federal entity may go to the awardee integrity and performance portal accessible through SAM (currently the Contractor Performance Assessment Reporting System (CPARS)) and comment on any information the system contains about the non-Federal entity itself; and
(5) Federal awarding agencies will consider that non-Federal entity's comments in determining whether the non-Federal entity is qualified for a future Federal award.
(d) If a Federal awarding agency enters information into the designated integrity and performance system accessible through SAM about a determination that a non-Federal entity is not qualified for a Federal award and subsequently:
(1) Learns that any of that information is erroneous, the Federal awarding agency must correct the information in the system within three business days;
(2) Obtains an update to that information that could be helpful to other Federal awarding agencies, the Federal awarding agency is strongly encouraged to amend the information in the system to incorporate the update in a timely way.
(e) Federal awarding agencies shall not post any information that will be made publicly available in the non-public segment of designated integrity and performance system that is covered by a disclosure exemption under the Freedom of Information Act. If the recipient asserts within seven calendar days to the Federal awarding agency that posted the information that some or all of the information made publicly available is covered by a disclosure exemption under the Freedom of Information Act, the Federal awarding agency that posted the information must remove the posting within seven calendar days of receiving the assertion. Prior to reposting the releasable information, the Federal awarding agency must resolve the issue in accordance with the agency's Freedom of Information Act procedures.

■ 14. Add § 200.213 to subpart C to read as follows:

§ 200.213 Suspension and debarment.

Non-federal entities are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

§ 200.300 [Amended]

■ 15. Amend § 200.300 paragraph (b) by removing ''Central Contractor Registration'' and adding in its place ''System for Award Management''.

§ 200.318 [Amended]

■ 16. Amend § 200.318 paragraph (h) by removing ''§ 200.212'' and adding in its place ''§ 200.213''.

■ 17. In § 200.339, revise paragraph (b) and add paragraph (c) to read as follows:

§ 200.339 Termination.

* * * * *

(b) When a Federal awarding agency terminates a Federal award prior to the

end of the period of performance due to the non-Federal entity's material failure to comply with the Federal award terms and conditions, the Federal awarding agency must report the termination to the OMB-designated integrity and performance system accessible through SAM (currently FAPIIS).

(1) The information required under paragraph (b) of this section is not to be reported to designated integrity and performance system until the non-Federal entity either—

(i) Has exhausted its opportunities to object or challenge the decision, see § 200.341 Opportunities to object, hearings and appeals; or

(ii) Has not, within 30 calendar days after being notified of the termination, informed the Federal awarding agency that it intends to appeal the Federal awarding agency's decision to terminate.

(2) If a Federal awarding agency, after entering information into the designated integrity and performance system about a termination, subsequently:

(i) Learns that any of that information is erroneous, the Federal awarding agency must correct the information in the system within three business days;

(ii) Obtains an update to that information that could be helpful to other Federal awarding agencies, the Federal awarding agency is strongly encouraged to amend the information in the system to incorporate the update in a timely way.

(3) Federal awarding agencies, shall not post any information that will be made publicly available in the non-public segment of designated integrity and performance system that is covered by a disclosure exemption under the Freedom of Information Act. If the non-Federal entity asserts within seven calendar days to the Federal awarding agency who posted the information, that some of the information made publicly available is covered by a disclosure exemption under the Freedom of Information Act, the Federal awarding agency who posted the information must remove the posting within seven calendar days of receiving the assertion. Prior to reposting the releasable information, the Federal agency must resolve the issue in accordance with the agency's Freedom of Information Act procedures.

(c) When a Federal award is terminated or partially terminated, both the Federal awarding agency or pass-through entity and the non-Federal entity remain responsible for compliance with the requirements in §§ 200.343 Closeout and 200.344 Post-closeout adjustments and continuing responsibilities.

■ 18. Revise § 200.340, paragraph (b) to read as follows:

§ 200.340 Notification of termination requirement.

* * * * *

(b) If the Federal award is terminated for the non-Federal entity's material failure to comply with the Federal statutes, regulations, or terms and conditions of the Federal award, the notification must state that—

(1) The termination decision will be reported to the OMB-designated integrity and performance system accessible through SAM (currently FAPIIS);

(2) The information will be available in the OMB-designated integrity and performance system for a period of five years from the date of the termination, then archived;

(3) Federal awarding agencies that consider making a Federal award to the non-Federal entity during that five year period must consider that information in judging whether the non-Federal entity is qualified to receive the Federal award, when the Federal share of the Federal award is expected to exceed the simplified acquisition threshold over the period of performance;

(4) The non-Federal entity may comment on any information the OMB-designated integrity and performance system contains about the non-Federal entity for future consideration by Federal awarding agencies. The non-Federal entity may submit comments to the awardee integrity and performance portal accessible through SAM (currently (CPARS).

(5) Federal awarding agencies will consider non-Federal entity comments when determining whether the non-Federal entity is qualified for a future Federal award.

* * * * *

■ 19. In Appendix I to Part 200, revise paragraph E.3., add paragraph E.4., and revise paragraph F.3. to read as follows:

Appendix I to Part 200—Full Text of Notice of Funding Opportunity

* * * * *

E. * * *

3. For any Federal award under a notice of funding opportunity, if the Federal awarding agency anticipates that the total Federal share will be greater than the simplified acquisition threshold on any Federal award under a notice of funding opportunity may include, over the period of performance (see § 200.88 Simplified Acquisition Threshold), this section must also inform applicants:

i. That the Federal awarding agency, prior to making a Federal award with a total amount of Federal share greater than the simplified acquisition threshold, is required to review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently FAPIIS) (see 41 U.S.C. 2313);

ii. That an applicant, at its option, may review information in the designated integrity and performance systems accessible through SAM and comment on any information about itself that a Federal awarding agency previously entered and is currently in the designated integrity and performance system accessible through SAM;

iii. That the Federal awarding agency will consider any comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in § 200.205 Federal awarding agency review of risk posed by applicants.

4. *Anticipated Announcement and Federal Award Dates—Optional.* This section is intended to provide applicants with information they can use for planning purposes. If there is a single application deadline followed by the simultaneous review of all applications, the Federal awarding agency can include in this section information about the anticipated dates for announcing or notifying successful and unsuccessful applicants and for having Federal awards in place. If applications are received and evaluated on a ''rolling'' basis at different times during an extended period, it may be appropriate to give applicants an estimate of the time needed to process an application and notify the applicant of the Federal awarding agency's decision.

F. * * *

3. Reporting—Required. This section must include general information about the type (*e.g.,* financial or performance), frequency, and means of submission (paper or electronic) of post-Federal award reporting requirements. Highlight any special reporting requirements for Federal awards under this funding opportunity that differ (*e.g.,* by report type, frequency, form/format, or circumstances for use) from what the Federal awarding agency's Federal awards usually require. Federal awarding agencies must also describe in this section all relevant requirements such as those at 2 CFR 180.335 and 2 CFR 180.350.

If the Federal share of any Federal award may include more than $500,000 over the period of performance, this section must inform potential applicants about the post award reporting requirements reflected in Appendix XII—Award Term and Condition for Recipient Integrity and Performance Matters.

* * * * *

■ 20. Add Appendix XII to Part 200 to read as follows:

Appendix XII to Part 200—Award Term and Condition for Recipient Integrity and Performance Matters

A. Reporting of Matters Related to Recipient Integrity and Performance

1. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds $10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110–417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111–212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

2. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;

b. Reached its final disposition during the most recent five year period; and

c. Is one of the following:

(1) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;

(2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of $5,000 or more;

(3) An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of $5,000 or more or reimbursement, restitution, or damages in excess of $100,000; or

(4) Any other criminal, civil, or administrative proceeding if:

(i) It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;

(ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

(iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

3. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

4. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than $10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

5. Definitions

For purposes of this award term and condition:

a. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (*e.g.,* Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

b. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

c. Total value of currently active grants, cooperative agreements, and procurement contracts includes—

(1) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and

(2) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

B. [Reserved]

[FR Doc. 2015–17753 Filed 7–21–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2014–0565; Airspace Docket No. 14–ACE–7]

Revocation of Class D and E Airspace; Independence, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes Class D airspace and the associated Class E surface area airspace at Independence Municipal Airport, Independence, KS. Closure of the airport's air traffic control tower has necessitated the need for this action.

DATES: Effective 0901 UTC, October 15, 2015. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Y, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/airtraffic/publications/.* The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15. For further information, you can contact the Airspace Policy and ATC Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 29591; telephone: 202–267–8783.

FOR FURTHER INFORMATION CONTACT: Raul Garza, Jr., Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: 817–222–4075.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it removes

controlled airspace at Independence Municipal Airport, KS.

History

On May 8, 2015, the FAA published in the **Federal Register** a supplemental notice of proposed rulemaking (SNPRM) to remove Class D airspace and Class E surface area airspace at Independence Municipal Airport, Independence, KS., (80 FR 26496). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D and E airspace areas are published in Paragraph 5000 and 6002, respectively, of FAA Order 7400.9Y, dated August 6, 2014, and effective September 15, 2014, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.9Y, airspace Designations and Reporting Points, dated August 6, 2014, and effective September 15, 2014. FAA Order 7400.9Y is publicly available as listed in the **ADDRESSES** section of this final rule. FAA Order 7400.9Y lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends Title 14, Code of Federal Regulations (14 CFR), Part 71 by removing Class D airspace and the associated Class E surface area airspace at Independence Municipal Airport, Independence, KS, as the air traffic control tower has closed and controlled airspace is no longer needed.

Class D and E airspace areas are published in Paragraph 5000 and 6002, respectively, of FAA Order 7400.9Y, dated August 6, 2014, and effective September 15, 2014, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E. ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Y, Airspace Designations and Reporting Points, dated August 6, 2014, and effective September 15, 2014, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ACE KS D Independence, KS [Removed]

Paragraph 6002 Class E Airspace Designated as Surface Areas

* * * * *

ACE KS E2 Independence, KS [Removed]

Issued in Fort Worth, TX, on July 10, 2015.

Robert W. Beck,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2015–17878 Filed 7–21–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2014–1067; Airspace Docket No. 14–ANM–15]

Establishment and Amendment of Class E Airspace; Bremerton, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies and establishes Class E airspace at Bremerton National Airport, Bremerton, WA, to accommodate new Standard Instrument Approach Procedures (SIAPs) at Bremerton National airport due to the decommissioning of the Kitsap non-directional radio beacon (NDB). The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, October 15, 2015. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Y, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/airtraffic/publications/*. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15. For further information, you can contact the Airspace Policy and ATC Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 29591; telephone: 202–267–8783.

FOR FURTHER INFORMATION CONTACT: Steve Haga, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4563.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Bremerton National Airport, Bremerton, WA.

History

On May 8, 2015, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class E airspace extending upward from 700 feet above the surface and modify Class E surface area airspace at Bremerton National Airport, Bremerton, WA (80 FR 26497). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Subsequent to publication, the FAA found a typographical error in the Proposal section for the Class E surface area airspace regarding the length of extension to the southwest, and corrects it from 7 miles to 6.1 miles. Also, the geographic latitude coordinate of the airport for the Class E airspace extending upward from 700 feet above the surface is corrected from lat. 47°29′34″ to lat. 47°29′25″.

Class E airspace designations are published in paragraph 6002 and 6005, respectively, of FAA Order 7400.9Y, dated August 6, 2014, and effective September 15, 2014, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.9Y, airspace Designations and Reporting Points, dated August 6, 2014, and effective September 15, 2014. FAA Order 7400.9Y is publicly available as listed in the **ADDRESSES** section of this final rule. FAA Order 7400.9Y lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 modifies Class E surface area airspace and establishes Class E airspace extending upward from 700 feet above the surface at Bremerton National Airport, Bremerton, WA. Class E surface area airspace is adjusted to be defined from the Bremerton National Airport reference point versus the decommissioned Kitsap NDB, with segments extending from the 4.1-mile radius of the airport to 6.1 miles southwest, and 6.1 miles northeast of the airport. Class E airspace extending upward from 700 feet above the surface would be established extending from the 6.1-mile radius of the airport to 7.6 miles northeast of the airport, and 8.1 miles southwest of the airport. This action enhances the safety and management of controlled airspace within the NAS.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Y, Airspace Designations and Reporting Points, dated August 6, 2014, and effective September 15, 2014, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas

* * * * *

ANM WA E2 Bremerton, WA [Modified]

Bremerton National Airport, WA
(Lat. 47°29′25″ N., long. 122°45′53″ W.)

That airspace within a 4.1-mile radius of Bremerton National Airport, and within 2 miles each side of the 33° bearing from the airport extending from the 4.1-mile radius to 6.1 miles northeast of the airport, and within 2 miles each side of the 213° bearing from the airport extending from the 4.1-mile radius to 6.1 miles southwest of the airport.

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

* * * * *

ANM WA E5 Bremerton, WA [New]

Bremerton National Airport, WA
(Lat. 47°29′25″ N., long. 122°45′53″ W.)

That airspace extending upward from 700 feet above the surface within 2 miles each side of the 33° bearing from Bremerton National Airport extending from 6.1-miles to 7.6 miles northeast of the airport, and within 2 miles each side of the 213° bearing from the airport extending from the 6.1-mile radius of the airport to 8.1 miles southwest of the airport.

Issued in Seattle, Washington, on July 9, 2015.

Christopher Ramirez,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2015–17880 Filed 7–21–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 734, 736, 740, 742, 746, 748, 750, 758, 772, and 774

[Docket No. 150416374–5374–01]

RIN 0694–AG60

Cuba: Implementing Rescission of State Sponsor of Terrorism Designation

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) to implement the rescission of Cuba's designation as a State Sponsor of Terrorism. Specifically, this rule removes anti-terrorism (AT) license requirements from Cuba and eliminates references to Cuba as a State Sponsor of Terrorism, but maintains preexisting license requirements for all items subject to the EAR unless authorized by a license exception. This rule also removes Cuba from Country Group E:1 (terrorist supporting countries), which makes Cuba eligible for a general 25 percent *de minimis* level and portions of four license exceptions. The Secretary of State rescinded the designation of Cuba as a State Sponsor of Terrorism on May 29, 2015.

DATES: This rule is effective July 22, 2015.

FOR FURTHER INFORMATION CONTACT: Foreign Policy Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Phone: (202) 482–4252.

SUPPLEMENTARY INFORMATION:

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I. Background

The United States maintains a comprehensive embargo on trade with Cuba. Pursuant to that embargo, all items that are subject to the Export Administration Regulations (EAR) require a license for export or reexport to Cuba unless authorized by a license exception. The Bureau of Industry and Security (BIS) administers export and reexport restrictions on Cuba consistent with the goals of that embargo and with relevant law. Accordingly, BIS may issue specific or general authorizations in the form of licenses or license exceptions for transactions that support the goals of United States policy while the embargo remains in effect.

On December 17, 2014, the President announced that the United States is taking steps to chart a new course in bilateral relations with Cuba and to further engage and empower the Cuban people. As one of these steps, the President directed the Secretary of State to review Cuba's designation as a State Sponsor of Terrorism and provide a report to the President within six months. Cuba was designated as a State Sponsor of Terrorism in 1982. Pursuant to Sections 6(a) and 6(j) of the Export Administration Act of 1979, as amended (EAA), State Sponsors of Terrorism are subject to anti-terrorism (AT) controls and certain other restrictions in the EAR. Once designated, a country remains a State Sponsor of Terrorism until its designation is rescinded in accordance with the relevant statutes (Section 6(j) of the EAA; Section 40 of the Arms Export Control Act of 1976, as amended; and Section 620A of the Foreign Assistance Act of 1961, as amended).

There are two possible paths to rescission of a State Sponsor of Terrorism designation under the relevant statutes. The first requires the President to submit a report to Congress before the proposed rescission would take effect certifying that (1) there has been a fundamental change in the leadership and policies of the government of the country concerned, (2) the government is not supporting acts of international terrorism, and (3) the government has provided assurances that it will not support acts of international terrorism in the future. The second path requires that the President submit a report to Congress, at least 45 days before the proposed rescission would take effect, justifying the rescission and certifying the subject government has not provided any support for international terrorism for the preceding six-month period and has given assurances that it will not support acts of international terrorism in the future. The rescission of Cuba's designation was done consistent with the second path.

On April 8, 2015, the Secretary of State completed the review requested by the President and submitted his analysis to the President recommending that Cuba should no longer be designated as a State Sponsors of Terrorism. On April 14, 2015, the President submitted to Congress the statutorily required report indicating the Administration's intent to rescind Cuba's State Sponsor of Terrorism designation, including the certification that Cuba has not provided any support for international terrorism during the previous six months; and that Cuba has provided assurances that it will not support acts of international terrorism in the future. The Secretary of State then made the final decision to rescind Cuba's designation as a State Sponsor of Terrorism, which was effective on May 29, 2015. Accordingly, this rule removes references to Cuba as a State Sponsor of Terrorism and removes anti-terrorism (AT) controls from Cuba.

However, Cuba is still subject to a comprehensive embargo and, as specified in § 746.2(a) of the EAR, a license is still required to export or reexport to Cuba any item subject to the EAR unless authorized by a license exception. Only those license exceptions listed in § 746.2(a) may be used to export or reexport to Cuba. These requirements of § 746.2(a) apply to all items subject to the EAR, including EAR99 items and items that are controlled on the Commerce Control List (CCL) only for AT reasons.

II. Removal of Anti-Terrorism Controls and Text Associating Cuba With Terrorism

This rule removes:

- The reference to ''counter-terrorism'' from the licensing policy that applies to certain exports intended to provide support for the Cuban people that appears in § 746.2(b)(4)(i) (which will be redesignated as § 746.2(b)(3)(i));
- § 746.2(c), which identifies Cuba as a country whose government has repeatedly provided support for acts of international terrorism;
- the references to ''terrorism'' and ''state sponsors of terrorism'' from § 746.2(e), which describes the license requirements regarding Cuba of the U.S. Department of the Treasury, Office of Foreign Assets Control and the U.S. Department of State; and
- the word ''Cuba'' from the statements of anti-terrorism license requirements in Export Control Classification Numbers 1C350, 1C355, 1C395, 2A994, 2D994 and 2E994.

This rule also removes Cuba from the following provisions, which list countries that have been designated as State Sponsors of Terrorism or that have repeatedly supported acts of international terrorism: § 742.1(d); Supplement No. 2 to part 742,

paragraphs (a) and (b)(1); § 750.4(b)(6)(i); and § 772.1, definition of ''countries supporting international terrorism.''

Finally, this rule removes Cuba from Country Group E:1—Terrorist Supporting Countries—in Supplement No. 1 to Part 740—Country Groups. However, Cuba remains in Country Group E:2—Unilateral embargo. Cuba also remains in Country Groups D:2, D:3, and D:5. Because country groups are used to specify the countries that are subject to certain provisions of the EAR, particularly license exceptions, and to impose certain restrictions, removal of Cuba from Country Group E:1 can have effects elsewhere in the EAR as will be discussed below.

III. Jurisdiction—Items That Are Subject to the EAR

A. Items With More Than de minimis Controlled U.S. Origin Content

The EAR apply to items that contain more than a *de minimis* amount of controlled U.S.-origin content including foreign-made items located outside the United States. For most items, the *de minimis* level is 10 percent if the destination of the foreign-made item is in Country Group E:1 and 25 percent if the destination is elsewhere. The removal of Cuba from Country Group E:1 raises the *de minimis* level to 25 percent for most items destined for Cuba. Additionally, since Cuba is no longer in Country Group E:1, the 25 percent *de minimis* level now applies to certain foreign-made encryption items destined for Cuba that meet the criteria specified in § 734.4(b)(1)(iii) of the EAR.

With the general increase in the *de minimis* level to 25 percent, paragraph (b)(3) of § 746.2, which described the circumstances under which foreign made items containing an insubstantial proportion of U.S. origin content (*i.e.*, not exceeding 20 percent) would generally be considered favorably, is no longer needed, so this rule removes that paragraph.

Foreign-made items destined for Cuba that incorporate U.S.-origin 9x515 or ''600 series'' .y content continue to be subject to the EAR regardless of the level of U.S.-origin content, *i.e.*, there is no *de minimis* for these items when destined for Cuba. To maintain this exclusion with respect to Cuba, this rule adds Country Group E:2 to the list of destinations (Country Group E:1 and the People's Republic of China) subject to that exclusion. Since 9x515 and ''600 series'' .y items are ''specially designed'' items transferred from the United States Munitions List to the CCL, this *de minimis* exclusion is still warranted for countries subject to unilateral embargo. Accordingly, BIS is amending § 734.4(a)(6)(ii) to include Country Group E:2.

B. Items That Are the Direct Product of U.S.-Origin National Security Technology and Software

The EAR apply to foreign-made national security items that are the direct product of U.S.-origin national security technology and software. Such items are subject to the EAR (and require a license) if destined to a country in Country Group D:1 or E:1. This rule retains Cuba as one of the destinations that is subject to this requirement by adding Country Group E:2 to § 736.2(b)(3).

IV. Provisions Impacted by Cuba's Removal From County Group E:1

The provisions of the four license exceptions described below contain restrictions that apply to countries in Country Group E:1 or to nationals of those countries. This section describes the restrictions that will no longer apply to Cuba or Cuban nationals as a result of Cuba's removal from Country Group E:1. This rule makes no change to the text of the four license exceptions because the removal of the restrictions results from the removal of Cuba from Country Group E:1 and no changes to the text of the license exceptions are needed.

License Exception Servicing and Replacement of Parts and Equipment (RPL)

The removal of Cuba from Country Group E:1 implicates only paragraph (a) of License Exception Servicing and Replacement of Parts and Equipment (RPL) in § 740.10 because only paragraph (a), which authorizes export and reexport of one-for-one replacement parts for items previously lawfully exported, is authorized for Cuba in § 746.2 of the EAR. Since Cuba is no longer in Country Group E:1, the following exclusions to License Exception RPL, paragraph (a) no longer apply to Cuba: paragraph (a)(3)(iv), which excludes parts, components, accessories, or attachments to repair ''aircraft'' or commodities controlled for national security (NS) reasons; paragraph (a)(3)(v), which excludes parts, components, accessories, or attachments to repair explosives detection equipment classified under Export Control Classification Number (ECCN) 2A983 or related software classified under ECCN 2D983; and paragraph (a)(3)(vi) which excludes parts, components, accessories, or attachments to repair concealed object detection equipment classified under ECCN 2A984 or related software classified under ECCN 2D984.

License Exception Governments, International Organizations, International Inspections Under the Chemical Weapons Convention, and the International Space Station (GOV)

Since Cuba is no longer in Country Group E:1, the following restrictions in License Exception GOV (§ 740.11) no longer apply to Cuban nationals: Paragraph (a)(2)(iv), which restricts physical or computational access by Country Group E:1 nationals to certain computers for authorized international safeguard use in connection with activities of the International Atomic Energy Agency and the European Atomic Energy Community; paragraph (d)(4), which restricts physical or computational access by Country Group E:1 nationals to certain computers for authorized international inspection and verification use in connection with the activities of the Organization for the Prohibition of Chemical Weapons; and paragraph (e)(7)(i), which precludes export, reexport or transfer (in-country) to Country Group E:1 nationals of items used to support the International Space Station. Additionally, paragraph (e)(8)(iii), which precludes return of parts for the International Space Station to destinations in Country Group E:1, no longer applies to Cuba.

License Exception Baggage (BAG)

Since Cuba is no longer in Country Group E:1, § 740.14(f)(1), which authorizes certain exports and reexports of encryption commodities and software subject to Encryption Items (EI) controls on the CCL by United States citizens and permanent resident aliens to destinations other than Country Group E:1, and § 740.14(f)(2), which authorizes such exports and reexports by individuals other than nationals of a country in Country Group E:1, no longer apply to Cuba or Cuban nationals. Additionally, § 740.14(g), which authorizes certain exports and reexports of technology by U.S. persons, but excludes in paragraph (g)(4) exports and reexports of encryption technology controlled in ECCN 5E002 to destinations in Country Group E:1, no longer applies to Cuba.

License Exception Aircraft, Vessels and Spacecraft (AVS)

The removal of Cuba from Country Group E:1 implicates only paragraph (a) of License Exception Aircraft, Vessels and Spacecraft (AVS) in § 740.15 because only paragraph (a), which authorizes aircraft on temporary

sojourn, is authorized for Cuba in § 746.2 of the EAR. Since Cuba is no longer in Country Group E:1, Cuba is no longer subject to the following restrictions:

- Paragraph (a)(1)(i), which prohibits use of AVS for foreign registered aircraft that were transferred to a national of a country in Country Group E:1 while in the United States;
- Paragraph (a)(1)(ii), which prohibits use of AVS for foreign registered aircraft that are departing the United States for purpose of transfer to a national of a country in Country Group E:1;
- Paragraph (a)(2)(ii), which prohibits use of AVS for U.S. registered aircraft that are not operating under an Air Carrier Operating Certificate, Commercial Operating Certificate or Air Taxi Operating Certificate from using AVS for temporary sojourns to a country in Country Group E:1;
- Paragraph (a)(3)(iv), which prohibits principal maintenance in Country Group E:1 or right to control the principal place of maintenance by a national of a country in Country Group E:1;
- Paragraph (a)(3)(v), which prohibits location of spares in a destination in Country Group E:1;
- Paragraph (a)(3)(vi), which prohibits changing the place of registration to a destination in Country Group E:1;
- Paragraph (a)(3)(vii), which prohibits transfer of technology to a national of a country in Country Group E:1;
- Paragraph (a)(3)(viii), which prohibits aircraft bearing livery, colors or logos of a national of a country in Country Group E:1; and
- Paragraph (a)(3)(ix), which prohibits flying under a flight number issued to a national of a country in Country Group E:1.

V. Provisions Being Amended To Retain Existing Cuba-Related Requirements

Although Cuba is removed from Country Group E:1, Cuba is still subject to a comprehensive embargo and, as specified in § 746.2(a) of the EAR, a license is still required to export or reexport to Cuba any item subject to the EAR unless authorized by a license exception. This rule makes the changes described below to retain the applicability of certain provisions and license conditions to Cuba, consistent with the embargo, that would otherwise cease as a result of Cuba's removal from Country Group E:1. While Cuba was in Country Group E:1, a separate reference to Country Group E:2 would have had no effect on exports or reexports to Cuba. With the removal of Cuba from Country Group E:1, it is necessary to explicitly link these provisions and conditions to the embargo.

Written Assurance for License Exception Technology and Software Under Restriction (TSR)

Before an exporter or reexporter is able to use License Exception Technology and Software under Restriction (TSR) in § 740.6 of the EAR to export or reexport software or technology controlled for national security reasons, the exporter or reexporter must obtain a written assurance from the consignee that the software or technology transferred and its direct product will not be sent to destinations in Country Group D:1 or E:1 or released to nationals thereof. This rule retains that restriction with respect to Cuba by adding Country Group E:2 to those written assurance requirements. The need for a written assurance is appropriate for countries in Country Groups E:1 and E:2. However, until the removal of Cuba from Country Group E:1, listing both country groups would have been redundant.

Note that License Exception TSR does not authorize exports or reexports to Cuba because it is not specified in § 746.2(a)(1) of the EAR and because, by its terms, License Exception TSR is available only for destinations in Country Group B, which does not include Cuba.

Supplement No. 2 to Part 748—Unique Application and Submission Requirements

Supplement No. 2 to Part 748 of the EAR describes information required to be included in license applications for certain specific situations. Paragraph (i)(2)(x) requires that technology intended to accompany any shipment to destinations in Country Group D:1 or E:1 be described in the application. Paragraph (o)(3)(i) requires applicants for licenses to export or reexport national security controlled technology to obtain a written assurance against transfer to destinations in Country Groups D:1 or E:1. This rule adds Country Group E:2 to both paragraphs to continue both requirements with respect to Cuba.

Export Clearance Requirements

Part 758 of the EAR describes certain export clearance requirements. Section 758.1(b)(1) makes the $2,500 threshold below which most exports need not be filed in the Automated Export System (AES) inapplicable for exports to Country Group E:1 by requiring such filing for exports to Country Group E:1 regardless of value. This rule retains that requirement for exports to Cuba by adding Country Group E:2 to § 758.1(b)(1).

Section 758.2(b)(3) makes export to Country Group E:1 grounds for rejecting applications for post-departure filing in AES (*i.e.*, authorization to file after the exporting carrier departs the port of export). This rule retains export to Cuba as a ground for rejection by adding Country Group E:2 to § 758.2(b)(3).

License Condition General Order

Supplement No. 1 to Part 736 of the EAR contains certain general orders. This rule adds General Order No. 3, which was reserved, to continue all restrictions on transactions with Cuba or Cuban nationals, by reference to Country Group E:1, that are contained in licenses issued prior to July 22, 2015. Certain licenses issued by BIS contain conditions that restrict the export, reexport, or transfer (in-country) to State Sponsors of Terrorism and countries subject to unilateral embargo by reference to Country Group E:1. Many of those restrictions were intended to apply to Cuba, not only as a State Sponsor of Terrorism but also as a country subject to unilateral embargo. However, BIS did not always list both Country Groups E:1 and E:2 in license conditions because, at the time, doing so would have been redundant. This general order applies those conditions to Country Groups E:1 and E:2. Licensees who seek authorization for transactions that are affected by General Order No. 3, may submit license applications that refer to General Order No. 3 and explain the reason for the request in Block 24 of the application. All license applications involving Cuba are reviewed pursuant to the licensing policy in § 746.2(b) of the EAR.

ECCN 4A003

This rule adds a reference to Country Group E:2 to the note that immediately follows the control table in ECCN 4A003. That note states that except for destinations in Country Group E:1, no license is required for computers with an Adjusted Peak Performance not exceeding 8.0 weighted teraFLOPS. The addition of Country Group E:2 retains Cuba's status as a destination for which a license is required.

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August

7, 2014, 79 FR 46959 (August 11, 2014), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. This rule involves a collection of information approved under OMB control number 0694–0088—Simplified Network Application Processing+ System (SNAP+) and the Multipurpose Export License Application, which are the methods for submitting *all* license applications, commodity classification requests and similar requests to BIS. The estimated annual total burden of all of those submissions is 31,833 hours. BIS believes that this rule will have no material impact on that burden. To the extent that it has any impact, this rule is likely to reduce the burden for two reasons. First, this rule might reduce the burden because it makes some transactions, primarily temporary sojourns in Cuba of general aviation aircraft, which would otherwise require a license, eligible for a license exception. Second, because this rule raises the percentage of U.S.-origin content that a foreign-made item must have before its export from abroad to Cuba becomes subject to the EAR, it reduces the number of foreign-made items that will need a license from BIS to be exported from abroad to Cuba.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget, by email at *jseehra@omb.eop.gov* or by fax to (202) 395–7285 and to William Arvin at *william.arvin@bis.doc.gov.*

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

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States (*See* 5 U.S.C. 553(a)(1)). This rule is a part of the implementation of the rescission of Cuba's designation as a State Sponsor of Terrorism, which became effective on May 29, 2015. Delay in implementing this rule to obtain public comment would undermine the foreign policy objectives that the rule is intended to implement. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553, or by any other law, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects

15 CFR Part 734

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

15 CFR Parts 736 and 772

Exports.

15 CFR Parts 740, 748, 750, and 758

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

15 CFR Part 742

Exports, Terrorism.

15 CFR Parts 746 and 774

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 734, 736, 740, 742, 746, 748, 750, 758, 772, and 774 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 734—[AMENDED]

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

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013); Notice of August 7, 2014, 79 FR 46959 (August 11, 2014); Notice of November 7, 2014, 79 FR 67035 (November 12, 2014).

■ 2. Section 734.4 is amended by revising paragraph (a)(6)(ii) to read as follows:

§ 734.4 *De minimis* U.S. content.

(a) * * *

(6) * * *

(ii) There is no *de minimis* level for foreign-made items that incorporate U.S.-origin 9x515 or ''600 series'' .y items when destined for a country listed in Country Group E:1 or E:2 of Supplement No. 1 to part 740 of the EAR or for the People's Republic of China (PRC).

* * * * *

PART 736—[AMENDED]

■ 3. The authority citation for 15 CFR part 736 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 2151 note; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014); Notice of November 7, 2014, 79 FR 67035 (November 12, 2014); Notice of May 6, 2015, 80 FR 26815 (May 8, 2015).

(6) * * *

■ 4. Section 736.2 is amended by revising paragraphs (b)(3)(i) and (iii) to read as follows:

§ 736.2 General prohibitions and determination of applicability.

* * * * *

(b) * * *

(3) *General Prohibition Three—Reexport and export from abroad of the foreign-produced direct product of U.S. technology and software (Foreign-Produced Direct Product Reexports)*—(i) *Country scope of prohibition.* You may not, without a license or license exception, reexport any item subject to the scope of this General Prohibition

Three to a destination in Country Group D:1, E:1, or E:2 (See Supplement No.1 to part 740 of the EAR). Additionally, you may not, without a license or license exception, reexport or export from abroad any ECCN 0A919 commodities subject to the scope of this General Prohibition Three to a destination in Country Group D:1, D:3, D:4, D:5, E:1, or E:2.

* * * * *

(iii) *Country scope of prohibition for 9x515 or ''600 series'' items.* You may not, except as provided in paragraphs (b)(3)(v) or (vi) of this section, reexport or export from abroad without a license any ''600 series'' item subject to the scope of this General Prohibition Three to a destination in Country Groups D:1, D:3, D:4, D:5, E:1, or E:2 (see Supplement No. 1 to part 740 of the EAR). You may not, except as provided in paragraphs (b)(3)(v) or (vi) of this section, reexport or export from abroad without a license any 9x515 item subject to the scope of this General Prohibition Three to a destination in Country Groups D:5, E:1, or E:2 (see Supplement No. 1 to part 740 of the EAR).

* * * * *

■ 5. Supplement No. 1 to part 736 is amended by revising the heading and paragraph (c) to read as follows:

Supplement No. 1 to Part 736—General Orders

* * * * *

(c) General Order No. 3:

General Order No. 3 of July 22, 2015. Certain licenses issued by BIS prior to July 22, 2015 contain conditions that restrict the export, reexport, or transfer (in-country) to or within Country Group E:1 as specified in Supplement No. 1 to part 740 of the EAR. At the time those license were issued, Cuba was in Country Group E:1. Many of those restrictions were intended to apply to Cuba, not only as a State Sponsor of Terrorism but also as a country subject to unilateral embargo. However, BIS did not always list both Country Groups E:1 and E:2 in license conditions because, at the time, doing so would have been redundant. However, with the rescission of Cuba's designation as a State Sponsor of Terrorism and resultant removal from Country Group E:1, continuing those conditions with respect to Cuba is consistent with the embargo. Accordingly, all conditions that apply to Country Group E:1 on licenses issued prior to July 22, 2015 that are in effect on that date, are revised to apply to Country Groups E:1 and E:2 as specified in Supplement No. 1 to part 740 of the EAR. Licensees who seek authorization for transactions that are affected by this General Order No. 3 may submit license applications that refer to General Order No. 3 and explain the reason for the request in Block 24 of the application. All license applications involving Cuba are reviewed pursuant to the licensing policy in § 746.2(b) of the EAR. The request should provide any available information in support of the argument that the transaction would be consistent with the licensing policy in § 746.2(b) of the EAR.

* * * * *

PART 740—[AMENDED]

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

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

§ 740.6 [Amended]

■ 7. Section 740.6 is amended by removing the phrase ''D:1 or E:1'' wherever it appears in paragraphs (a)(1) and (2) and adding in its place the phrase ''D:1, E:1, or E:2''.

Supplement No. 1 to Part 740 [Amended]

■ 8. Supplement No. 1 to part 740 is amended by removing the ''X'' from the row for Cuba in the E:1 column of the ''Country Group E'' table.

PART 742—[AMENDED]

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

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014); Notice of November 7, 2014, 79 FR 67035 (November 12, 2014).

§ 742.1 [Amended]

■ 10. Section 742.1 is amended by removing the word ''Cuba'' and the comma that follows it from each place that it appears in paragraph (d).

Supplement No. 2 to Part 742 [Amended]

■ 11. Supplement No. 2 to part 742 is amended by removing the word ''Cuba'' and the comma that follows it from paragraphs (a) and (b)(1).

PART 746—[AMENDED]

■ 12. The authority citation for 15 CFR part 746 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 287c; Sec 1503, Pub. L. 108–11, 117 Stat. 559; 22 U.S.C. 6004; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p 168; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Presidential Determination 2007–7 of December 7, 2006, 72 FR 1899 (January 16, 2007); Notice of August 7, 2014, 79 FR 46959 (August 11, 2014); Notice of May 6, 2015, 80 FR 26815 (May 8, 2015).

■ 13. Section 746.2 is amended by:

■ a. Removing paragraph (b)(3);

■ b. Redesignating paragraphs (b)(4), (5), and (6) as paragraphs (b)(3), (4), and (5), respectively;

■ c. Removing the phrase ''or counter-terrorism'' from the first sentence of newly designated paragraph (b)(3)(i);

■ d. Removing paragraph (c);

■ e. Redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively; and

■ f. Revising newly designated paragraph (d).

The revision to read as follows:

§ 746.2 Cuba.

* * * * *

(d) *Related controls.* OFAC maintains controls on the activities of persons subject to U.S. jurisdiction, wherever located, involving transactions with Cuba or any Cuban national, as provided in 31 CFR part 515. Exporters and reexporters should consult with OFAC for further guidance on its related controls.

PART 748—[AMENDED]

■ 14. The authority citation for 15 CFR part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

Supplement No. 2 to Part 748 [Amended]

■ 15. Supplement No. 2 to part 748 is amended by removing the phrase ''Country Group D:1 or E:1'' wherever it appears in paragraphs (i)(2)(x) and (o)(3)(i) and adding in its place the phrase ''Country Group D:1, E:1, or E:2''.

PART 750—[AMENDED]

■ 16. The authority citation for 15 CFR part 750 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* Sec 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013); Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

§ 750.4 [Amended]

■ 17. Section 750.4 is amended by removing the word ''Cuba'' and the comma immediately following it from paragraph (b)(6)(i).

PART 758—[AMENDED]

■ 18. The authority citation for 15 CFR part 758 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

§ 758.1 [Amended]

■ 19. Section 758.1 is amended by adding the phrase ''or E:2'' immediately following the phrase ''Country Group E:1'' in paragraph (b)(1).

§ 758.2 [Amended]

■ 20. Section 758.2 is amended by adding the phrase ''or E:2'' immediately following the phrase ''Country Group E:1'' in paragraph (b)(3).

PART 772—[AMENDED]

■ 21. The authority citation for 15 CFR part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

§ 772.1 [Amended]

■ 22. Section 772.1 is amended by removing the word ''Cuba'' and the comma that follows it from the definition of ''Countries supporting international terrorism.''

PART 774—[AMENDED]

■ 23. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

■ 24. In supplement No. 1 to part 774 (The Commerce Control List), Export Control Classification Number (ECCN) 1C350 is amended by revising second paragraph that follows the License Requirements table to read as follows:

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

* * * * *

1C350 Chemicals that may be used as precursors for toxic chemical agents (see List of Items Controlled).

License Requirements

* * * * *

AT applies to entire entry. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for AT reasons in 1C350. A license is required, for AT reasons, to export or reexport items controlled by 1C350 to a country in Country Group E:1 of Supplement No. 1 to part 740 of the EAR. (See part 742 of the EAR for additional information on the AT controls that apply to Iran, North Korea, Sudan, and Syria. See part 746 of the EAR for additional information on sanctions that apply to Iran, North Korea, and Syria.)

* * * * *

■ 25. In supplement No. 1 to part 774, ECCN 1C355 is amended by revising the second ''Control(s)'' paragraph to read as follows:

1C355 Chemical Weapons Convention (CWC) Schedule 2 and 3 chemicals and families of chemicals not controlled by ECCN 1C350 or ''subject to the ITAR'' (see 22 CFR parts 120 through 130) (see List of Items Controlled).

License Requirements

* * * * *

Control(s): * * *

AT applies to entire entry. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for AT reasons in 1C350. A license is required, for AT reasons, to export or reexport items controlled by 1C350 to a country in Country Group E:1 of Supplement No. 1 to part 740 of the EAR. (See part 742 of the EAR for additional information on the AT controls that apply to Iran, North Korea, Sudan, and Syria. See part 746 of the EAR for additional information on sanctions that apply to Iran, North Korea, and Syria.)

* * * * *

■ 26. In supplement No. 1 to part 774, ECCN 1C395 is amended by revising the third ''Control(s)'' paragraph to read as follows:

1C395 Mixtures and Medical, Analytical, Diagnostic, and Food Testing Kits Not Controlled by ECCN 1C350, as follows (See List of Items Controlled).

License Requirements

* * * * *

Control(s): * * *

AT applies to entire entry. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for AT reasons in 1C395. A license is required, for AT reasons, to export or reexport items controlled by 1C395 to a country in Country Group E:1 of Supplement No. 1 to part 740 of the EAR. (See part 742 of the EAR for additional information on the AT controls that apply to Iran, North Korea, Sudan, and Syria. See part 746 of the EAR for additional information on sanctions that apply to Iran, North Korea, and Syria.)

* * * * *

■ 27. In supplement No. 1 to part 774, ECCN 2A994 is amended by revising the ''Control(s)'' paragraph to read as follows:

2A994 Portable electric generators and ''specially designed'' ''parts'' and ''components.''

* * * * *

Control(s): AT applies to entire entry. A license is required for items controlled by this entry to Iran and North Korea. The Commerce Country Chart is not designed to determine licensing requirements for this entry. See part 746 of the EAR for additional information on Iran. See § 742.19 of the EAR for additional information on North Korea.

* * * * *

■ 28. In supplement No. 1 to part 774, ECCN 2D994 is amended by revising the ''Control(s)'' paragraph to read as follows:

2D994 ''Software'' ''specially designed'' for the ''development'' or ''production'' of portable electric generators controlled by 2A994.

License Requirements

* * * * *

Control(s): AT applies to entire entry. A license is required for items controlled by this entry to Iran and North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine licensing requirements for this entry. See part 746 of the EAR for additional information on Iran. See § 742.19 of the EAR for additional information on North Korea.

* * * * *

■ 29. In supplement No. 1 to part 774, ECCN 2E994 is amended by revising the ''Control(s)'' paragraph to read as follows:

2E994 ''Technology'' for the ''use'' of portable electric generators controlled by 2A994.

License Requirements

* * * * *

Control(s): AT applies to entire entry. A license is required for items controlled by this entry to Iran and North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine licensing requirements for this entry. See part 746 of the EAR for additional information on Iran. See § 742.19 of the EAR for additional information on North Korea.

* * * * *

ECCN 4A001—[Amended]

■ 30. In supplement No. 1 to part 774, ECCN 4A003 is amended by adding the phrase ''or E:2'' immediately following the phrase ''Country Group E:1'' in the note that immediately follows the License Requirements table.

Dated: July 17, 2015.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2015–17981 Filed 7–21–15; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1020

[Docket No. FDA–2015–N–0828]

Performance Standards for Ionizing Radiation Emitting Products; Fluoroscopic Equipment; Correction; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA or we) is confirming the effective date of August 26, 2015, for the direct final rule that appeared in the **Federal Register** of April 13, 2015. The direct final rule amends a Federal performance standard for ionizing radiation to correct a drafting error regarding fluoroscopic equipment measurement. We are taking this action to ensure clarity and improve the accuracy of the regulations. This document confirms the effective date of the direct final rule.

DATES: Effective date of the final rule published in the **Federal Register** of April 13, 2015 (80 FR 19530), confirmed: August 26, 2015.

FOR FURTHER INFORMATION CONTACT: Scott Gonzalez, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4641, Silver Spring, MD 20993–0002, 301–796–5889.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 13, 2015 (80 FR 19530), FDA solicited comments concerning the direct final rule for a 75-day period ending June 29, 2015. We stated that the effective date of the direct final rule would be on August 26, 2015, 30 days after the end of the comment period, unless FDA received any significant adverse comment during the comment period. FDA did not receive any significant adverse comments.

Authority: 21 U.S.C. 351, 352, 360e–360j, 360hh–360ss, 371, 381. Accordingly, the amendment issued thereby is effective.

Dated: July 16, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–17930 Filed 7–21–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 17, 39, 48, 49, 51, 52, 53, 59, 61, 62, and 64

RIN 2900–AP22

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Updating References

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations with updated citations and references to Office of Management and Budget (OMB) authorities for Federal grant programs. OMB has issued final guidance, located in Title 2 of the Code of Federal Regulations (CFR), which streamlines and supersedes requirements previously found in various OMB Circulars. VA has adopted OMB's guidance, and this rule replaces the obsolete OMB references in VA's regulations.

DATES: This final rule is effective July 22, 2015.

FOR FURTHER INFORMATION CONTACT: Brian McCarthy, Office of Regulatory and Administrative Affairs (10B4), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Ave. NW., Washington, DC 20420, (202) 461–6345. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) is streamlining the Federal government's guidance on Administrative Requirements, Cost Principles, and Audit Requirements for Federal awards. In a document published in the **Federal Register** on December 26, 2013 (78 FR 78590), OMB adopted final guidance, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), that supersedes and streamlines requirements from OMB Circulars A–21, A–87, A–110, and A–122 (which have been placed in OMB guidances); Circulars A–89, A–102, and A–133; and the guidance in Circular A–50 on Single Audit Act follow-up. The final guidance is located in title 2 of the Code of Federal Regulations (CFR).

On December 19, 2014, OMB published a joint interim final rule in the **Federal Register** (79 FR 75871). OMB made technical corrections to the Uniform Guidance, and Federal awarding agencies, including VA, implemented the guidance in their respective chapters of title 2 of the CFR. VA amended title 2 of the CFR to add part 802. Section 802.101 of title 2 CFR now provides, ''The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards set forth in 2 CFR part 200 shall apply to the Department of Veterans Affairs.'' VA also removed parts 41 and 43 from title 38 CFR. Those parts codified OMB Circulars that were superseded by the Uniform Guidance.

Because of these changes, existing references in VA's regulations to the superseded OMB guidance documents and to parts 41 and 43 are obsolete. Accordingly, we are amending various VA regulations located in 38 CFR parts 17, 39, 48, 51, 52, 53, 59, 61, 62, and 64 to replace the obsolete references with references to the current authority. For the same reason, we are removing part 49 of title 38 CFR, which codified OMB Circular A–110, and amending VA's regulations referencing part 49 to reference 2 CFR part 200 instead.

Administrative Procedure Act

The Secretary of Veterans Affairs finds there is good cause under the provisions of 5 U.S.C. 553(b)(B) and (d)(3) to publish this rule without prior

opportunity for public comment and with an immediate effective date. This rule does not amend the substantive content of the regulations cited. We are merely making technical revisions to replace obsolete OMB references and citations in existing VA regulations because 2 CFR part 200, which VA is adopting, supersedes OMB's previous guidance. We are also deleting existing references to parts 41 and 43 of 38 CFR, which were removed from 38 CFR by the interim final rule published on December 19, 2014 (79 FR 75871), and removing part 49 of title 38 CFR and existing references to part 49, which codified OMB guidance that was superseded by the Uniform Guidance. Because these changes are merely technical, advance notice and public comment are unnecessary and we find good cause to make these necessary changes effective immediately upon publication.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by OMB, unless OMB waives such review, as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at *http://www.va.gov/orpm/,* by following the link for ''VA Regulations Published From FY 2004 Through Fiscal Year to Date.''

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612) because the amendments are merely technical in nature. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the final regulatory flexibility analysis requirements of section 604.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.005, Grants to States for Construction of State Home Facilities; 64.024, VA Homeless Providers Grant and Per Diem Program; 64.026, Veterans State Adult Day Health Care; 64.033, VA Supportive Services for Veteran Families Program; 64.034, VA Assistance to United States Paralympic Integrated Adaptive Sports Program; 64.037, VA U.S. Paralympics Monthly Assistance Allowance Program; 64.038, Grants for the Rural Veterans Coordination Pilot; 64.100, Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces; 64.201, National Cemeteries; and 64.203, State Cemetery Grants.

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. Robert L. Nabors II, Chief of Staff, Department of Veterans Affairs, approved this document on July 7, 2015, for publication.

List of Subjects

38 CFR Part 17

Administrative practice and procedure, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Nursing homes, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

38 CFR Part 39

Cemeteries, Grant programs—veterans, Veterans.

38 CFR Part 48

Administrative practice and procedure, Drug abuse, Grant programs, Loan programs, Reporting and recordkeeping requirements.

38 CFR Part 49

Uniform Administrative Requirements for Grants and Agreements.

38 CFR Parts 51 and 52

Administrative practice and procedure, Day care, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Nursing homes, Reporting and recordkeeping requirements, Veterans.

38 CFR Part 53

Administrative practice and procedure, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Nursing homes, Reporting and recordkeeping requirements, Scholarships and fellowships, Veterans.

38 CFR Part 59

Administrative practice and procedure, Day care, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Nursing homes, Reporting and recordkeeping requirements, Veterans.

38 CFR Part 61

Administrative practice and procedure, Alcohol abuse, Alcoholism, Drug abuse, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Homeless, Mental

health programs, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

38 CFR Part 62

Administrative practice and procedure, Claims, Grant programs—health, Grant programs—social services, Grant programs—transportation, Grant programs—veterans, Grants—housing and community development, Heath care, Homeless, Housing, Housing assistance payments, Indian—lands, Individuals with disabilities, Low and moderate income housing, Manpower training program, Medicare, Medicaid, Public assistance programs, Public housing, Relocation assistance, Rent subsidies, Reporting and recordkeeping requirements, Rural areas, Social security, Supplemental security income (SSI), Travel and transportation expenses, Unemployment compensation, Veterans.

38 CFR Part 64

Administrative practice and procedure, Disability benefits, Claims, Grant programs—health, Grant programs—veterans, Health care, Health records, Reporting and recordkeeping requirements, Veterans.

Dated: July 13, 2015.

William F. Russo,

Acting Director, Office of Regulation Policy & Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons set forth in the preamble, VA amends 38 CFR parts 17, 39, 48, 49, 51, 52, 53, 59, 61, 62, and 64 as follows:

PART 17—MEDICAL

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

Authority: 38 U.S.C. 501, and as noted in specific sections.

§ 17.200 [Amended]

■ 2. Amend § 17.200 by removing ''Single Audit Act of 1984 (part 41 of this chapter).'' and adding in its place ''Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards under 2 CFR part 200.''.

■ 3. Amend § 17.715 by revising paragraph (b) to read as follows:

§ 17.715 Grant Agreements.

* * * * *

(b) *Additional requirements.* Grantees and identified subrecipients are subject to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards under 2 CFR part 200, and subject to 2 CFR parts 25 and 170, if applicable.

* * * * *

PART 39—AID FOR THE ESTABLISHMENT, EXPANSION, AND IMPROVEMENT, OR OPERATION AND MAINTENANCE OF VETERANS CEMETERIES

Subpart B—Establishment, Expansion, and Improvement Projects

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

Authority: 25 U.S.C. 450b(1); 38 U.S.C. 101, 501, 2408, 2411, 3765.

§ 39.31 [Amended]

■ 5. Amend § 39.31(c)(6) by removing ''parts 180 and 801 and 38 CFR part 43'' and adding in its place ''parts 180, 200, and 801''.

§ 39.32 [Amended]

■ 6. Amend § 39.32 introductory text by removing ''the provisions of Office of Management and Budget (OMB) Circular No. A–87.'' and removing ''OMB Circular No. A–102, Revised.'' and adding in each place ''2 CFR part 200.''.

Subpart C—Operation and Maintenance Projects

§ 39.81 [Amended]

■ 7. Amend § 39.81(d)(2) by removing ''parts 180 and 801 and 38 CFR part 43'' and adding in its place ''parts 180, 200, and 801''.

§ 39.82 [Amended]

■ 8. Amend § 39.82:

■ a. In paragraph (a)(2), by removing ''the provisions of OMB Circular No. A–87'' and adding in its place ''2 CFR part 200''.

■ b. In paragraph (a)(3), by removing ''OMB Circular No. A–102, Revised.'' and adding in its place ''2 CFR part 200.''.

Subpart D—Grant Recipient Responsibilities, Inspections, and Reports Following Project Completion

§ 39.122 [Amended]

■ 9. Amend § 39.122(a) by removing ''(see Part 41 of this chapter)''.

PART 48—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart F—Definitions

■ 10. The authority citation for part 48 continues to read as follows:

Authority: 41 U.S.C. 701, *et seq.;* 38 U.S.C 501.

§ 48.605 [Amended]

■ 11. Amend § 48.605(a)(2) by removing ''the Governmentwide rule 38 CFR part 43 that implements OMB Circular A–102 (for availability, see 5 CFR 1310.3) and specifies uniform administrative requirements.'' and adding in its place ''2 CFR part 200.''.

PART 49—[REMOVED]

■ 12. Under the authority of 38 U.S.C. 501, remove part 49.

PART 51—PER DIEM FOR NURSING HOME CARE OF VETERANS IN STATE HOMES

Subpart C—Per Diem Payments

■ 13. The authority citation for part 51 continues to read as follows:

Authority: 38 U.S.C. 101, 501, 1710, 1720, 1741–1743, and as stated in specific sections.

§ 51.43 [Amended]

■ 14. Amend § 51.43(e) by removing ''the Office of Management and Budget (OMB) Circular number A–87, dated May 4, 1995, ''Cost Principles for State, Local, and Indian Tribal Governments.'' '' and adding in its place ''2 CFR part 200.''.

PART 52—PER DIEM FOR ADULT DAY HEALTH CARE OF VETERANS IN STATE HOMES

Subpart C—Per Diem Payments

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

Authority: 38 U.S.C. 101, 501, 1741–1743, unless otherwise noted.

§ 52.40 [Amended]

■ 16. Amend § 52.40(b) by removing ''the Office of Management and Budget (OMB) Circular number A–87, dated May 4, 1995, ''Cost Principles for State, Local, and Indian Tribal Governments'' (OMB Circulars are available at the addresses in 5 CFR 1310.3).'' and adding in its place ''2 CFR part 200.''.

PART 53—PAYMENTS TO STATES FOR PROGRAMS TO PROMOTE THE HIRING AND RETENTION OF NURSES AT STATE VETERANS HOMES

■ 17. The authority citation for part 53 continues to read as follows:

Authority: 38 U.S.C. 101, 501, 1744.

§ 53.31 [Amended]

■ 18. Amend § 53.31(b) by removing ''Single Audit Act of 1984 (see 38 CFR

part 41)'' and adding in its place ''Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards under 2 CFR part 200''.

PART 59—GRANTS TO STATES FOR CONSTRUCTION OR ACQUISITION OF STATE HOMES

■ 19. The authority citation for part 59 continues to read as follows:

Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131–8137.

§ 59.124 [Amended]

■ 20. Amend § 59.124(a) by removing ''Single Audit Act of 1984 (see part 41 of this chapter)'' and adding in its place ''Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards under 2 CFR part 200''.

PART 61—VA HOMELESS PROVIDERS GRANT AND PER DIEM PROGRAM

■ 21. The authority citation for part 61 continues to read as follows:

Authority: 38 U.S.C. 501, 2001, 2002, 2011, 2012, 2061, 2064.

Subpart B—Capital Grants

§ 61.16 [Amended]

■ 22. Amend § 61.16(a) by removing ''OMB Circular A–122 as codified at 2 CFR part 230.'' and adding in its place ''the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards under 2 CFR part 200.''.

Subpart E—Technical Assistance Grants

■ 23. Amend § 61.50 by revising paragraph (b)(3)(i) to read as follows:

§ 61.50 Technical assistance grants-general.

* * * * *

(b) * * *

(3) * * *

(i) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards under 2 CFR part 200;

* * * * *

Subpart F—Awards, Monitoring, and Enforcement of Agreements

§ 61.61 [Amended]

■ 24. Amend § 61.61(a) by removing ''VA common grant rules at 38 CFR parts 43 and 49 and the OMB Circulars, including those cited in § 61.66.'' and adding in its place ''Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards under 2 CFR part 200.''.

■ 25. Revise § 61.66 to read as follows:

§ 61.66 Financial management.

(a) All recipients must comply with applicable requirements of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards under 2 CFR part 200.

(b) All entities receiving assistance under this part must use a financial management system that follows generally accepted accounting principles and meets the requirements set forth under 2 CFR part 200. All recipients must implement the requirements of 2 CFR part 200 when determining costs reimbursable under all awards issued under this part.

(Authority: 38 U.S.C. 501)

§ 61.67 [Amended]

■ 26. Amend § 61.67:

■ a. In paragraph (c) by removing ''38 CFR 49.32'' and adding in its place ''2 CFR part 200''.

■ b. In paragraph (f) by removing ''38 CFR 49.34'' and adding in its place ''2 CFR part 200''.

PART 62—SUPPORTIVE SERVICES FOR VETERANS FAMILIES PROGRAM

■ 27. The authority citation for part 62 continues to read as follows:

Authority: 38 U.S.C. 501, 2044, and as noted in specific sections.

■ 28. Amend § 62.70:

■ a. By revising paragraph (a).

■ b. In paragraph (b) by removing ''OMB Circular A–110, Subpart C, Section 21 (codified at 2 CFR 215.21) and 38 CFR 49.21.'' and adding in its place ''2 CFR part 200.''.

■ c. In paragraph (c) by removing ''OMB Circular A–122, Cost Principles for Non-Profit Organizations, codified at 2 CFR part 235.'' and adding in its place ''2 CFR part 200.''.

The revision reads as follows:

§ 62.70 Financial management and administrative costs.

(a) Grantees must comply with applicable requirements of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards under 2 CFR part 200.

* * * * *

PART 64—GRANTS FOR THE RURAL VETERANS COORDINATION PILOT (RVCP)

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

Authority: 38 U.S.C. 501, 523 *note.*

■ 30. Amend § 64.14 by revising paragraph (b)(2) to read as follows:

§ 64.14 RVCP grant agreement.

* * * * *

(b) * * *

(2) Abide by the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards under 2 CFR part 200, and 2 CFR parts 25 and 170, if applicable.

* * * * *

[FR Doc. 2015–17416 Filed 7–21–15; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2014–0354; FRL–9930–84]

Sedaxane; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of sedaxane as a seed treatment for cotton, undelinted seed; cotton, gin byproducts; and beet, sugar. Syngenta Crop Protection, LLC requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective July 22, 2015. Objections and requests for hearings must be received on or before September 21, 2015, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2014–0354, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Registration Division (7505P), Office of Pesticide Programs,

Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl*.

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2014–0354 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before September 21, 2015. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2014–0354, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html*.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets*.

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of August 1, 2014 (79 FR 44729) (FRL–9911–67), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 4F8263) by Syngenta Crop Protection, LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the fungicide sedaxane, *N*-[2-[1,1′-bicyclopropyl]-2-ylphenyl]-3-(difluoromethyl)-1-methyl-1*H*-pyrazole-4-carboxamide, as a seed treatment for cotton, undelinted seed at 0.01 parts per million (ppm); cotton, gin byproducts at 0.01 ppm; and beet, sugar at 0.01 ppm. That document referenced a summary of the petition prepared by Syngenta Crop Protection, LLC, the registrant, which is available in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has altered the commodity name from ''beet, sugar'' to ''beet, sugar, roots''. The reason for this change is explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for sedaxane including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with sedaxane follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The toxicological effects reported in the submitted animal studies such as mitochondrial disintegration and glycogen depletion in the liver are consistent with the pesticidal mode of action also being the mode of toxic action in mammals. The rat is the most sensitive species tested, and the main target tissue for sedaxane is the liver. Sedaxane also caused thyroid hypertrophy/hyperplasia. In the acute neurotoxicity (ACN) and sub-chronic neurotoxicity (SCN) studies, sedaxane caused decreased activity, decreased muscle tone, decreased rearing, and decreased grip strength. There are indications of reproductive toxicity in rats such as decreased follicle counts, but these effects did not result in reduced fertility. Offspring effects in the reproduction study occurred at the same doses causing parental effects, and do not indicate any quantitative or qualitative increase in sensitivity in rat pups. In the rat, no adverse effects in fetuses were seen in developmental toxicity studies at maternally toxic

doses. In the rabbit, fetal toxicity (increased unossified sternebrae and 13th rudimentary ribs, decrease in fetal weights, increased numbers of abortions) was observed at the same doses that produced toxicity in the dams (abortions, decreased body weight gain/body weight loss, reduced food consumption, defecation), and therefore does not indicate any increased susceptibility. Sedaxane is tumorigenic in the liver in the rat and mouse, and led to tumors in the thyroid and uterus in the rat and was classified as ''likely to be carcinogenic to humans.'' Sedaxane was negative in the mutagenicity studies. The 28-day dermal study did not show systemic toxicity at the limit dose of 1,000 milligrams/kilogram/day (mg/kg/day). Sedaxane has low acute toxicity by the oral, dermal, and inhalation routes. It is not a dermal sensitizer, causes no skin irritation and only slight eye irritation.

Specific information on the studies received and the nature of the adverse effects caused by sedaxane as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document ''Sedaxane. Human Health Risk Assessment to Support New Seed Treatment Uses on Cotton and Sugar Beet'' on pages 13–20 in docket ID number EPA–HQ–OPP–2014–0354.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors (U/SF) are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for sedaxane used for human risk assessment is shown in the Table of this unit.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR SEDAXANE FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/Scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (All populations, including children and women 13–49 years of age).	NOAEL = 30 mg/kg/day. UF_A = 10x ..... UF_H = 10x ..... FQPA SF = 1x	Acute RfD = 0.30 mg/kg/day. aPAD = 0.30 mg/kg/day.	Rat ACN Study. LOAEL = 250 mg/kg based on reduced activity, decreased rearing, initial inactivity, piloerection, ruffled fur and recumbency, decreased BW, decreased BWG and food consumption (males). In females, weakened condition, swaying gait, and decreased activity, reduced muscle tone, decreased locomotor activity and rearing. The weakened condition, swaying gait and decreased activity were observed on days 2–7, while the other effects were on day 1.
Chronic dietary (All populations)	NOAEL= 11 mg/kg/day. UF_A = 10x ..... UF_H = 10x ..... FQPA SF = 1x	Chronic RfD = 0.11 mg/kg/day. cPAD = 0.11 mg/kg/day.	Chronic Rat Study. NOAEL= 11/14 mg/kg bw/day (male/female). LOAEL = 67/86 mg/kg bw/day (male/female) based on decreased hind limb grip strength increased liver weight, increased incidences of hepatocyte hypertrophy and eosinophilic foci, and thyroid follicular cell hypertrophy, basophilic colloid, epithelial desquamation and increased phosphate levels (males). In females it was based on decreased body weight and body weight gain, increased liver weight and the same histopathology noted above for males.
Cancer (Oral, dermal, inhalation).	''Likely to be Carcinogenic to Humans'' based on significant tumor increases in two adequate rodent carcinogenicity studies. $Q_1^* = 4.64 \times 10 - 3$ (mg/kg/day)$^{-1}$ (linear low-dose extrapolation model).		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. mg/kg/day = milligram/kilogram/day. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). Q_1^* = Linear cancer slope factor

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to sedaxane, EPA considered exposure under the petitioned-for tolerances as well as all existing sedaxane tolerances in 40 CFR 180.665. EPA assessed dietary exposures from sedaxane in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for sedaxane. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA) conducted from 2003–2008. As to residue levels in

food, EPA conducted a highly conservative acute dietary assessment using tolerance-level residues and 100% crop treated assumptions for all commodities.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA NHANES/WWEIA conducted from 2003–2008. As to residue levels in food, EPA conducted a partially refined chronic dietary assessment using anticipated residue levels for all commodities and percent crop treated data.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that sedaxane should be classified as ''Likely to be Carcinogenic to Humans'' and a linear approach has been used to quantify cancer risk. Cancer risk was quantified using the same estimates as discussed in Unit III.C.1.ii., C*hronic exposure.* A linear low-dose extrapolation model (Q_1*) = 4.64×10^{-3} (mg/kg/day)$^{-1}$ was used to estimate cancer risk.

iv. *Anticipated residue and percent crop treated (PCT) information.*

Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- Condition a: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- Condition b: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- Condition c: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT. The Agency estimated the PCT for existing uses as follows: For chronic and cancer dietary exposure assessment, 100 PCT was assumed for all commodities except for soybeans (51%), wheat (32%) and potato (67%), which incorporated average PCT estimates.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6–7 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than one. In those cases, 1% is used as the average PCT and 2.5% is used as the maximum PCT. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which sedaxane may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for sedaxane in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of sedaxane. Drinking water accounted for 95% of the total dietary exposure to sedaxane. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the FQPA Index Reservoir Screening Tool (FIRST) and Pesticide Root Zone Model Ground Water (PRZM GW), the estimated drinking water concentrations (EDWCs) of sedaxane for acute exposures are estimated to be 4.1 parts per billion (ppb) for surface water and 22.0 ppb for ground water, for chronic exposures and cancer assessments are estimated to be 1.2 ppb for surface water and 19.3 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 22.0 ppb was used to assess the contribution to drinking water. For chronic and cancer dietary risk assessment, the water concentration of value 19.3 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Sedaxane is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' EPA has not found sedaxane to share a common mechanism of toxicity with any other substances, and sedaxane does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that sedaxane does not have a common mechanism of toxicity with other substances. For information regarding

EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA SF. In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There is no evidence for increased susceptibility following prenatal and/or postnatal exposures to sedaxane based on effects seen in developmental toxicity studies in rabbits or rats. In range finding and definitive developmental toxicity studies in rats, neither quantitative nor qualitative evidence of increased susceptibility of fetuses to *in utero* exposure to sedaxane was observed. In these studies, there were no single-dose effects. There was no evidence of increased susceptibility in a 2-generation reproduction study in rats following prenatal or postnatal exposure to sedaxane. Clear NOAELs/LOAELs were established for the developmental effects seen in rats and rabbits as well as for the offspring effects seen in the 2-generation reproduction study. The dose-response relationship for the effects of concern is well characterized. The NOAEL used for the acute dietary risk assessment (30 mg/kg/day), based on effects observed in the ACN study, is protective of the developmental and offspring effects seen in rabbits and rats (NOAELs of 100–200 mg/kg/day). In addition, there is no evidence of neuropathology or abnormalities in the development of the fetal nervous system from the available toxicity studies conducted with sedaxane.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x. That decision is based on the following findings:

i. The toxicity database for sedaxane is complete.

ii. There is no indication that sedaxane is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity. Although sedaxane caused changes in apical endpoints such as decreased activity, decreased muscle tone, decreased rearing and decreased grip strength in the ACN and SCN studies, EPA believes these effects do not support a finding that sedaxane is a neurotoxicant. The observed effects in the ACN and SCN studies were likely secondary to inhibition of mitochondrial energy production caused by sedaxane. Furthermore, there was no corroborative neuro-histopathology demonstrated in any study, even at the highest doses tested (*i.e.,* 2,000 mg/kg/day). Therefore, based on its chemical structure, its pesticidal mode of action, and lack of evidence of neuro-histopathology in any acute and repeated-dose toxicity study, sedaxane does not demonstrate potential for neurotoxicity. Since sedaxane did not demonstrate increased susceptibility to the young or specific neurotoxicity, a developmental neurotoxicity (DNT) study is not required.

iii. As discussed in Unit III.D.2., there is no evidence that sedaxane results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments are highly conservative (acute) or only partially refined (chronic), resulting in high-end estimates of dietary food exposure. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to sedaxane in drinking water. These assessments will not underestimate the exposure and risks posed by sedaxane.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to sedaxane will occupy 1.3% of the aPAD for all infants (<1 year old), the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to sedaxane from food and water will utilize 1% of the cPAD for all infants (<1 year old), the population group receiving the greatest exposure. There are no residential uses for sedaxane.

3. *Short- and Intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

A short- and intermediate-term adverse effect was identified; however, sedaxane is not registered for any use patterns that would result in short- or intermediate-term residential exposure. Short- and intermediate-term risk is assessed based on short- and intermediate-term residential exposure plus chronic dietary exposure. Because there is no short- or intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short-term risk), no further assessment of short- and intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short- and intermediate-term risk for sedaxane.

4. *Aggregate cancer risk for U.S. population.* The Agency has classified sedaxane as ''Likely to be Carcinogenic to Humans'' based on significant tumor increases in two adequate rodent carcinogenicity studies. A cancer dietary risk assessment was conducted using a linear low-dose extrapolation model (Q_1^*) = 4.64×10^{-3} (mg/kg/day)$^{-1}$ which indicated a risk estimate to the U.S. population as 2×10^{-6}. EPA generally considers cancer risks in the range of 10^{-6} or less to be negligible. The precision that can be assumed for cancer risk estimates is best described by rounding to the nearest integral order of magnitude on the log scale; for example, risks falling between 3×10^{-7} and 3×10^{-6} are expressed as risks in the range of 10^{-6}. Considering the precision with which cancer hazard can be estimated, the conservativeness of low-dose linear extrapolation, and the rounding procedure described above in this unit, cancer risk should generally not be assumed to exceed the

benchmark level of concern of the range of 10^{-6} until the calculated risk exceeds approximately 3×10^{-6}. This is particularly the case where some conservatism is maintained in the exposure assessment. Based on this approach, EPA considers the risks of cancer from exposure to sedaxane to be negligible.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to sedaxane residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (liquid chromatography/tandem mass spectrometry (LC/MS/MS)) is available to enforce the tolerance expression. A modification of the Quick, Easy, Cheap, Effective, Rugged, and Safe (QuEChERS) method was developed for the determination of residues of sedaxane (as its isomers SYN508210 and SYN508211) in/on various crops. The sedaxane isomers (SYN508210 and SYN508211) are quantitatively determined by LC/MS/MS. The validated limit of quantitation (LOQ) reported in the method is 0.005 ppm for both sedaxane isomers. A successful independent laboratory validation (ILV) study was also conducted on the modified QuEChERS method using samples of wheat green forage and wheat straw fortified with SYN508210 and SYN508211 at 0.005 and 0.05 ppm. The analytical standard for sedaxane, with an expiration date of February 28, 2018, is currently available in the EPA National Pesticide Standards Repository.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. The Codex has not established MRLs for sedaxane.

C. Revisions to Petitioned-For Tolerances

Although the petitioner sought a tolerance for the commodity name ''beet, sugar'', EPA is establishing a tolerance for ''beet, sugar, roots'' to be consistent with the general food and feed commodity vocabulary EPA uses for tolerances and exemptions.

V. Conclusion

Therefore, tolerances are established for residues of sedaxane, *N*-[2-[1,1′-bicyclopropyl]-2-ylphenyl]-3-(difluoromethyl)-1-methyl-1*H*-pyrazole-4-carboxamide, as a seed treatment for cotton, undelinted seed at 0.01 ppm; cotton, gin byproducts at 0.01 ppm; and beet, sugar, roots at 0.01 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 16, 2015.

G. Jeffrey Herndon,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.665, add alphabetically the following commodities to the table in paragraph (a) to read as follows:

§ 180.665 Sedaxane; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Beet, sugar, roots	0.01
* * * * *	
Cotton, undelinted seed	0.01
Cotton, gin byproducts	0.01
* * * * *	

* * * * *

[FR Doc. 2015–17999 Filed 7–21–15; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2014–0232; FRL–9929–57]

Novaluron; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of novaluron in or on multiple commodities and removes several existing tolerances which are identified and discussed later in this document. This regulation additionally revises existing tolerances in or on vegetable, cucurbit, group 9; and plum, prune, dried. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective July 22, 2015. Objections and requests for hearings must be received on or before September 21, 2015, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2014–0232, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2014–0232 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before September 21, 2015. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2014–0232, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of December 17, 2014 (79 FR 75107) (FRL–9918–90), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 4E8241) by Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 W., Princeton, NJ 08540. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the insecticide novaluron, (*N*-[[[3-chloro-4-[1,1,2-trifluoro-2-(trifluoromethoxy)ethoxy] phenyl]amino]carbonyl]-2,6-difluoro benzamide), in or on avocado at 0.60 parts per million (ppm); carrot at 0.05 ppm; bean at 0.60 ppm; vegetable, fruiting, group 8–10 at 1.0 ppm; fruit, pome, group 11–10 at 2.0 ppm; cherry subgroup 12–12A at 8.0 ppm; peach

subgroup 12–12B at 1.9 ppm; and plum subgroup 12–12C at 1.9 ppm.

Upon approval of the petitioned-for tolerances listed above, the petition proposed to remove the following established tolerances for residues of novaluron from 40 CFR 180.598: Bean, succulent, snap at 0.60 ppm; bean, dry, seed at 0.30 ppm; cherry at 8.0 ppm; fruit, pome, group 11 at 2.0 ppm; fruit, stone, group 12, except cherry at 1.9 ppm; vegetable, fruiting, group 8 at 1.0 ppm; cocona at 1.0 ppm; African eggplant at 1.0 ppm; pea eggplant at 1.0 ppm; scarlet eggplant at 1.0 ppm; goji berry at 1.0 ppm; garden huckleberry at 1.0 ppm; martynia at 1.0 ppm; naranjilla at 1.0 ppm; okra at 1.0 ppm; roselle at 1.0 ppm; sunberry at 1.0 ppm; bush tomato at 1.0 ppm; currant tomato at 1.0 ppm; and tree tomato at 1.0 ppm. These tolerances were requested for removal because they will be superseded by establishment of the petitioned-for tolerances. That document referenced a summary of the petition prepared on behalf of IR–4 by Makhteshim-Agan of North America, Inc., the registrant, which is available in the docket, *http://www.regulations.gov.* Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA has revised several proposed tolerances. EPA has also determined that the previously established tolerances in or on vegetable, cucurbit, group 9 and plum, prune, dried should be revised. Finally, EPA determined that establishing a tolerance on bean is not appropriate; rather, a tolerance should be established on bean, succulent and the previously established tolerance on bean, dry, seed should not be removed. The reasons for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for novaluron including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with novaluron follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

In subchronic and chronic toxicity studies, novaluron primarily produced hematotoxic effects such as methemoglobinemia, decreased hemoglobin, decreased hematocrit, decreased red blood cells (RBCs) (or erythrocytes) and increased reticulocyte counts that were associated with compensatory erythropoiesis. Increased spleen weights or hemosiderosis in the spleen were considered to be due to enhanced removal of damaged erythrocytes and not to a direct immunotoxic effect.

There was no maternal or developmental toxicity seen in the rat and rabbit developmental toxicity studies up to the limit doses. In the 2-generation reproductive toxicity study in rats, both parental and offspring toxicity (increased spleen weights) were observed at the same dose. Reproductive toxicity, including decreases in epididymal sperm counts and increased age at preputial separation in the F1 generation, was observed at a higher dose than the increased spleen weights and were consistent with the primary effects in the database.

Clinical signs of neurotoxicity (piloerection, irregular breathing), changes in functional observational battery (FOB) parameters (increased head swaying, abnormal gait), and neuropathology (sciatic and tibial nerve degeneration) were seen in the rat acute neurotoxicity study at the limit dose. However, no signs of neurotoxicity or neuropathology were observed in the subchronic neurotoxicity study in rats at similar doses or in any other subchronic or chronic toxicity study in rats, mice, or dogs. In the submitted immunotoxicity study, the only sign of potential immunotoxicity for novaluron was a decreased anti-sheep red blood cell (anti-SRBC) response at twice the limit dose in female rats. There was no evidence of carcinogenic potential in either the rat or mouse carcinogenicity studies, and there was also no concern for genotoxicity or mutagenicity.

Specific information on the studies received and the nature of the adverse effects caused by novaluron as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document: ''Novaluron: Human Health Risk Assessment for the Petition for the Establishment of Permanent Tolerances for Residues of Novaluron in/on Avocado; Carrot; Succulent Bean; Vegetable, Fruiting, Crop Group 8–10; Fruit, Pome, Crop Group 11–10; Cherry Subgroup 12–12A; Peach Subgroup 12–12B; and Plum Subgroup 12–12C; and Revisions to the Label to Include Uses on Greenhouse-Grown Cucumber'' at pages 36–40 in docket ID number EPA–HQ–OPP–2014–0232.

B. Toxicological Points of Departure/ Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles

EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for novaluron used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR NOVALURON FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/ safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (General population, including infants and children).	An endpoint of concern attributable to a single dose was not identified, and an acute RfD was not established.		
Chronic dietary (All populations)	NOAEL = 1.1 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.011 mg/kg/day. cPAD = 0.011 mg/kg/day.	Combined chronic toxicity/carcinogenicity feeding in rat. LOAEL = 30.6 mg/kg/day based on erythrocyte damage resulting in a compensatory regenerative anemia.
Incidental oral, all durations	NOAEL = 4.38 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	90-day feeding study in rat. LOAEL = 8.64 mg/kg/day based on clinical chemistry (decreased hemoglobin, hematocrit, and RBC counts) and histopathology (increased hematopoiesis and hemosiderosis in spleen and liver).
Inhalation, all durations	Inhalation (or oral) study NOAEL = 4.38 mg/kg/day (inhalation absorption rate = 100%). UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	90-day feeding study in rat. LOAEL = 8.64 mg/kg/day based on clinical chemistry (decreased hemoglobin, hematocrit, and RBC counts) and histopathology (increased hematopoiesis and hemosiderosis in spleen and liver).
Cancer (Oral, dermal, inhalation).	Classified as not likely to be carcinogenic to humans.		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to novaluron, EPA considered exposure under the petitioned-for tolerances as well as all existing novaluron tolerances in 40 CFR 180.598. EPA assessed dietary exposures from novaluron in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were identified in the toxicological studies for novaluron; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA under the National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA); 2003–2008. As to residue levels in food, EPA incorporated average field trial residues for the majority of commodities; anticipated residues (ARs) for meat, milk, hog, and poultry commodities; and average percent crop treated (PCT) data for apples, blueberries, cabbage, cauliflower, cotton, dry beans, pears, peppers, potatoes, strawberries, and tomatoes. Percent crop treated for new use (PCTn) data were incorporated for the recently registered grain sorghum and sweet corn uses. For the remaining food commodities, 100 PCT was assumed. The registered food-handling use was also incorporated into the dietary assessment. Empirical processing factors were utilized for apple juice (translated to pear and stone fruit juice), cottonseed oil, dried plums, and tomato paste and purée. Dietary Exposure Evaluation Model (DEEM) (ver. 7.81) default processing factors were used for the remaining processed commodities.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that novaluron does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and PCT information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- Condition a: The data used are reliable and provide a valid basis to

show what percentage of the food derived from such crop is likely to contain the pesticide residue.

- Condition b: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- Condition c: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency estimated the average PCT for existing uses as follows:

Apple, 10%; blueberry, 1%; cabbage, 5%; cauliflower, 2.5%; cotton, 2.5%; dry beans, 1%; pear, 15%; pepper, 2.5%; potato, 2.5%; strawberry, 35%; and tomato, 2.5%.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6 to 7 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than one. In those cases, 1% is used as the average PCT and 2.5% is used as the maximum PCT. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

The Agency estimated the PCT for new uses as follows: Grain sorghum, 2%; and sweet corn, 36%.

EPA estimates PCTn for novaluron based on the PCT of the dominant pesticide (*i.e.,* the one with the greatest PCT) on that site over the three most recent years of available data. Comparisons are only made among pesticides of the same pesticide types (*i.e.,* the dominant insecticide on the use site is selected for comparison with a new insecticide). The PCTs included in the analysis may be for the same pesticide or for different pesticides since the same or different pesticides may dominate for each year. Typically, EPA uses USDA/NASS as the source for raw PCT data because it is publicly available and does not have to be calculated from available data sources. When a specific use site is not surveyed by USDA/NASS, EPA uses proprietary data and calculates the estimated PCT.

This estimated PCTn, based on the average PCT of the market leader, is appropriate for use in the chronic dietary risk assessment. This method of estimating a PCT for a new use of a registered pesticide or a new pesticide produces a high-end estimate that is unlikely, in most cases, to be exceeded during the initial five years of actual use. The predominant factors that bear on whether the estimated PCTn could be exceeded are: The extent of pest pressure on the crops in question; the pest spectrum of the new pesticide in comparison with the market leaders as well as whether the market leaders are well-established for this use; and resistance concerns with the market leaders.

Novaluron specifically targets lepidopterous insects, which are not key pests of sorghum but are key pests of sweet corn. However, novaluron has a relatively narrow spectrum of pest activity when compared to the market leader insecticides. In addition, there are no resistance or pest pressure issues as indicated in Section 18 Emergency Exemption requests for use of novaluron on sorghum or sweet corn. All information currently available has been considered for novaluron use on sorghum and sweet corn, and it is the opinion of EPA that it is unlikely that actual PCT for novaluron will exceed the estimated PCT for new uses during the next five years.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which novaluron may be applied in a particular area.

2. *Dietary exposure from drinking water.* The residues of concern in drinking water for risk assessment purposes are novaluron, the chlorophenyl urea degradate, and the chloroaniline degradates. The estimated drinking water concentrations (EDWCs) for each of these was calculated using a molecular weight conversion and then combined for each modeled scenario. The degradates are assumed to have equal toxicity to the parent. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for novaluron and its degradates in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of novaluron and its degradates. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS), the Screening Concentration in Ground Water (SCI–GROW), and Pesticide Root Zone Model Ground Water (PRZM GW) models, the combined EDWCs of novaluron, chlorophenyl urea, and chloroaniline for chronic exposures are estimated to be 16.7 ppb for surface water and 77.8 ppb for groundwater.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 77.8 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Novaluron is currently registered for the following uses that could result in residential exposures: Indoor and outdoor crack and crevice or perimeter applications in residential areas and their immediate surroundings, including homes and apartment buildings; on modes of transportation; and as a spot-on use for pets. EPA assessed residential exposure using the following assumptions:

Adult handlers were assessed for potential short-term inhalation exposures from mixing, loading, and

applying novaluron via manually-pressurized hand wand and from liquid applications of novaluron to turf. Adults were also assessed for potential short-term post-application inhalation exposures to novaluron from indoor uses. For children 1 to <2 years old, short-term post-application inhalation and incidental oral exposures were assessed resulting from hand-to-mouth contact with treated residential areas, turf, and from contact with treated pets. There is also the potential for intermediate-term and long-term post-application hand-to-mouth exposures to children 1 to <2 years old from the registered pet spot-on use of novaluron. Inhalation exposures are considered negligible for this exposure scenario; therefore, the intermediate- and long-term aggregate risk estimates do not include inhalation exposures. For adults, inhalation exposure is expected to be negligible for intermediate- and long-term durations and was not included in the aggregate assessment. Additionally, a dermal endpoint has not been selected for novaluron, so dermal exposures to adults or children were not assessed.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found novaluron to share a common mechanism of toxicity with any other substances, and novaluron does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that novaluron does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* The prenatal and postnatal toxicology database for novaluron includes rat and rabbit prenatal developmental toxicity studies and a two-generation reproduction toxicity study in rats. There was no evidence of increased quantitative or qualitative susceptibility following *in utero* exposure to rats or rabbits in the developmental toxicity studies and no evidence of increased quantitative or qualitative susceptibility of offspring in the reproduction study. Neither maternal nor developmental toxicity was seen in the developmental studies up to the limit doses (1,000 mg/kg/day). In the 2-generation reproductive study in rats, offspring and parental toxicity (increased absolute and relative spleen weights) were similar and occurred at the same dose (74.2 mg/kg/day). Additionally, reproductive effects (decreases in epididymal sperm counts and increased age at preputial separation in the F1 generation) occurred at a higher dose than that which resulted in parental toxicity.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for novaluron is complete.

ii. Acute and subchronic rat neurotoxicity studies were performed for novaluron. The clinical signs of neurotoxicity, changes in FOB parameters, and neuropathology were seen in the acute neurotoxicity study at the limit dose (2,000 mg/kg/day) only and were not reproduced at similar, repeated doses in the subchronic neurotoxicity study. In addition, no evidence of neuropathology was observed in subchronic and chronic toxicity studies in rats, mice, or dogs. Therefore, novaluron is not considered a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that novaluron results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The chronic dietary food exposure assessment was performed using average field trial residues, anticipated residues for livestock commodities, average PCT and PCTn data for some commodities, and empirical and default processing factors. For the remaining food commodities, 100 PCT was assumed. The registered food handling use was also incorporated into the dietary assessment. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to novaluron in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by novaluron.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, novaluron is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to novaluron from food and water will utilize 73% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Novaluron is currently

registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to novaluron.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 1,560 for adults and 350 for children 1 to <2 years old. Because EPA's level of concern for novaluron is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate- and long-term risk.* Intermediate- and long-term aggregate exposure takes into account intermediate- and long-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Novaluron is currently registered for uses that could result in intermediate- and long-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate- and long-term residential exposures to novaluron.

Using the exposure assumptions described in this unit for intermediate- and long-term exposures, EPA has concluded that the combined intermediate- and long-term food, water, and residential exposures result in an aggregate MOE of 530 for children 1 to <2 years old. For adults, since there is no dermal endpoint and inhalation exposure is expected to be negligible, the average dietary consumption (food and drinking water) exposure estimate is representative of intermediate- and long-term aggregate risk, and results in an MOE of 1640. Because EPA's level of concern for novaluron is a MOE of 100 or below, these MOEs are not of concern.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, novaluron is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to novaluron residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodologies, gas chromatography/electron-capture detection (GC/ECD) and high-performance liquid chromatography/ultraviolet (HPLC/UV), are available to enforce the tolerance expression.

The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has established MRLs for novaluron in or on common beans (pods and/or immature seeds) at 0.7 ppm; pome fruit at 3 ppm; cucurbit vegetables at 0.2 ppm; and prunes at 3.0 ppm. EPA is establishing tolerances in or on succulent bean at 0.70 ppm; pome fruit crop group 11–10 at 3.0 ppm; cucurbit vegetable crop group 9 at 0.20 ppm; and dried prune at 3.0 ppm in order to harmonize with Codex. The Codex has additionally established a tolerance in or on fruiting vegetables other than cucurbits at 0.7 ppm and stone fruits at 7 ppm. Because EPA is recommending a tolerance in or on fruiting vegetables crop group 8–10 (1.0 ppm) that is higher than Codex, EPA cannot harmonize this tolerance. Residue data for greenhouse tomatoes supports the 1.0 ppm tolerance for the group 8–10 tolerance.

The data supporting the EPA petition result in stone fruit tolerances that are either higher (cherry subgroup 12–12A at 8.0 ppm) or much lower (peach subgroup 12–12B and plum subgroup 12–12C at 1.9 ppm) than the established Codex MRL for stone fruit at 7 ppm. EPA notes that the stone fruit tolerances are not harmonized with associated Codex MRLs on these commodities because it has been determined that the major export market for these commodities is Canada. Therefore, in order to maintain harmonization of U.S. tolerances and Canadian MRLs for these commodities, the EPA is establishing these subgroup tolerances at the levels that align with the Canadian MRLs. No Codex MRLs have been established for residues of novaluron in or on avocado or carrot.

C. Response to Comments

One comment was received to the batched Notice of Filing that provided brief and general concerns about toxins and potential impacts to bees, but the commenter did not cite a specific petition within the Notice. The Agency has received similar comments from this commenter on numerous previous occasions. Refer to **Federal Register** 70 FR 37686 (June 30, 2005), 70 FR 1354 (January 7, 2005), 69 FR 63096–63098 (October 29, 2004) for the Agency's response to these objections.

D. Revisions to Petitioned-For Tolerances

The Agency was petitioned to establish a tolerance of novaluron in or on plum subgroup 12–12C. As a part of that request, the Agency reviewed the existing tolerance on dried prune, and determined that the tolerance should be amended from 2.6 ppm to 3.0 ppm in order to harmonize with Codex. Data were also submitted and reviewed by EPA to allow the use of novaluron in or on greenhouse-grown cucumbers. During review, the Agency determined that the existing tolerance in or on cucurbit vegetable group 9 (which includes cucumber) should be amended from 0.15 ppm to 0.20 ppm in order to harmonize with Codex.

EPA was also petitioned to establish a tolerance in or on bean at 0.60 ppm and to remove the existing tolerance in or on dry bean seed at 0.30 ppm upon approval of the proposed bean tolerance. However, the Agency determined that separate tolerances should be established in or on succulent bean and dry bean seed. Therefore, this action will not remove the existing tolerance for the use of novaluron in or on dry bean seed at 0.30 ppm, and the Agency determined that a tolerance in or on succulent bean at 0.70 ppm is appropriate in order to harmonize with the established Codex tolerance on beans. Finally, EPA revised the proposed pome fruit crop group 11–10 tolerance from 2.0 ppm to 3.0 ppm in order to harmonize with the established Codex MRL.

V. Conclusion

Therefore, tolerances are established for residues of novaluron, (*N*-[[[3-

chloro-4-[1,1,2-trifluoro-2- (trifluoro methoxy)ethoxy]phenyl]amino] carbonyl]-2,6-difluorobenzamide), in or on avocado at 0.60 ppm; bean, succulent at 0.70 ppm; carrot at 0.05 ppm; cherry subgroup 12–12A at 8.0 ppm; fruit, pome, group 11–10 at 3.0 ppm; peach subgroup 12–12B at 1.9 ppm; plum subgroup 12–12C at 1.9 ppm; and vegetable, fruiting, group 8–10 at 1.0 ppm. This regulation additionally revises the existing tolerances in or on vegetable, cucurbit, group 9 from 0.15 ppm to 0.20 ppm; and plum, prune, dried from 2.6 ppm to 3.0 ppm. Finally, this regulation removes established tolerances in or on bean, snap, succulent; cherry; cocona; fruit, pome, group 11; fruit, stone, group 12, except cherry; eggplant, African; eggplant, pea; eggplant, scarlet; goji berry; huckleberry, garden; martynia; naranjilla; okra; roselle; sunberry; tomato, bush; tomato, currant; tomato, tree; and vegetable, fruiting, group 8.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 9, 2015.

Susan Lewis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.598:

■ a. Remove the entries in the table in paragraph (a) for ''Bean, snap, succulent'', ''Cherry'', ''Cocona'', ''Eggplant, African'', ''Eggplant, pea'', ''Eggplant, scarlet'', ''Fruit, pome, group 11'', ''Fruit, stone, group 12, except cherry'', ''Goji berry'', ''Huckleberry, garden'', ''Martynia'', ''Naranjilla'', ''Okra'', ''Roselle;'' ''Sunberry'', ''Tomato, bush'', ''Tomato, currant'', ''Tomato, tree'', and ''Vegetable, fruiting, group 8''.

■ b. Add alphabetically the entries for ''Avocado'', ''Bean, succulent'', ''Carrot'', ''Cherry subgroup 12–12A'', ''Fruit, pome, group 11–10'', ''Peach subgroup 12–12B'', ''Plum subgroup 12–12–C'', and ''Vegetable, fruiting, group 8–10'' to the table in paragraph (a).

■ c. Revise the entries for ''Plum, prune, dried'', and ''Vegetable, cucurbit, group 9'' in the table in paragraph (a).

The additions and revisions read as follows:

§ 180.598 Novaluron; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Avocado	0.60
* * * * *	
Bean, succulent	0.70
* * * * *	
Carrot	0.05
* * * * *	
Cherry subgroup 12–12A	8.0
* * * * *	
Fruit, pome, group 11–10	3.0
* * * * *	
Peach subgroup 12–12B	1.9
* * * * *	
Plum, prune, dried	3.0
Plum subgroup 12–12C	1.9
* * * * *	
Vegetable, cucurbit, group 9	0.20
Vegetable, fruiting, group 8–10	1.0
* * * * *	

* * * * *

[FR Doc. 2015–17676 Filed 7–21–15; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 150316270–5270–01]

RIN 0648–XE054

Fisheries Off West Coast States; Modifications of the West Coast Commercial Salmon Fisheries; Inseason Actions #14 and #15

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

ACTION: Modification of fishing seasons; request for comments.

SUMMARY: NMFS announces two inseason actions in the ocean salmon fisheries. These inseason actions modified the commercial salmon fisheries in the area from the U.S./Canada border to the Oregon/California border.

DATES: The effective dates for the inseason actions are set out in this document under the heading Inseason Actions. Comments will be accepted through August 6, 2015.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2015–0001, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0001,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–6349.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

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

SUPPLEMENTARY INFORMATION:

Background

In the 2015 annual management measures for ocean salmon fisheries (80 FR 25611, May 5, 2015), NMFS announced the commercial and recreational fisheries in the area from the U.S./Canada border to the U.S./Mexico border, beginning May 1, 2015, and 2016 salmon fisheries opening earlier than May 1, 2016. NMFS is authorized to implement inseason management actions to modify fishing seasons and quotas as necessary to provide fishing opportunity while meeting management objectives for the affected species (50 CFR 660.409). Inseason actions in the salmon fishery may be taken directly by NMFS (50 CFR 660.409(a)—Fixed inseason management provisions) or upon consultation with the Pacific Fishery Management Council (Council) and the appropriate State Directors (50 CFR 660.409(b)—Flexible inseason management provisions). The state management agencies that participated in the consultations described in this document were: Oregon Department of Fish and Wildlife (ODFW) and Washington Department of Fish and Wildlife (WDFW).

Management of the salmon fisheries is generally divided into two geographic areas: North of Cape Falcon (U.S./Canada border to Cape Falcon, OR) and south of Cape Falcon (Cape Falcon, OR, to the U.S./Mexico border). The inseason actions reported in this document affect fisheries north and south of Cape Falcon. Within the south of Cape Falcon area, the Klamath Management Zone (KMZ) extends from Humbug Mountain, OR, to Humboldt South Jetty, CA, and is divided at the Oregon/California border into the Oregon KMZ to the north and California KMZ to the south. All times mentioned refer to Pacific daylight time.

Inseason Actions

Inseason Action #14

Description of action: Inseason action #14 adjusted the July quota for the commercial salmon fishery in the Oregon KMZ. Unutilized quota from June was rolled over on an impact-neutral basis to July. The adjusted July quota is 1,184 Chinook salmon.

Effective dates: Inseason action #14 took effect on July 1, 2015, and remains in effect until the end of the season.

Reason and authorization for the action: The commercial salmon fishery in the Oregon KMZ had a June quota of 1,800 Chinook salmon. The State of Oregon reported that 1,528 Chinook salmon were landed in June, leaving quota of 272 Chinook salmon unutilized. To address temporal differences in impacts to Klamath River fall and California coastal Chinook salmon stocks, the Council's Salmon Technical Team (STT) calculated the impact-neutral rollover of 272 Chinook salmon from June to July. As a result, 184 Chinook salmon were added to the July quota of 1,000 Chinook, for an adjusted quota of 1,184 Chinook salmon. After consideration of Chinook salmon landings to date and the STT's calculations, the Regional Administrator (RA) determined that it was appropriate to adjust the July quota for the commercial salmon fishery in the Oregon KMZ. This action was taken to allow access to available Chinook salmon quota, without exceeding conservation impacts to Klamath River fall and California coastal Chinook salmon stocks. Inseason action to modify quotas and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

Consultation date and participants: Consultation on inseason action #14 occurred on July 9, 2015. Participants in this consultation were staff from NMFS, Council, WDFW, and ODFW.

Inseason Action #15

Description of action: Inseason action #15 adjusted the landing and possession limit in the commercial salmon fishery north of Cape Falcon to 60 Chinook salmon and 50 marked coho per vessel per open period from the U.S./Canada border to Queets River, WA, or 75 Chinook salmon and 50 marked coho per vessel per open period from Queets River, WA to Cape Falcon, OR. This action superseded the landing limit set preseason at 50 Chinook salmon and 50 marked coho per vessel per open period from the U.S./Canada border to Cape Falcon, OR (80 FR 25611).

Effective dates: Inseason action #15 took effect on July 10, 2015, and remains in effect until superseded by inseason action or the end of the season.

Reason and authorization for the action: After consideration of Chinook salmon landings to date and fishery effort, the RA determined that sufficient quota remained to increase the landing and possession limit to allow access to the remaining quota without exceeding the quota that was set preseason. Inseason action to modify quotas and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

Consultation date and participants: Consultation on inseason action #15 occurred on July 9, 2015. Participants in this consultation were staff from NMFS, Council, WDFW, and ODFW.

All other restrictions and regulations remain in effect as announced for the 2015 ocean salmon fisheries and 2016

salmon fisheries opening prior to May 1, 2016 (80 FR 25611, May 5, 2015).

The RA determined that the best available information indicated that Chinook salmon catch to date and fishery effort supported the above inseason actions recommended by the states of Washington and Oregon. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with these Federal actions. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice of the described regulatory actions was given, prior to the time the action was effective, by telephone hotline numbers 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 kHz.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of the regulatory actions was provided to fishers through telephone hotline and radio notification. These actions comply with the requirements of the annual management measures for ocean salmon fisheries (80 FR 25611, May 5, 2015), the West Coast Salmon Fishery Management Plan (Salmon FMP), and regulations implementing the Salmon FMP, 50 CFR 660.409 and 660.411. Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies had insufficient time to provide for prior notice and the opportunity for public comment between the time Chinook salmon catch and effort assessments and projections were developed and fisheries impacts were calculated, and the time the fishery modifications had to be implemented in order to ensure that fisheries are managed based on the best available scientific information, ensuring that conservation objectives and ESA consultation standards are not exceeded. The AA also finds good cause to waive the 30-day delay in effectiveness required under 5 U.S.C. 553(d)(3), as a delay in effectiveness of these actions would allow fishing at levels inconsistent with the goals of the Salmon FMP and the current management measures.

These actions are authorized by 50 CFR 660.409 and 660.411 and are exempt from review under Executive Order 12866.

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

Dated: July 17, 2015.

Emily H. Menashes,

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

[FR Doc. 2015–17969 Filed 7–21–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 140918791–4999–02]

RIN 0648–XE064

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the West Yakutat District of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the West Yakutat District of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2015 total allowable catch of Pacific ocean perch in the West Yakutat District of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), July 17, 2015, through 2400 hours, A.l.t., December 31, 2015.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

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

The 2015 total allowable catch (TAC) of Pacific ocean perch in the West Yakutat District of the GOA is 2,014 metric tons (mt) as established by the final 2015 and 2016 harvest specifications for groundfish of the (80 FR 10250, February 25, 2015).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2015 TAC of Pacific ocean perch in the West Yakutat District of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,914 mt, and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the West Yakutat District of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for Pacific ocean perch in the West Yakutat District of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 16, 2015.

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

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

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

Dated: July 17, 2015.

Emily H. Menashes,

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

[FR Doc. 2015–17968 Filed 7–17–15; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 80, No. 140
Wednesday, July 22, 2015

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 HOMELAND SECURITY

8 CFR Parts 103 and 212

[CIS No. 2557–14; DHS Docket No. USCIS–2012–0003]

RIN 1615–AC03

Expansion of Provisional Unlawful Presence Waivers of Inadmissibility

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: The Department of Homeland Security (DHS) proposes to expand eligibility for provisional waivers of certain grounds of inadmissibility based on the accrual of unlawful presence to all aliens who are statutorily eligible for a waiver of such grounds, are seeking such a waiver in connection with an immigrant visa application, and meet other conditions. The provisional waiver process currently allows certain aliens who are present in the United States to request from U.S. Citizenship and Immigration Services (USCIS) a provisional waiver of certain unlawful presence grounds of inadmissibility prior to departing from the United States for consular processing of their immigrant visas—rather than applying for a waiver abroad after the immigrant visa interview using the Form I–601, Waiver of Grounds of Inadmissibility (hereinafter ''Form I–601 waiver process''). DHS proposes to expand its current provisional waiver process in two principal ways. First, DHS would eliminate current limitations on the provisional waiver process that restrict eligibility to certain immediate relatives of U.S. citizens. Under this proposed rule, the provisional waiver process would be made available to all aliens who are statutorily eligible for waivers of inadmissibility based on unlawful presence and meet certain other conditions. Second, in relation to the statutory requirement that the waiver applicant demonstrate that denial of the waiver would result in ''extreme hardship'' to certain family members, DHS proposes to expand the provisional waiver process by eliminating the current restriction that limits extreme hardship determinations only to aliens who can establish extreme hardship to U.S. citizen spouses or parents. Under this proposed rule, an applicant for a provisional waiver would be permitted to establish the eligibility requirement of showing extreme hardship to any qualifying relative (namely, U.S. citizen *or* lawful permanent resident spouses or parents). DHS is proposing to expand the provisional waiver process in the interests of encouraging eligible aliens to complete the visa process abroad, promoting family unity, and improving administrative efficiency.

DATES: Submit written comments on or before September 21, 2015. Comments on the information collection revisions in this rule, as described in the Paperwork Reduction Act section, will also be accepted until September 21, 2015.

ADDRESSES: You may submit comments, identified by DHS Docket No. USCIS–2012–0003, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow this site's instructions for submitting comments.
- *Email:* You may email comments directly to USCIS at *uscisfrcomment@dhs.gov.* Include DHS Docket No. USCIS–2012–0003 in the subject line of the message.
- *Mail:* Laura Dawkins, Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529–2020. To ensure proper handling, please reference DHS Docket No. USCIS–2012–0003 on your correspondence. This mailing address may be used for paper, disk, or CD–ROM submissions.
- *Hand Delivery/Courier:* Laura Dawkins, Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529–2020. Contact Telephone Number is (202) 272–8377.

FOR FURTHER INFORMATION CONTACT: Roselyn Brown-Frei, Office of Policy and Strategy, Residence and Naturalization Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529–2099, Telephone (202) 272–1470 (this is not a toll free number).

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II. Public Participation

DHS invites all interested parties to submit written data, views, or arguments on all aspects of this proposed rule. DHS also invites comments about how the proposed rule might affect the economy, environment,

or federalism. The most helpful comments will:

(1) Refer to a specific portion of this proposed rule;

(2) Explain the reason for any recommended change; and

(3) Include data, information, or references to authority that support the recommended change.

Instructions: All submissions must include the agency name and DHS Docket No. USCIS–2012–0003 assigned to this rulemaking. Regardless of the method you used to submit comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Your entire submission will be available for the public to view. Therefore, you may wish to consider limiting the amount of personal information that you provide. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is deemed to be inappropriate or offensive. For additional information, please read the Privacy Act notice that is available on the link in the footer of *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and enter this proposed rule's DHS Docket No. USCIS–2012–0003.

III. Background

A. Legal Authority

Section 102 of the Homeland Security Act of 2002 (Public Law 107–296, 116 Stat. 2135), 6 U.S.C. 112, and section 103 of the Immigration and Nationality Act (INA), 8 U.S.C. 1103, charge the Secretary of Homeland Security (Secretary) with the administration and enforcement of the immigration and naturalization laws of the United States. The Secretary proposes the changes in this rule under the broad authority to administer the authorities provided under the Homeland Security Act of 2002, the immigration and nationality laws, and other delegated authorities. The Secretary's discretionary authority to waive the unlawful presence grounds of inadmissibility is provided in INA section 212(a)(9)(B)(v), 8 U.S.C. 1182(a)(9)(B)(v). *See also* Homeland Security Act of 2002, sec. 451(b), 6 U.S.C. 271(b) (transferring to the Director of USCIS the immigration benefits adjudication functions of the Commissioner of the former Immigration and Naturalization Service).

B. Immigrant Visa Categories

U.S. immigration laws provide avenues for U.S. citizens, LPRs, and U.S. employers to bring their families or employees permanently to the United States. Certain other categories of aliens are eligible for immigrant visas through special processes. *See, e.g.,* INA section 201(b), 8 U.S.C. 1151(b) (describing aliens who are not subject to numerical limitations on immigration levels); INA section 203(a)–(d); 8 U.S.C. 1153(a)–(d) (providing for the allocation of immigrant visas to family-sponsored immigrants, employment-based immigrants, certain special immigrants, and diversity immigrants, as well as the derivative spouses and children of such immigrants).

1. Immediate Relatives, Family-Sponsored Immigrants, Employment-Based Immigrants, and Certain Special Immigrants

Generally, if a U.S. citizen or LPR seeks to sponsor a relative for lawful permanent residence in the United States, the U.S. citizen or LPR must first file an immigrant visa petition for the relative with USCIS.[1] *See* INA sections 201(b)(2)(A)(i), 203(a), 204; 8 U.S.C. 1151(b)(2)(A)(i), 1153(a), 1154; 8 CFR part 204. The same is generally true with respect to a U.S. employer that wishes to petition on behalf of a noncitizen worker. *See* INA sections 203(b), 204; 8 U.S.C. 1153(b), 1154; 8 CFR part 204. Certain other categories of immigrants, such as ''special immigrants,'' are eligible for permanent residence through special processes. *See* INA sections 101(a)(27), 203(b)(4), 204(a)(1)(I); 8 U.S.C. 1101(a)(27), 1153(b)(4), 1154(a)(1)(I); 8 CFR part 204; 22 CFR 42.32(d).

The purpose of the immigrant visa petition is to classify the alien as an intending immigrant who is either an immediate relative of a U.S. citizen (*i.e.,* the spouse, parent, or unmarried child of a U.S. citizen) or an alien described under the family-sponsored preference, employment-based preference, or special immigrant categories. Except with respect to immediate relatives of U.S. citizens, immigrant visa petitions may also serve to classify derivatives (*i.e.,* spouses and unmarried children) of principal beneficiaries as immigrants. *See* INA 203(d); 8 U.S.C. 1153(d). USCIS determines, among other things, whether an alien has the necessary familial relationship to the U.S. citizen or the LPR, has the necessary professional qualifications or skills and expertise for the position offered by the U.S. employer, or meets the requirements for the specific special immigrant category, before approving an immigrant visa petition. Approval of an immigrant visa petition does not give the beneficiary any lawful immigration status in the United States. If the beneficiary is without lawful status when the immigrant visa petition is filed, the beneficiary remains without such status even after it is approved. Once approved, the relative, employee, or special immigrant who is the beneficiary of the approved immigrant visa petition may seek to adjust status to lawful permanent residence in the United States or obtain an immigrant visa abroad at a U.S. embassy or consulate, if eligible. *See* INA section 204, 8 U.S.C. 1154; *see also* 8 CFR part 204.

Many aliens present in the United States who are the beneficiaries of approved immigrant visa petitions are eligible to adjust to LPR status while remaining in the United States. *See, e.g.,* INA section 245, 8 U.S.C. 1255; 8 CFR part 245. Other aliens, however, are ineligible to adjust status in the United States. For example, aliens who entered the United States without inspection and admission or parole, or who are not in a lawful immigration status, are generally ineligible to adjust status in the United States. *See* INA section 245(a), (c); 8 U.S.C. 1255(a), (c); *see also* 8 CFR 245.1(b)–(c) (describing aliens who are ineligible to apply for adjustment of status or who are restricted from applying unless they meet certain conditions). An alien who is unable to adjust status in the United States must obtain an immigrant visa at a U.S. Embassy or consulate abroad before he or she can be lawfully admitted to the United States as an immigrant. An alien who is eligible to apply for adjustment of status to lawful permanent residence in the United States can also choose to apply for an immigrant visa and obtain that visa at a U.S. embassy or consulate abroad through consular processing.

If an alien seeks an immigrant visa abroad through consular processing, USCIS forwards the approved immigrant visa petition to the DOS National Visa Center (NVC), which completes initial processing of petition-based immigrant visa applications. The NVC notifies the alien when he or she

[1] Certain immediate relatives (*e.g.,* widows or widowers of U.S. citizens and their children) and special immigrants can self-petition for classification as an immediate relative of a U.S. citizen by filing a Form I–360, Petition for Amerasian, Widow(er) or Special Immigrant. Similarly, certain employment-based categories (*e.g.,* aliens with extraordinary ability) allow an alien to self-petition for classification as an employment-based immigrant. *See* INA sections 201 and 203(b)(1)(A) & (2)(B); 8 U.S.C. 1151, 1153(b)(1)(A) & (2)(B); 8 CFR 204.5(h) and (k)(4)(ii).

can start the immigrant visa process and will request, among other things, that the alien pay the immigrant visa processing fee and submit the necessary documents. After receiving the fee and necessary documents, the NVC schedules the alien for an immigrant visa interview with a DOS consular officer at a U.S. Embassy or consulate abroad. During the interview, the DOS consular officer determines whether the alien is admissible to the United States and eligible for an immigrant visa.

2. Diversity Visa Program

An alien may also immigrate to the United States through the Diversity Visa program administered by DOS. *See* INA section 203(c), 8 U.S.C. 1153(c); 22 CFR 42.33. Under the Diversity Visa program, up to 55,000 immigrant visas and adjustment of status applications can be approved annually for aliens who are from countries with low immigration rates to the United States.[2] See INA section 201(e), 8 U.S.C. 1151(e). An alien seeking to immigrate as a diversity immigrant submits an entry with the Diversity Visa program during the designated registration period. After the registration period closes, DOS randomly selects aliens from the pool of registrants to continue the Diversity Visa process. Being selected to participate in the Diversity Visa program does not afford the selectee any lawful immigration status.

If selected and eligible, an alien may be authorized to seek LPR status either through adjustment of status in the United States or through consular processing abroad with DOS. If the alien chooses to use the consular process, he or she must submit an immigrant visa application (Form DS–260, Immigrant Visa Electronic Application) to the DOS Kentucky Consular Center (KCC), which completes initial processing of the immigrant visa applications from Diversity Visa program selectees and derivatives. If the immigrant visa application is complete and an immigrant visa is available, the KCC schedules the alien for an immigrant visa interview abroad. The DOS consular officer determines whether the alien is admissible to the United States and eligible for the immigrant visa. A program selectee or derivative (such as the spouse or minor child of a program selectee), however, can obtain an immigrant visa only in the fiscal year for which he or she was selected, provided the numerical limits have not been reached. *See* 22 CFR 42.33(c)–(f).

Diversity Visa program processing is different from the petition-based immigrant visa process, as Diversity Visa program selectees and their derivatives are not beneficiaries of approved immigrant visa petitions. DOS completes initial processing of program selectees and derivatives at the KCC instead of at the NVC. The Diversity Visa program pre-processing steps aim to ensure that DOS can issue as many visas to program selectees and derivatives as possible during the particular fiscal year. For example, Diversity Visa program selectees and their derivatives submit their immigrant visa applications to the KCC without the additional documents required for immigrant visa processing. Program selectees and derivatives submit the additional required documents to the DOS consular officer as part of the immigrant visa interview and process. In addition, unlike immediate-relative, family-sponsored, employment-based, and special-immigrant visa applicants, Diversity Visa program selectees and their derivatives pay their immigrant visa processing fees at their immigrant visa interviews rather than before DOS schedules the interviews.

C. Grounds of Inadmissibility

U.S. immigration laws specify acts, conditions, and conduct that bar aliens from being admitted to the United States or from obtaining visas, including immigrant visas. *See* INA section 212(a), 8 U.S.C. 1182(a) (listing the grounds of inadmissibility). The Secretary has the discretion to waive certain inadmissibility grounds if an alien applies for a waiver and meets the relevant statutory and regulatory requirements. *See, e.g.,* INA section 212(a)(9)(B)(v), 8 U.S.C. 1182(a)(9)(B)(v); 8 CFR 212.7. If the Secretary grants a waiver of inadmissibility, the waived inadmissibility ground no longer bars the alien's admission, readmission, or immigrant visa eligibility. *See* 8 CFR 212.7(a)(4).

D. Unlawful Presence

The inadmissibility ground based on the accrual of unlawful presence in the United States is found at INA section 212(a)(9)(B)(i), 8 U.S.C. 1182(a)(9)(B)(i). Under that provision, an alien who was unlawfully present in the United States for more than 180 days but less than one year and who then departs voluntarily from the United States before removal proceedings begin is inadmissible to the United States for 3 years from the date of departure. *See* INA section 212(a)(9)(B)(i)(I), 8 U.S.C. 1182(a)(9)(B)(i)(I). An alien who was unlawfully present in the United States for one year or more and who then departs the United States before, during, or after removal proceedings is inadmissible for 10 years from the date of departure. *See* INA section 212(a)(9)(B)(i)(II), 8 U.S.C. 1182(a)(9)(B)(i)(II).

These 3- and 10-year unlawful presence bars do not take effect unless and until the alien departs from the United States.[3] *See, e.g., Matter of Rodarte-Roman,* 23 I. & N. Dec. 905 (BIA 2006); 22 CFR 40.92(a)–(b). Once the 3- or 10-year unlawful presence bar is triggered, the alien must apply for and be granted a waiver of inadmissibility before he or she can be issued an immigrant visa and be admitted to the United States for permanent residence. The Secretary has the discretion to waive the 3- and 10-year unlawful presence bars for an alien seeking admission to the United States as an immigrant, if he or she demonstrates that the refusal of his or her admission to the United States would cause extreme hardship to the alien's U.S. citizen or LPR spouse or parent. *See* INA section 212(a)(9)(B)(v), 8 U.S.C. 1182(a)(9)(B)(v).

Because approval of the waiver is discretionary, the alien also must establish that he or she merits a favorable exercise of discretion. *See* INA section 212(a)(9)(B)(v), 8 U.S.C. 1182(a)(9)(B)(v). Accordingly, USCIS may deny a waiver application as a matter of discretion, even if the applicant meets all of the other regulatory requirements.

E. Form I–601 Waiver Process

1. Form I–601 Waiver Process for Immigrant Visa Applicants Abroad

The 3- and 10-year unlawful presence bars to admissibility under INA section 212(a)(9)(B) do not apply unless and until an alien who accrued sufficient unlawful presence departs from the United States. Many aliens who would trigger these bars upon departure from the United States are ineligible to adjust

[2] INA section 203(c) authorizes up to 55,000 immigrant visas each fiscal year for aliens from countries with low admissions during the previous five years. However, this number is reduced by up to 5,000 for applicants seeking adjustment of status under the Nicaraguan Adjustment and Central American Relief Act (NACARA), Pub. L. 105–100, title II, secs. 201–204, 111 Stat. 2160, 2193–201 (Nov. 19, 1997), *amended by* Pub. L. 105–139, 111 Stat. 2644 (Dec. 2, 1997) (8 U.S.C. 1255 note).

[3] By statute, certain aliens do not accrue unlawful presence for purposes of INA section 212(a)(9)(B)(i), 8 U.S.C. 1182(a)(9)(B)(i). For example, aliens under the age of 18 do not accrue unlawful presence. *See* INA section 212(a)(9)(B)(iii)(I), 8 U.S.C. 1182(a)(9)(B)(iii)(I). Similarly, aliens with pending asylum claims generally do not accrue unlawful presence while their asylum applications are pending. *See* INA section 212(a)(9)(B)(iii)(II), 8 U.S.C. 1182(a)(9)(B)(iii)(II). *See* INA sections 212(a)(9)(B)(iii)(III), (IV), and (V), 8 U.S.C. 1182(a)(9)(B)(iii)(III), (IV), and (V) for additional exceptions to the accrual of unlawful presence.

status in the United States and must travel abroad to obtain an immigrant visa from DOS. DOS cannot issue an immigrant visa to an inadmissible alien unless he or she applies for, and USCIS approves, a waiver of inadmissibility, if a waiver is authorized under the INA for the specific ground of inadmissibility. *See* 22 CFR 40.6, 40.9, 40.92(c).

Under the Form I–601 waiver process, an immigrant visa applicant may file an Application for Waiver of Grounds of Inadmissibility, Form I–601, with USCIS *after* the DOS consular officer makes the inadmissibility determination during the immigrant visa interview abroad.[4] Once the alien files the Form I–601 waiver application, he or she must remain abroad while USCIS adjudicates the waiver application. Currently, USCIS adjudicates these Form I–601 waiver applications at the Nebraska Service Center (NSC) in the United States.[5]

Upon approving the Form I–601 waiver application, USCIS notifies DOS so that DOS may issue the immigrant visa if the alien is otherwise eligible. If USCIS denies the Form I–601 waiver application, the alien remains inadmissible and, therefore, ineligible for an immigrant visa and is generally unable to lawfully return to the United States. If the alien is inadmissible based on the 3- or 10-year unlawful presence bar, he or she must remain outside of the United States for the relevant 3- or 10-year period before he or she can reapply for an immigrant visa without having to obtain a waiver. An alien may appeal the denial of a Form I–601 waiver application with the USCIS Administrative Appeals Office (AAO). Alternatively, the alien can file another Form I–601 waiver application.

2. Difficulties With the Form I–601 Waiver Process

Immigrant visa applicants typically encounter difficulties when seeking waivers of the 3- and 10-year unlawful presence bars through the Form I–601 waiver process abroad. After attending the immigrant visa interview with DOS, these applicants must gather the necessary information and supporting documents, file their Form I–601 waiver applications with USCIS, and typically wait abroad for at least several months for a decision on their applications based on the average adjudication time for Form I–601 waiver applications.[6] During this period, the applicant must endure separation from U.S. citizen and LPR family members in the United States. Such separation may cause some U.S. citizens, LPRs, and their families to experience emotional and financial hardships while the alien relative waits abroad for a decision on his or her application. If the waiver is approved, and the alien is otherwise eligible for the immigrant visa, the alien must then return to DOS to pick up the immigrant visa. Due to these difficulties and uncertainties, many alien relatives of U.S. citizens and LPRs are reluctant to leave the United States to obtain an immigrant visa.

Inefficiencies in the Form I–601 waiver process also create costs for the Federal Government. If a DOS officer at a U.S. Embassy or consulate determines that the applicant is inadmissible based on a ground that can be waived, the DOS officer informs the applicant about the option to file a waiver application with USCIS. After the interview, DOS puts the immigrant visa process on hold while waiting for the applicant to submit the Form I–601 waiver application and for USCIS's decision on the waiver. If a waiver is approved, DOS must reschedule the applicant for additional visa processing at a U.S. Embassy or consulate, which uses valuable DOS consular officer resources that could be used for processing other visa applications.

F. Provisional Waiver Process

1. Creation of the Provisional Waiver Process

In 2013, DHS sought to partially address the difficulties and inefficiencies of the Form I–601 waiver process through rulemaking. DHS published a rule establishing a provisional waiver process, which streamlines certain aspects of the Form I–601 waiver process, facilitates immigrant visa issuance, and promotes family unity. *See* 78 FR 536 (Jan. 3, 2013); *see also* 77 FR 19902 (Apr. 2, 2012) (proposed rule). The goal of the provisional waiver process is to reduce the adverse impact of the Form I–601 waiver process on families in the United States.[7] In particular, the current provisional waiver process permits certain immediate relatives of U.S. citizens who are physically present in the United States to apply for a provisional waiver of the 3- and 10-year unlawful presence bars *before* departing for their immigrant visa interviews abroad. The provisional waiver is available to only those aliens who will be inadmissible on account of the 3-year or 10-year unlawful presence bar at the time of the immigrant visa interview. Aliens who, at the time of the immigrant visa interview, may be inadmissible based on another ground of inadmissibility or multiple grounds of inadmissibility, are not eligible for provisional waivers. USCIS's approval of a provisional waiver allows DOS to issue the immigrant visa without the further delay associated with the Form I–601 waiver process, if the applicant is otherwise eligible. *See* 8 CFR 212.7(e).

DHS initially limited eligibility for provisional waivers to immediate relatives of U.S. citizens (spouses, parents and children (under the age of 21) of U.S. citizens). The intention was to prioritize the family reunification of immediate relatives of U.S. citizens over other categories of aliens. Limiting the program also allowed DHS to assess the initial effectiveness of a provisional waiver process. Accordingly, DHS restricted eligibility for provisional waivers to immediate relatives of U.S. citizens who could demonstrate that their U.S. citizen spouses or parents would suffer extreme hardship if the immediate relatives were refused admission to the United States. *See* 78 FR at 542. Although other aliens are eligible for waivers of the 3- and 10-year unlawful presence bars under the Form I–601 waiver process, the provisional waiver process was not made available to them. DHS limited eligibility to immediate relatives able to demonstrate extreme hardship to a U.S. citizen spouse or parent. *See* 78 FR at 543 (describing rationale for eligibility limitations). Immediate relatives who can show extreme hardship to only their LPR spouses or parents, and other categories of immigrant visa applicants, are ineligible to obtain a provisional waiver under the current regulation.[8]

[4] To be eligible for the waiver, the alien must meet all requirements described in INA section 212(a)(9)(B)(v), including the requirement to demonstrate that refusing the alien's admission to the United States would result in extreme hardship to the alien's U.S. citizen or LPR spouse or parent. This same requirement applies to the Form I–601A provisional waiver process. The fundamental distinction between the Form I–601 and Form I–601A processes is the manner in which the applicant applies for the waiver.

[5] The alien files the waiver application from abroad by sending it to a USCIS ''lockbox'' facility in the United States. In limited circumstances, as outlined in the Form I–601 instructions, an alien may file a waiver application at a USCIS international office.

[6] The average adjudication time of Form I–601 waivers is currently five months based on information gathered from USCIS's Nebraska Service Center on March 3, 2015. Updated processing times for Form I–601 are also posted on the USCIS Web site at: *https://egov.uscis.gov/cris/processTimesDisplayInit.do.*

[7] Promoting family unity has always played a significant role in the development of U.S. immigration laws. *See, e.g., Holder* v. *Martinez Gutierrez,* 132 S. Ct. 2011, 2019 (2012); *INS* v. *Errico,* 385 U.S. 214, 219–20 (1966).

[8] In the 2012 proposed rule, DHS explained that the provisional waiver process would not be extended to non-immediate relatives of U.S.

Continued

2. Impact of Provisional Waiver Process

In the 2013 final rule, DHS noted that it would consider expanding provisional waiver eligibility after DHS and DOS assessed the effectiveness of the provisional waiver process and the operational impact it may have on existing agency processes and resources. *See* 78 FR at 542–543 (citing *Beach Commc'ns* v. *FCC,* 508 U.S. 307, 316 (1993) (observing that policymakers ''must be allowed leeway to approach a perceived problem incrementally'')). Preliminary review of the provisional waiver process has shown that it can reduce the time that relatives are separated from their U.S. citizen families, reduce the processing costs incurred by DOS and DHS, limit the number of exchanges between DOS and DHS, and reduce the number of immigrant visa cases DOS has to either reschedule or place on hold under the Form I–601 waiver process. DHS initially anticipated receiving as many as 62,348 provisional waiver applications per year and allocated resources accordingly. USCIS, however, received only about 39,000 applications in fiscal year 2014. As a result, both DHS and DOS have determined that there would not be a significant operational impact if DHS expanded eligibility for provisional waivers to include other statutorily eligible aliens who are beneficiaries of approved immigrant visa petitions and can establish extreme hardship to their U.S. citizen or LPR spouses or parents.

IV. Proposed Changes

DHS proposes to expand the class of aliens who may be eligible for a provisional waiver beyond immediate relatives of U.S. citizens to aliens in all statutorily eligible immigrant visa categories. Such aliens include family-sponsored immigrants, employment-based immigrants, certain special immigrants, and Diversity Visa program selectees, together with their derivative spouses and children. *See* proposed 8 CFR 212.7(e)(3)(iv). DHS also proposes to expand who may be considered a qualifying relative for purposes of the extreme hardship determination to include LPR spouses and parents.

This proposed expansion will permit any alien seeking an immigrant visa who would be eligible to apply for a Form I–601 waiver of unlawful presence abroad to now apply for a provisional waiver *before* leaving the United States to attend his or her immigrant visa interview abroad. Aliens who will become eligible for a provisional waiver, including derivative spouses and children, would still need to meet all other requirements of proposed 8 CFR 212.7(e) to obtain the waiver.[9] Under this proposed rule, any alien who meets the eligibility requirements for a provisional waiver and who is pursuing consular processing abroad can apply for the waiver irrespective of his or her current immigration status in the United States.[10]

DHS does not propose to change any eligibility requirements for a provisional waiver other than those described in this rulemaking.

A. Immediate Relatives, Family-Sponsored Immigrants, Employment-Based Immigrants, and Certain Special Immigrants

Under the proposed rule, an alien would be eligible for a provisional waiver if, among other criteria, he or she has an immigrant visa case pending with DOS based on an approved immigrant visa petition and has paid the immigrant visa processing fee. Aliens with an approved immigrant visa petition include: [11]

- A beneficiary of an approved Petition for Alien Relative, Form I–130, or Petition for Amerasian, Widow(er), and Special Immigrant, Form I–360 (classifying the alien as immigrant visa applicant under INA section 201(b)(2), 8 U.S.C. 1151(b)(2), or INA section 203(a) or (b), 8 U.S.C. 1153(a) or (b));
- A beneficiary of an approved Immigrant Petition for Alien Worker, Form I–140 (classifying the alien as immigrant visa applicant under INA section 203(b), 8 U.S.C. 1153(b)); and
- A spouse or child, as defined in subparagraph (A), (B), (C), (D) or (E) of INA section 101(b)(1), 8 U.S.C. 1101(b)(1), if accompanying or following-to-join an alien spouse or parent seeking to immigrate under INA section 203(a) or (b), 8 U.S.C. 1153(a) or (b), or under INA section 203(d), 8 U.S.C. 1153(d).

B. Diversity Immigrants

Under the proposed rule, an alien would also be eligible for a provisional waiver based on selection by DOS to participate in the Diversity Visa program under INA section 203(c), 8 U.S.C. 1153(c) for the fiscal year for which the alien registered. Expanding the provisional waiver process to Diversity Visa program selectees and their derivatives requires USCIS to develop procedures that apply only to these applicants because such applicants do not have approved immigrant visa petitions. DOS's selection of an alien for the Diversity Visa program is for these purposes being considered the functional equivalent of having an approved immigrant visa petition. *See* proposed 8 CFR 212.7(e)(3)(iv). Additionally, Diversity Visa program processing must be completed by the end of the fiscal year for the program year for which the alien registered. *See* INA section 204(a)(1)(I)(ii)(II), 8 U.S.C. 1154(a)(1)(I)(ii)(II). To meet the time constraints of the Diversity Visa program, USCIS would consider an immigrant visa case pending as soon as DOS selects the alien for the program. *See* proposed 8 CFR 212.7(e)(3)(iv) and 8 CFR 212.7(e)(5)(ii)(F). Because Diversity Visa program selectees and derivatives do not have to pay the immigrant visa processing fee until the immigrant visa interview, DHS proposes that such aliens would not have to provide proof of payment of the immigrant visa processing fee when they apply for a provisional waiver. *See* proposed 8 CFR 212.7(e)(3)(iv) and 8 CFR 212.7(e)(5)(ii)(F).

C. Qualifying Relatives

DHS proposes to expand eligibility for provisional waivers to include aliens who can establish extreme hardship to an LPR spouse or parent. This proposed expansion would allow immigrant visa applicants, including diversity visa applicants, to seek provisional waivers based on extreme hardship to all categories of qualifying relatives authorized by statute. See proposed 8 CFR 212.7(e)(3)(vi) and 8 CFR 212.7(e)(8). Although the benefits of this rule largely would accrue to the expanded group of aliens newly eligible to apply for provisional waivers under the rule, certain immediate relatives of U.S. citizens will also experience

citizens or immediate relatives who can only show extreme hardship to their LPR spouses or parents. *See* 77 FR 19907. Commenters to the proposed provisional waiver rule from April 2, 2012 objected to both limitations. *See* 78 FR at 542–543.

[9] Although derivative spouses and children apply for an immigrant visa based on their relationship to a principal beneficiary, the admissibility determination is made individually for each immigrant visa applicant. *See* INA 212, 221(g), 291, 8 U.S.C. 1182, 1201(g), 1361; 22 CFR 40.6, 40.92. If the derivative is inadmissible, he or she must apply for a provisional waiver and meet the eligibility requirements independent of the principal.

[10] As stated in the 2013 rule, an alien's current immigration status is not relevant for purposes of seeking a provisional waiver of an unlawful presence ground of inadmissibility. *See* 78 FR at 547. No alien, including one who is in Temporary Protected Status, has received deferred action, or is currently in a lawful nonimmigrant status, is barred from seeking a provisional waiver as long as the alien meets the eligibility requirements stated in the rule.

[11] A Refugee/Asylee Relative Petition, Form I–730, is not an immigrant visa petition and is therefore not a basis for filing a provisional waiver application.

benefits from this rule. For example, an alien who is the beneficiary of an immediate relative petition filed by his or her U.S. citizen son or daughter—who is not a qualifying relative for purposes of the waiver—could seek a provisional waiver based on extreme hardship that would be suffered by the alien's LPR spouse.

D. Aliens With Scheduled Immigrant Visa Interviews

DHS proposes to limit eligibility for provisional waivers under this rulemaking to aliens, other than immediate relatives of U.S. citizens, who have not had their immigrant visa interviews scheduled before the effective date of a final rule. DHS also proposes that immediate relatives of U.S. citizens will be eligible to file for provisional waivers if they have not had their immigrant visa interviews scheduled before January 3, 2013, even if they may not have been previously eligible to apply for provisional waivers under the current rule.[12] For these purposes, DHS will use the date that DOS initially acted to schedule the immigrant visa interview, not the date that the alien is scheduled to appear for the immigrant visa interview.

As reflected in the 2013 rulemaking, these restrictions are necessary to make the process operationally manageable without creating delays in the processing of other petitions or applications filed with USCIS or in the DOS immigrant visa process. If the proposed rule included aliens who were scheduled for an interview prior to the effective date of a final rule, the projected volume of cases could increase and create backlogs not only in the provisional waiver process, but also in adjudication of other USCIS benefits. The increased volume could also adversely impact DOS and its immigrant visa process.[13]

E. Miscellaneous Changes

This rule also proposes to remove from the affected regulations all unnecessary procedural instructions regarding office names and locations, position titles and responsibilities, and form numbers. Prescribing an office name, such as ''Application Support Center,'' is unnecessary and restricts USCIS' ability to vary work locations as necessary to address its workload needs, better utilize its resources, and serve its customers. *See, e.g.,* proposed 8 CFR 212.7(e)(3)(ii) (replacing the term ''USCIS ASC'' with ''location in the United States designated by USCIS''). Likewise, requiring a specific form to be filed for a certain benefit in the Code of Federal Regulations (CFR) is generally unnecessary, and enumerating specific form numbers reduces the agency's ability to modify or modernize its business processes to address changing needs. *See, e.g.,* proposed 8 CFR 212.7(e)(5)(i) (replacing ''Form I–601A'' with ''application for a provisional unlawful presence waiver''). Finally, listing specific officer titles for consideration of provisional waiver applications restricts USCIS' flexibility in the adjudication of immigration benefits. *See, e.g.,* proposed 8 CFR 212.7(e)(12)(i)(C) (removing ''consular officer''). Authorities and functions of DHS to administer and enforce the immigration laws are appropriately delegated to DHS employees and others in accordance with section 102(b)(1) of the Homeland Security Act of 2002, 6 U.S.C. 112(b)(1); section 103(a) of the INA, 8 U.S.C. 1103(a); and 8 CFR 2.1.

In addition, USCIS is proposing to revise 8 CFR 212.7(e)(8) by removing the superfluous sentence that states USCIS may require the alien and the U.S. citizen petitioner to appear for an interview pursuant to 8 CFR 103.2(b)(9). USCIS already has the authority to require an applicant or petitioner to appear for an interview under 8 CFR 103.2(b)(9). USCIS thus retains the authority to require an interview regardless of the inclusion of such authority in § 212.7(e)(8). The cross reference at 8 CFR 212.7(e)(8) was unnecessarily redundant.

Finally, DHS is correcting two errors. First, in 8 CFR 103.2(b), DHS is replacing the article ''an'' with the article ''a,'' wherever the article appears before the term ''benefit request'' in paragraphs (b)(6), (b)(9), (b)(10), and (b)(12). Second, in 8 CFR 212.7(a), DHS is removing the title to effectuate the change that was intended to be made in the 2013 rule.

F. Benefits of the Proposed Changes

By making the provisional waiver process available to all aliens who are statutorily eligible for the waiver of unlawful presence under section 212(a)(9)(B)(v) and meet certain other conditions, DHS would be expanding the population of aliens who could benefit from a streamlined immigrant visa process. DHS believes that expanding availability of the provisional waiver process would likely reduce the overall immigrant visa processing time for eligible immigrant visa applicants, thereby saving DHS, DOS, and applicants both the time and resources currently devoted to the Form I–601 waiver process. DHS also believes that the proposed expansion would reduce the hardship that U.S. citizen and LPR families experience as a result of separation from their alien relatives. Some immediate relatives of U.S. citizens may also benefit from the proposal to broaden the group of individuals who can serve as qualifying relatives for the provisional waiver's extreme hardship determination.

V. Public Input

DHS invites comments from all interested parties, including advocacy groups, nongovernmental organizations, community-based organizations, and legal representatives who specialize in immigration law, on any and all aspects of this proposed rule. DHS is specifically seeking comments on:

a. The proposal to expand eligibility for provisional waivers to include the following aliens not covered by the current rule:

- Immediate relatives of U.S. citizens under INA section 201(b)(2), 8 U.S.C. 1151(b)(2), who can establish extreme hardship to an LPR spouse or parent as provided under INA section 212(a)(9)(B)(v);
- Family-sponsored immigrant visa applicants under INA section 203(a), 8 U.S.C. 1153(a);
- Employment-based immigrant visa applicants and certain special immigrants under INA section 203(b), 8 U.S.C. 1153(b);
- Diversity immigrants under INA section 203(c), 8 U.S.C. 1153(c); and
- Derivative family members of the above mentioned immigrant visa applicants, in accordance with INA section 203(d), 8 U.S.C. 1153(d).

b. The proposal to limit eligibility for provisional waivers to aliens as follows: (1) for immediate relatives of U.S. citizens, to those for whom DOS initially acted to schedule their immigrant visa interviews on or after January 3, 2013; and (2) for all other immigrant visa applicants, on or after the effective date of the final rule.

c. Any alternatives to this proposed rule that may be more effective than the current provisional waiver process or the amended process described in the proposed rule.

[12] Aliens who are immediate relatives of U.S. citizens but who can only demonstrate that the denial of admission would cause extreme hardship to an LPR spouse or parent (rather than a U.S. citizen spouse or parent) are currently ineligible for provisional waivers.

[13] Focusing on U.S. citizens and their immediate relative family members in the expansion of this discretionary procedure also is consistent with permissible distinctions that may be drawn between U.S. citizens and aliens and between classes of aliens in immigration laws and policies. See, *e.g., Fiallo* v. *Bell,* 430 U.S. 787, 792 (1977); *Mathews* v. *Diaz,* 426 U.S. 67, 81 (1976).

VI. Statutory and Regulatory Requirements

A. Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

B. Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

C. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential 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. This rule is a ''significant regulatory action,'' although not an economically significant regulatory action, under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has reviewed this regulation. This effort is consistent with Executive Order 13563's call for agencies to ''consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.''

1. Summary

The proposed expansion of the provisional waiver process would create costs and benefits to provisional waiver (Form I–601A) applicants, their U.S. citizen or lawful permanent resident (LPR) family members, and the Federal Government (namely, U.S. Citizenship and Immigration Services (USCIS) and the Department of State (DOS)), as summarized in Table 1. This rule would impose fee, time, and travel costs on aliens who choose to complete and submit provisional waiver applications and biometrics (namely, fingerprints, photograph, and signature) to USCIS for consideration. These costs would be $58.5 million at a 7 percent discount rate and $71.6 million at a 3 percent discount rate in present value across the 10-year period of analysis. On an annualized basis, the costs are $8.3 million and $8.4 million at 7 percent and 3 percent, respectively (*see* Table 1).

Newly eligible provisional waiver applicants and their U.S. citizen or LPR family members would benefit from this rule. Beneficiaries of provisional waivers may experience shortened periods of separation from their family members living in the United States while they pursue an immigrant visa abroad, thus reducing any related financial and emotional strain on the family. If finalized, some immediate relatives of U.S. citizens may also benefit from the rule's broadened group of individuals who can be qualifying relatives for the provisional waiver's extreme hardship determination. Additionally, USCIS and DOS would continue to benefit from the operational efficiencies gained from the provisional waiver's role in streamlining immigrant visa application processing, though on a larger scale than currently in place.

In the absence of this rule, DHS assumes that the majority of aliens newly eligible for provisional waivers under this rule would pursue an immigrant visa through consular processing abroad and apply for waivers of unlawful presence through the Form I–601 process. Aliens who would otherwise apply for unlawful presence waivers through the Form I–601 process would incur fee, time, and travel costs similar to aliens applying for waivers through the provisional waiver process. But in the absence of this rule, Form I–601 applicants would face longer separation times from their family in the United States and less certainty regarding their application for the waiver.

TABLE 1—TOTAL COSTS AND BENEFITS OF THIS RULE, YEAR 1–YEAR 10

	10-Year present values		Annualized values	
	3% Discount rate	7% Discount rate	3% Discount rate	7% Discount rate
Total Costs:				
Quantitative	$71,622,948	$58,520,192	$8,396,394	$8,331,959
Total Benefits:				
Qualitative	Decreased amount of time that U.S. citizens or LPRs are separated from their alien family members, leading to reduced financial and emotional hardship for these families. Federal Government would achieve increased efficiencies by streamlining immigrant visa processing for aliens seeking inadmissibility waivers of unlawful presence. Aliens, and their family members, would receive advance notice of USCIS's decision on their waiver application prior to leaving the United States for their immigrant visa interview abroad, offering many the certainty of knowing they have been provisionally approved for a waiver.		Decreased amount of time that U.S. citizens or LPRs are separated from their alien family members, leading to reduced financial and emotional hardship for these families. Federal Government would achieve increased efficiencies by streamlining immigrant visa processing for aliens seeking inadmissibility waivers of unlawful presence. Aliens, and their family members, would receive advance notice of USCIS's decision on their waiver application prior to leaving the United States for their immigrant visa interview abroad, offering many the certainty of knowing they have been provisionally approved for a waiver.	

TABLE 1—TOTAL COSTS AND BENEFITS OF THIS RULE, YEAR 1–YEAR 10—Continued

	10-Year present values		Annualized values	
	3% Discount rate	7% Discount rate	3% Discount rate	7% Discount rate
	Certain previously ineligible immediate relatives may now qualify for provisional waivers due to the broadened group of individuals who can be qualifying relatives for the waiver's extreme hardship determination.		Certain previously ineligible immediate relatives may now qualify for provisional waivers due to the broadened group of individuals who can be qualifying relatives for the waiver's extreme hardship determination.	

Note: The cost estimates in this table are contingent upon Form I–601A filing (or receipt) projections as well as the discount rates applied for monetized values.

2. Background

Aliens who are in the United States and seeking LPR status must either obtain an immigrant visa abroad through consular processing with DOS or apply to adjust status in the United States, if eligible. Aliens present in the United States without having been inspected and admitted or paroled are typically ineligible to adjust their status in the United States. To obtain LPR status, such aliens must leave the United States for immigrant visa processing at a U.S. Embassy or consulate abroad. Because these aliens are present in the United States without having been inspected and admitted or paroled, many have already accrued enough unlawful presence (more than 180 days) to trigger the 3- or 10-year unlawful presence grounds of inadmissibility upon departure from the United States. Indeed, in most cases, the action these aliens must take to obtain their immigrant visa—departing the United States to attend a consular interview—is the very action that triggers the 3- or 10-year bar to admissibility due to the accrual of unlawful presence. *See* INA section 212(a)(9)(B)(i), 8 U.S.C. 1182(a)(9)(B)(i). While there may be limited exceptions, the population affected by this rule would consist almost exclusively of aliens who are eligible for immigrant visas but are unlawfully present in the United States without having been inspected and admitted or paroled.

Historically, aliens seeking an immigrant visa through consular processing were only able to apply for a waiver of a ground of inadmissibility, like a waiver of inadmissibility for unlawful presence, after attending their immigrant visa interview abroad. If a consular officer identified a ground or grounds of inadmissibility during an immigrant visa interview, the immigrant visa applicant was tentatively denied an immigrant visa and allowed to complete a waiver of the applicable ground(s) of inadmissibility, if a waiver was available. The immigrant visa applicant could apply for such a waiver by filing an Application for Waiver of Grounds of Inadmissibility, Form I–601, with USCIS. Applicants who applied for such waivers were required to remain abroad while USCIS adjudicated their Form I–601, which currently takes an average of five months to complete.[14] If USCIS granted a waiver of the inadmissibility ground(s), DOS subsequently scheduled a follow-up consular interview. Provided there were no other concerns raised by the consular officer, DOS generally issued the immigrant visa during the follow-up consular interview. For some aliens, the Form I–601 waiver process has led to lengthy separations of immigrant visa applicants and their U.S. citizen or LPR spouses, parents, and children, causing both financial and emotional harm. The Form I–601 waiver process has also created processing inefficiencies for both USCIS and DOS through repeated interagency communication and through multiple consular appointments or interviews.

With the goals of streamlining the inadmissibility waiver process, facilitating efficient immigrant visa issuance, and promoting family unity, DHS promulgated a rule that established an alternative inadmissibility waiver process on January 3, 2013 (''2013 rule'').[15] The 2013 rule created a provisional waiver process for certain immediate relatives of U.S. citizens (namely, spouses, children, and parents of U.S. citizens) who are in the United States, are seeking immigrant visas, can demonstrate extreme hardship to a U.S. citizen spouse or parent, and would be inadmissible upon departure from the United States due to only the accrual of unlawful presence. That process allowed such aliens to apply for a provisional waiver prior to departing for DOS consular processing of their immigrant visa applications. Instead of requiring them to wait abroad while USCIS adjudicates their application for a waiver of inadmissibility through the Form I–601 waiver process, the provisional waiver process established in 2013 allowed those applicants to remain in the United States with their U.S. citizen relative(s) while awaiting notification of USCIS's decision on their provisional waiver application. Following approval of a provisional waiver, applicants are scheduled for their immigrant visa interviews abroad.

Since the provisional waiver process's inception, USCIS has approved more than 44,000 provisional waiver applications (through Form I–601A filings) for certain immediate relatives of U.S. citizens,[16] allowing these individuals to enjoy the benefits incident to such waivers. Illustrating the demand for provisional waivers, Table 2 displays the historical numbers of Form I–601A receipts, approvals, and denials recorded for March of fiscal year (FY) 2013 through January of FY 2015.

TABLE 2—HISTORICAL NUMBERS OF FORM I–601A RECEIPTS, APPROVALS, AND DENIALS

Fiscal Year	Month	Receipts	Approvals	Denials
2013	Mar.	1,306	746	421
	Apr.	2,737	5	2
	May	3,267	52	19

[14] This figure is based on Form I–601 average adjudication times gathered from USCIS's Nebraska Service Center on March 3, 2015.

[15] *See* 78 FR 536 (Jan. 3, 2013).

[16] This figure is based on Form I–601A approvals data through January 2015. Please note that USCIS began accepting provisional waiver applications on March 4, 2013. Source: Data gathered from USCIS's Office of Performance and Quality on February 20, 2015.

TABLE 2—HISTORICAL NUMBERS OF FORM I–601A RECEIPTS, APPROVALS, AND DENIALS—Continued

Fiscal Year	Month	Receipts	Approvals	Denials
	Jun.	3,119	226	345
	Jul.	3,425	1006	763
	Aug.	3,075	1435	937
	Sep.	2,798	1,749	458
FY 2013 Total		19,727	4,473	2,524
2014	Oct.	2,886	1,465	612
	Nov.	2,697	1,456	577
	Dec.	2,641	1,708	541
	Jan.	2,256	1,616	793
	Feb.	2,483	1,282	574
	Mar.	2,989	1,216	987
	Apr.	3,265	1,363	675
	May	3,650	2,052	640
	Jun.	4,184	3,152	1,057
	Jul.	3,778	4,211	1,451
	Aug.	3,907	3,914	1,808
	Sep.	4,237	4,076	1,493
FY 2014 Total		38,973	27,511	11,208
2015	Oct.	4,540	4,196	1,465
	Nov.	3,726	2,168	948
	Dec.	4,103	2,838	1,185
	Jan.	3,370	3,012	1,443
FY 2015 Total		15,739	12,214	5,041
Cumulative FY 2013–FY 2015 Total		74,439	44,198	18,773

Note: Approvals and denials reflect actual cases adjudicated, which do not directly correspond to filing receipts for the month.
Source: Data gathered from USCIS's Office of Performance and Quality on March 5, 2015.

3. Purpose of Rule

Despite the provisional waiver process's benefits to certain immediate relatives of U.S. citizens, thousands of non-immediate relatives of U.S. citizens and LPRs [17] seeking immigrant visas who are inadmissible to the United States due to only unlawful presence still face the financial and emotional burdens of pursuing a Form I–601 waiver while outside of the country and away from their family in the United States. In addition to promoting the goal of family unity between eligible non-immediate relatives and their U.S. citizen or LPR family members, this rule would increase USCIS and DOS efficiencies by streamlining the waiver process for unlawful presence for this expanded group of aliens.

To assess the initial effectiveness of the provisional waiver process, DHS decided to offer this process to a limited group of aliens in the 2013 rule.[18] Based on the Form I–601 waiver process's financial and emotional burdens to families and the efficiencies realized for both USCIS and DOS through the provisional waiver process, the Secretary directed USCIS to expand eligibility for the provisional waiver process beyond certain immediate relatives of U.S. citizens to all statutorily eligible relatives of U.S. citizens and LPRs.[19] Consistent with that directive, USCIS (through DHS authority) now proposes to extend the provisional waiver process to include all other aliens seeking an immigrant visa (hereafter, ''all other immigrant visa applicants'') who are statutorily eligible to apply for a waiver of the 3- or 10-year unlawful presence bar, are present in the United States, and otherwise meet the requirements of the provisional waiver process.[20] USCIS also proposes to allow LPR spouses and parents, in addition to currently eligible U.S. citizen spouses and parents, to serve as qualifying relatives for the provisional waiver's extreme hardship determination. Under this proposal, provisional waiver applicants could show that their denial of admission would cause extreme hardship to their U.S. citizen *or* LPR spouses or parents.

This rule's proposed changes would provide more aliens and their U.S. citizen or LPR family members with the provisional waiver's main benefit of shortened family separation periods, while increasing USCIS and DOS efficiencies by streamlining the immigrant visa process for such aliens. Additionally, the proposed changes may allow more immediate relatives of U.S. citizens to qualify for provisional waivers by broadening the group of individuals who could serve as qualifying relatives for the waiver's extreme hardship determination. Other than the changes proposed in this rulemaking, DHS would maintain all other eligibility requirements for the provisional waiver as currently outlined in 8 CFR 212.7(e), including the requirements to submit biometrics, pay a $585 application fee and $85 biometric services fee, and be currently present in the United States at the time of the provisional waiver application filing and biometrics appointment.

4. Current Provisional Waiver Process

In this analysis, DHS draws on relevant DOS inadmissibility statistics and historical provisional waiver application data to estimate the demand for provisional waivers occurring in the absence of this rule (for certain immediate relatives of U.S. citizens), as well as directly resulting from this rule

[17] Examples of family relationships that fall into the ''non-immediate'' category include, but are not limited to, adult sons and daughters of U.S. citizens; brothers and sisters of U.S. citizens; and spouses and children of LPRs.

[18] *See* 78 FR at 542 (Jan. 3, 2013).

[19] *See* Memorandum from Jeh Charles Johnson, Secretary, for León Rodríguez, Director, U.S. Citizenship and Immigration Services, *Expansion of the Provisional Waiver Program,* Nov. 20, 2014, *available at http://www.dhs.gov/sites/default/files/publications/14_1120_memo_i601a_waiver.pdf.*

[20] The phrase ''all other immigrant visa applicants'' encompasses the following immigrant visa categories: Family-sponsored immigrants, employment-based immigrants, diversity immigrants, and certain special immigrants.

(for the expanded population of eligible immigrant visa beneficiaries). Table 3 shows DOS's historical immigrant visa inadmissibility findings due to only unlawful presence. Between FYs 2010 and 2014, DOS recorded inadmissibility due to only unlawful presence for almost 241,000 immediate relative visas and for nearly 60,000 all other immigrant visas.[21]

TABLE 3—NUMBER OF IMMIGRANT VISA INADMISSIBILITY FINDINGS DUE TO ONLY UNLAWFUL PRESENCE

Fiscal year	Visa category type		Total
	Immediate relatives[22]	All other immigrants[23]	
2010	44,497	4,955	49,452
2011	45,961	13,162	59,123
2012	46,520	13,568	60,088
2013	45,602	14,354	59,956
2014	58,058	13,946	72,004
Total	240,638	59,985	300,623

Source: Data gathered from the U.S. Department of State's Bureau of Consular Affairs on March 25, 2015.

With the implementation of the 2013 rule, immediate relatives of U.S. citizens seeking immigrant visas who were present in the United States, demonstrated extreme hardship to their U.S. citizen spouse or parent, and were inadmissible only for unlawful presence became eligible to apply for provisional waivers. *See* 8 CFR 212.7(e). Table 4 compares the number of DOS immediate relative visa inadmissibility findings due to only unlawful presence and provisional waiver applications filed with USCIS for FYs 2013 and 2014. Because the provisional waiver process went into effect in March 2013, immediate relatives could file provisional waiver applications only during the last seven months of FY 2013.[24] Thus, for comparison purposes, USCIS adjusted DOS's FY 2013 immediate relative visa inadmissibility counts to reflect only a partial year (specifically, 7/12 of a year). During FYs 2013 and 2014, USCIS received a total of 58,700 provisional waiver applications, which represented approximately 70 percent[25] of the population of certain immediate relatives found inadmissible for unlawful presence during that same time period.[26]

TABLE 4—NUMBER OF IMMEDIATE RELATIVE IMMIGRANT VISA INADMISSIBILITY FINDINGS DUE TO ONLY UNLAWFUL PRESENCE COMPARED TO HISTORICAL FORM I–601A RECEIPTS

Fiscal year	Immediate relative immigrant visa inadmissibility		Immediate relative Form I–601A receipts	
	Inadmissibility findings	Inadmissibility findings adjusted for partial year	Actual Form I–601A receipts	Ratio of Form I–601A receipts to inadmissibility findings (%)
Year 1 (2013)	45,602	26,601	19,727	74
Year 2 (2014)	58,058	58,058	38,973	67
2-Year Total/Avg.	103,660	84,659	58,700	70

Notes: The provisional waiver process's implementation date was March 4, 2013. DHS adjusted the full year of immediate relative immigrant visa inadmissibility counts due to only unlawful presence in 2013 to account for only the portion of the year in which the provisional waiver process existed. The data listed in this table was rounded.

The actual Form I–601A filing demands, illustrated in Table 2 and Table 4, differ from the estimates in the 2013 rule's economic impact analysis. When DHS conducted the 2013 rule's economic impact analysis, DHS did not have statistics on unlawful presence inadmissibility findings for immediate relatives that would allow for a precise calculation of the rule's impact. Due to such limitations, DHS instead estimated the rule's impact based on various demand scenarios. In this rule's analysis, DHS retrospectively examined DOS data on unlawful presence inadmissibility findings for immediate relatives and compared this information against USCIS receipts for provisional waiver applications (through Form I–601A filings) to determine the future demand for provisional waivers.

When determining a figure upon which to base future inadmissibility estimates and subsequent Form I–601A demand, DHS chose to use the actual FY 2014 inadmissibility count for unlawful presence rather than a multi-year

[21] Of the inadmissibility figures recorded for all other immigrant visa categories, nearly 98 percent corresponded to family-sponsored (other than immediate relatives of U.S. citizens) immigrant visa applications, 1 percent corresponded to employment-based immigrant visa applications, 1 percent corresponded to Diversity Visa immigrant applications, and a fraction of 1 percent corresponded to certain special immigrant visa applications.

[22] Population addressed in the 2013 rule (immediate relatives of U.S. citizens).

[23] Population impacted by this rule.

[24] FY 2013 is October 1, 2012 to September 30, 2013.

[25] Calculated as 58,700 2-year total Form I–601A receipts divided by 84,659 total immediate relative inadmissibility count for March 2013 through FY 2014, which equals 0.693, or 0.70 when rounded to the first decimal place.

[26] Data gathered from USCIS's Office of Performance and Quality Reporting on March 5, 2015.

average of historical values as the averages did not seem to fully capture the general rise in inadmissibility findings occurring between FYs 2010 and 2014 (see Table 3).[27] Consistent with the ratio of provisional waiver application filings to immediate relative visa inadmissibility counts based solely on unlawful presence during FYs 2013 and 2014 listed in Table 4, DHS assumes that 70 percent of the population of immediate relatives found inadmissible only for unlawful presence would file a Form I–601A provisional waiver application. In the absence of this rule, DHS projects that the number of immediate relative visa inadmissibility findings due to only unlawful presence would continue to increase from the FY 2014 count shown in Table 4 (58,058) by 2.5 percent per year based on the compound annual growth rate of the unauthorized immigrant population living in the United States between 2000 and 2012.[28] To calculate future Form I–601A filing (or receipt) volumes, DHS multiplies the 70 percent provisional waiver filing rate by the annual numbers of immediate relative immigrant visa inadmissibility findings due to only unlawful presence. Note that when applying this filing rate to yearly inadmissibility figures, the numbers may not match those listed in Table 5 due to rounding.[29] DHS originally calculated the estimates in Table 5 using unrounded figures. Thereafter, all estimates were simultaneously rounded for tabular presentation. In the absence of this rule, USCIS would receive a projected 467,000 provisional waiver applications across 10 years of analysis, as Table 5 illustrates. These provisional waiver applications may ultimately result in waiver approvals or denials.

TABLE 5—PROJECTED NUMBERS OF IMMEDIATE RELATIVE IMMIGRANT VISA INADMISSIBILITY FINDINGS DUE TO ONLY UNLAWFUL PRESENCE AND FORM I–601A APPLICATIONS IN THE ABSENCE OF THIS RULE

[Population addressed in 2013 rule]

Fiscal year	Inadmissibility findings due to only unlawful presence—immediate relatives[30]	Form I–601A receipts—immediate relatives[31]
Year 1	59,509	41,657
Year 2	60,997	42,698
Year 3	62,522	43,765
Year 4	64,085	44,860
Year 5	65,687	45,981
Year 6	67,329	47,131
Year 7	69,013	48,309
Year 8	70,738	49,517
Year 9	72,506	50,755
Year 10	74,319	52,023
Total	666,705	466,696

Notes: The estimates in this table were originally calculated using unrounded figures. Thereafter, all estimates were simultaneously rounded for tabular presentation. Estimates may not sum to total due to rounding.

5. The Population Affected by This Rule

With this rule's implementation, the number of provisional waiver applications would increase from the figures listed in Table 5 as the waiver eligibility criteria expands from only certain immediate relatives of U.S. citizens to include all other immigrant visa applicants who are present in the United States and who otherwise meet the requirements of the provisional waiver process.[32] DHS does not believe that this proposed rule would induce any new demand above the status quo for petitions or immigrant visa applications for this expanded group of aliens. DHS bases this assumption on the fact that the immigrant visa categories to which this rule would now apply (namely, family-sponsored, employment-based, diversity, and certain special immigrant visa categories) are generally subject to statutory visa issuance limits and lengthy visa availability waits due to oversubscription,[33] unlike the immediate relative category currently

[27] Both the three-year FY 2012–FY 2014 average (50,060) and five-year FY 2010–FY 2014 average (48,128) of immediate relative inadmissibility finding counts differed significantly from the FY 2014 total immediate relative inadmissibility finding count of 58,058 (see Table 3).

[28] Calculated by comparing the estimated unauthorized immigrant population living in the United States in 2000 (8,500,000) and the estimated unauthorized immigrant population living in the United States in 2012 (11,400,000). In recent years, the estimated unauthorized immigrant population has decreased. DHS uses the historical growth rate in the unauthorized immigrant population from 2000 to 2012 because it most likely reflects the population impacted by this rule. This population includes those who have likely been unlawfully present in the United States for an extended period and who have already started the immigrant visa process by having an approved petition. Source: U.S. Department of Homeland Security's Office of Immigration Statistics, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2012,* Figure 1, Unauthorized Immigrant Population: 2000–2012, Mar. 2013, *available at http://www.dhs.gov/sites/default/files/publications/ois_ill_pe_2012_2.pdf.*

[29] For example, using the figures in Table 5, the Year 1 immediate relative immigrant visa inadmissibility findings count due to only unlawful presence equals 59,509. Calculation: 59,909 multiplied by 0.70 (the Form I–601A filing rate) equals 41,656.3. The calculated result differs slightly from the 41,657 Year 1 Form I–601A receipts figure in the table.

[30] Population of immediate relatives potentially eligible for provisional waivers.

[31] Estimated number of provisional waiver applications from the eligible population of immediate relatives. These applications do not necessarily correspond to waiver approvals.

[32] As previously mentioned, the phrase ''all other immigrant visa applicants'' encompasses the following immigrant visa categories: Family-sponsored immigrants, employment-based immigrants, Diversity Visa immigrants, and certain special immigrants.

[33] Family-sponsored immigrant visa applicants, who represent nearly 98 percent of the ''all other immigrant visa applicant'' population found inadmissible due to only unlawful presence, currently face visa oversubscription. This means that any new family-sponsored visa applicants must wait in line for available visas. Depending upon the applicant's country of chargeability and preference category, this wait could be many years. Source: U.S. Department of State, Visa Bulletin for April 2015, IX (79), Mar. 2015, *available at http://travel.state.gov/content/visas/english/law-and-policy/bulletin/2015/visa-bulletin-for-april-2015.html.*

eligible for provisional waivers. Furthermore, there is no evidence that the Secretary's November 2014 memorandum [34] on the expansion of the provisional waiver process spurred a significant increase in filings of the Petition for Alien Relative, Form I–130, or the Immigrant Petition for Alien Worker, Form I–140.[35] Thus, DHS does not believe that this rule would increase the demand for the immigrant visa categories to which it applies.

To determine the impact of this rule, DHS employs the same projection method used to estimate future volumes of unlawful presence inadmissibility findings and provisional waiver applications occurring in the absence of this rule. By applying the previously discussed historical 2.5 percent compound annual growth rate of unauthorized immigrants from 2000 to 2012, to the FY 2014 count of all other immigrant visa inadmissibility findings due to only unlawful presence (13,946, as listed in Table 3), DHS projects that non-immediate relative immigrant visa inadmissibility findings due to only unlawful presence would measure approximately 14,295 during this rule's first year of implementation (see Table 6).[36] Based on the current demand for provisional waivers, DHS assumes that 70 percent of the ''all other immigrant visa applicant'' population found inadmissible due to only unlawful presence each year would apply for a provisional waiver annually (see Table 6). Note that when applying this 70 percent filing rate to the inadmissible population estimates in Table 6, the numbers may not match those in the table due to rounding. The estimates in Table 6 were originally calculated using unrounded figures. Thereafter, all estimates were simultaneously rounded for tabular presentation.

Table 6 outlines the population of all other immigrant visa applicants impacted by this rule. During this rule's first year of implementation, DHS projects that USCIS could receive approximately 10,006 provisional waiver applications from newly eligible non-immediate relatives.[37] Across a 10-year period of analysis, DHS estimates that inadmissibility findings based solely on unlawful presence for non-immediate relatives would total about 160,000, while provisional waiver applications from this population of inadmissible non-immediate relative immigrants would measure nearly 112,000. These provisional waiver applications may ultimately result in waiver approvals or denials. Note that Table 6 presents only the additional Form I–601A filings that would occur as a result of this rule; it does not account for the provisional waiver applications that DHS anticipates would be filed in the absence of this rule by certain immediate relatives of U.S. citizens (listed in Table 5).

TABLE 6—PROJECTED NUMBERS OF ALL OTHER IMMIGRANT VISA INADMISSIBILITY FINDINGS DUE TO ONLY UNLAWFUL PRESENCE AND FORM I–601A APPLICATIONS RESULTING FROM THIS RULE

Fiscal year	Inadmissibility findings due to only unlawful presence—All other immigrants [38]	Total Form I–601A receipts—All other immigrants [39]
Year 1	14,295	10,006
Year 2	14,652	10,256
Year 3	15,018	10,513
Year 4	15,394	10,776
Year 5	15,779	11,045
Year 6	16,173	11,321
Year 7	16,577	11,604
Year 8	16,992	11,894
Year 9	17,417	12,192
Year 10	17,852	12,496
Total	160,149	112,103

Notes: The estimates in this table were originally calculated using unrounded figures. Thereafter, all estimates were simultaneously rounded for tabular presentation. Estimates may not sum to total due to rounding.

In addition to the non-immediate relative population affected by this rule illustrated in Table 6, this rule's broadened group of qualifying relatives for the provisional waiver's extreme hardship determination may impact some immediate relatives of U.S. citizens. Yet, the exact number of such immediate relatives is unknown. DHS welcomes any public comments on the population projections used in this analysis.

6. Costs and Benefits

To summarize, aliens who are immediate relatives of U.S. citizens and who are currently eligible for provisional waivers would continue to apply for such waivers in the absence of this rule. At the time of the 2013 rule, DHS was unable to predict the likely application volumes of Form I–601A with precision. With additional information from DOS and the experience since the provisional waiver's inception, DHS can reasonably project the provisional waiver application rate from currently eligible immediate relatives who trigger unlawful presence bars. In fact, DHS

[34] *See* Memorandum from Jeh Charles Johnson, Secretary, for León Rodríguez, Director, U.S. Citizenship and Immigration Services, *Expansion of the Provisional Waiver Program,* Nov. 20, 2014, *available at http://www.dhs.gov/sites/default/files/publications/14_1120_memo_i601a_waiver.pdf.*

[35] Based on a DHS comparison of Form I–130 and Form I–140 filings during the fiscal years before and after the Secretary's 2014 memorandum on the expansion of the provisional waiver program.

[36] FY 2014 ''all other immigrant visa applicants'' count found inadmissible due to only unlawful presence of 13,946 multiplied by 2.5 percent growth rate (that is, 1.025), which equals 14,295 non-immediate relative immigrant visa applicants found inadmissible due to only unlawful presence (rounded).

[37] Year 1's 14,295 non-immediate relative immigrant visa applicant count found inadmissible due to only unlawful presence multiplied by a 70 percent filing rate (0.70), which equals 10,006 Form I–601A receipts.

[38] Population of immigrants newly eligible under this rule for provisional waivers.

[39] Estimated number of provisional waiver applications from the eligible population of all other immigrants. These applications do not necessarily correspond to waiver approvals.

estimates that USCIS would receive 467,000 provisional waiver applications from currently eligible immediate relatives of U.S. citizens across 10 years of analysis (see Table 5). Table 5 represents the baseline of immediate relatives of U.S. citizens that would trigger unlawful presence bars, and those that would likely apply for a provisional waiver based on recent application rates. This proposed rule would expand eligibility for the provisional waiver process to include individuals who fall within all other immigrant visa classifications, are statutorily eligible to apply for a waiver of the 3- or 10-year unlawful presence bar, are present in the United States, and otherwise meet the requirements of the provisional waiver process.[40] As illustrated in Table 6, DHS estimates that provisional waiver applications from the population of newly eligible non-immediate relative immigrants would measure nearly 112,000 across a 10-year period of analysis. As previously mentioned, this proposed rule could also impact some immediate relatives of U.S. citizens by amending the definition of qualifying relatives for purposes of extreme hardship determinations, but the exact number is unknown. Accordingly, DHS analyzes the costs and benefits of this rule to the population of newly eligible non-immediate relatives expected to apply for provisional waivers (see Table 6, ''Total Form I–601A Receipts—All Other Immigrants'' column), while qualitatively discussing the rule's potential impact on immediate relatives of U.S. citizens who would now qualify for provisional waivers under this proposed rule.

Costs

Applicants from the expanded population of aliens who are newly eligible to apply for a provisional waiver under this proposed rule would bear the costs of this regulation. Certain immediate relatives of U.S. citizens already eligible to apply for a provisional waiver would not incur costs from this rule.[41] Although the waiver expansion may require USCIS to expend resources on additional adjudication personnel, associated equipment (*e.g.*, computers and telephones), and related occupancy demands, USCIS expects these costs to be offset by the additional fee revenue collected from the $585 Form I–601A filing fee and the $85 biometric services fee.[42] Accordingly, DHS does not believe that this rule would impose additional net costs on the agency.

To receive a provisional waiver under this rule, eligible aliens must first complete a Form I–601A and submit it to USCIS with its $585 filing fee and $85 biometric services fee. DHS estimates the time burden of completing Form I–601A to be 1.5 hours, which translates to a time, or opportunity, cost of $15.89 per application.[43] DHS calculates the Form I–601A application's opportunity cost to aliens by first multiplying the current Federal minimum wage of $7.25 per hour by 1.46 to account for the full cost of employee benefits (such as paid leave, insurance, and retirement), which results in a time value of $10.59 per hour.[44] Then, DHS multiplies the $10.59 hourly time value by the current 1.5-hour Form I–601A completion time burden to determine the opportunity cost for aliens to complete Form I–601A ($15.89). DHS recognizes that the aliens impacted by the rule are generally unlawfully present and not eligible to work; however, consistent with other DHS rulemakings, DHS uses wage rates as a mechanism to estimate the opportunity costs to aliens associated with completing this rule's required application and biometrics collection. The cost for aliens to initially file a Form I–601A, including only the $585 filing fee and opportunity cost, equals $600.89.

After USCIS receives an alien's completed Form I–601A and its filing and biometric services fees, the agency sends the alien a notice scheduling him or her to visit a USCIS Application Support Center (ASC) for biometrics collection. Along with an $85 biometric services fee, the applicant would incur the following costs to comply with the provisional waiver's biometrics submission requirement: the opportunity cost of traveling to an ASC, the opportunity cost of submitting his or her biometrics, and the mileage cost of traveling to an ASC. While travel times and distances vary, DHS estimates that an applicant's average roundtrip distance to an ASC is 50 miles, and that the average time for that trip is 2.5 hours. DHS estimates that an alien waits an average of 1.17 hours for service and to have his or her biometrics collected at an ASC, adding up to a total biometrics-related time burden of 3.67 hours.[45] By applying the $10.59 hourly time value for aliens to the total biometrics-related time burden, DHS finds that the opportunity cost for a provisional waiver applicant to travel to and from an ASC, and to submit biometrics, would total $38.87.[46] In addition to the opportunity cost of providing biometrics, provisional waiver applicants would experience travel costs related to biometrics collection. The cost of such travel would equal $28.75 per trip, based on the 50-mile roundtrip distance to an ASC and the General Services Administration's (GSA) travel rate of $0.575 per mile.[47] DHS assumes that each alien would travel independently to an ASC to submit his or her biometrics, meaning that this rule would impose a time cost on each of these applicants. Adding the fee, opportunity, and travel costs of biometrics collection together, DHS estimates that the provisional waiver's requirement to submit biometrics would cost a total of $152.62 per Form I–601A filing.

Once all of the aforementioned fee, time, and travel costs to comply with the provisional waiver's requirements are accounted for, DHS finds that each Form I–601A filing would cost an alien $753.51. Table 7 shows that the overall cost of this rule to the expanded population of provisional waiver applicants (namely, non-immediate relatives of U.S. citizens and LPRs) would measure $84.5 million (undiscounted) over the 10-year period of analysis. DHS calculates this rule's total cost to applicants by multiplying

[40] ''All other immigrant visa applicants'' encompass the following immigrant visa categories: Family-sponsored, employment-based, diversity, and certain special immigrants.

[41] *See* 78 FR 536 (Jan. 3, 2013).

[42] Fee information gathered from USCIS, ''I–601A, Application for Provisional Unlawful Presence Waiver,'' *available at http://www.uscis.gov/i-601a* (last updated Mar. 3, 2015). The $585 Form I–601A filing fee and the $85 biometric services fee are subject to change through the normal fee review cycle and any subsequent rulemaking issued by USCIS. USCIS will consider the impact of the provisional waiver and biometrics process workflows and resource requirements as a normal part of its biennial fee review. The biennial fee review determines if fees for immigration benefits are sufficient in light of resource needs and filing trends. *See* INA section 286(m), 8 U.S.C. 1356(m).

[43] *See* 79 FR 36543 (June 27, 2014) for the estimated Form I–601A completion time burden.

[44] Federal minimum wage information gathered from the U.S. Department of Labor, Wage and Hour Division, *available at http://www.dol.gov/dol/topic/wages/minimumwage.htm* (last accessed Mar. 5, 2015). Employer benefits adjustment information gathered from the U.S. Department of Labor, Bureau of Labor Statistics. ''Economic News Release, Table 1. Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group, September 2014.'' Dec. 10, 2015, *available at http://www.bls.gov/news.release/ecec.htm.*

[45] *See* 79 FR 36543 (June 27, 2014) for Form I–601A biometrics collection time burden.

[46] 3.67 hours multiplied by $10.59 per hour equals $38.87.

[47] 50 miles multiplied by $0.575 per mile equals $28.75. *See* 79 FR 78437 (Dec. 30, 2014) for GSA mileage rate.

the individual cost of completing the provisional waiver application requirements ($753.51) by the number of newly eligible aliens projected to apply for provisional waivers each year following the implementation of this rule (listed in Table 6). In present value terms, this rule would cost newly eligible non-immediate relative waiver applicants $58.5 million to $71.6 million across a 10-year period, depending on the discount rate applied (see Table 7). Because this rule would not generate any net costs to USCIS, Table 7 also illustrates the total cost of this rule.

TABLE 7—TOTAL COST OF THIS RULE TO NON-IMMEDIATE RELATIVE APPLICANTS

Fiscal year	Total waiver cost to applicants
Year 1	$7,539,621
Year 2	7,727,999
Year 3	7,921,651
Year 4	8,119,824
Year 5	8,322,518
Year 6	8,530,487
Year 7	8,743,730
Year 8	8,962,248
Year 9	9,186,794
Year 10	9,415,861
10-Year Total: Undiscounted	84,470,732
10-Year Total: Present Value, Discounted at 3 percent	71,622,948
10-Year Total: Present Value, Discounted at 7 percent	58,520,192

Notes: Estimates may not sum to total due to rounding. The cost estimates in this table are contingent upon Form I–601A filing (or receipt) projections as well as the discount rates applied.

DHS welcomes any public comments on the costs of this proposed rule.

Benefits

The benefits of this proposed rule are largely the result of streamlining the immigrant visa process for an expanded population of aliens who are inadmissible to the United States solely due to unlawful presence. For those aliens who are newly eligible for a provisional waiver and their U.S. citizen or LPR family members, the primary benefits of this rule are its reduced separation time among family members during the immigrant visa process for aliens granted waivers and improved predictability of the immigrant visa process. Instead of attending multiple immigrant visa interviews and waiting abroad while USCIS adjudicates a waiver application as required under the Form I–601 waiver process, the provisional waiver process allows aliens to file a provisional waiver application and remain in the United States while it is adjudicated by USCIS. This process generally allows eligible provisional waiver applicants to stay with their family members in the United States while awaiting adjudication and to receive advance notice of USCIS's decision on their waiver application prior to leaving the United States for their immigrant visa interview abroad. Although DHS cannot estimate with precision the exact amount of separation time families would save through this rule, DHS estimates that some newly eligible provisional waiver applicants and their U.S. citizen or LPR family members could experience several months of reduced separation time based on the average adjudication time for Form I–601 waiver applications.[48] In addition to the humanitarian and emotional benefits derived from reduced separation of families, DHS anticipates that the shortened periods of family separation resulting from this rule may lessen the financial burden U.S. citizens and LPRs face to support their relatives while they remain outside of the country. Because of data limitations, however, DHS cannot predict the exact financial impact of this change.

Due to the unique nature of the Diversity Visa program, aliens seeking an immigrant visa through that program and wishing to use the provisional waiver process are likely to enjoy fewer overall benefits from this rule than other non-immediate relative immigrant visa and waiver applicants. Although an alien may be selected to participate in the Diversity Visa program, he or she may not ultimately receive an immigrant visa due to visa unavailability. Under this proposed rule, Diversity Visa selectees and their derivatives who wish to use the provisional waiver process may file a waiver application in advance of knowing whether their immigrant visa will ultimately be available to them. For those provisional waiver applicants pursuing the Diversity Visa track, the risk of completing the provisional waiver process without being issued a visa is higher compared to applicants of other immigrant visa categories filing Form I–601A.[49] If a Diversity Visa program selectee's provisional waiver is approved but he or she is not ultimately issued an immigrant visa, he or she would incur the costs but not the benefits associated with a provisional waiver.

Although the main benefits of this rule would center on the expanded group of aliens newly eligible to apply for provisional waivers, certain immediate relatives of U.S. citizens may also experience benefits from this rule. Through this rulemaking, DHS proposes to allow LPR spouses and parents, in addition to currently eligible U.S. citizen spouses and parents, to serve as qualifying relatives for the provisional waiver's extreme hardship determination. This change may allow some immediate relatives of U.S. citizens (included in Table 5's inadmissible immediate relative estimates) to now qualify for a provisional waiver, although the exact number of individuals who would benefit from this change is unknown due to data limitations.

Based on USCIS and DOS efficiencies realized as a result of the current provisional waiver process, DHS believes that this rule could provide additional Federal Government efficiencies through its expansion to a larger population of aliens. As previously described in the 2013 rule, the provisional waiver process allows USCIS to communicate to DOS the status of an unlawful presence inadmissibility waiver prior to a waiver applicant's immigrant visa interview abroad. Such early communication eliminates the current need for USCIS and DOS to transfer cases repeatedly between the two agencies when adjudicating an immigrant visa application and Form I–601 waiver application.[50] Through the provisional waiver process, DOS receives advance notification from USCIS of the discretionary decision to provisionally waive the unlawful presence inadmissibility bar, which allows for better allocation of valuable agency

[48] The average adjudication time of Form I–601 waivers is currently five months based on information gathered from USCIS's Nebraska Service Center on March 3, 2015. Updated processing times for Form I–601 are also posted on the USCIS Web site at: *https://egov.uscis.gov/cris/processTimesDisplayInit.do.*

[49] There is a statutory maximum of only 55,000 diversity visas authorized for allocation each fiscal year, but this number is reduced by up to 5,000 visas set aside exclusively for use under the Nicaraguan and Central American Relief Act. See NACARA section 203(d), as amended. DOS regularly selects more than 50,000 entrants to proceed on to the next step for diversity visa processing to ensure that all of the 50,000 diversity visas are allotted. Source: U.S. Department of State, Office of the Spokesman. Special Briefing: Senior State Department Official on the Diversity Visa Program. May 13, 2011, available at *http://www.state.gov/r/pa/prs/ps/2011/05/166811.htm.*

[50] *See* 78 FR 536 (Jan. 3, 2013).

resources like time, storage space, and human capital.

DHS welcomes any public comments on the benefits of this proposed rule.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (Mar. 29, 1996), requires Federal agencies to consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. DHS has reviewed this regulation in accordance with the Regulatory Flexibility Act and certifies that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is that this rule directly regulates individuals, who are not, for purposes of the Regulatory Flexibility Act, within the definition of small entities established by 5 U.S.C. 601(6).

E. Executive Order 13132

This proposed rule would not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 Civil Justice Reform

Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DHS has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting requirements inherent in a rule. This rule proposes a revision to the Application for a Provisional Unlawful Presence Waiver, Form I–601A, OMB Control Number 1615–0123. USCIS estimates that approximately 10,258 new respondents would file applications for provisional waivers as a result of the changes proposed by this rule.

DHS is requesting comments on the revisions it is proposing to make to this information collection until September 21, 2015.

In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments. When submitting comments on this information collection, your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, 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 submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Provisional Unlawful Presence Waiver.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–601A; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households: Individuals who: (a) Are immigrant visa applicants, including: (1) Immediate relatives of U.S. citizens, (2) aliens seeking to immigrate under a family-sponsored, employment-based, or special immigrant visa category, and (3) Diversity Visa selectees and derivatives, and (b) are applying from within the United States for a provisional waiver under INA section 212(a)(9)(B)(v) before obtaining an immigrant visa abroad.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–601A is 52,965 and the estimated hour burden per response is 1.5 hours; and 52,965 respondents providing biometrics at 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 141,417 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $1,497,601.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

Accordingly, DHS proposes to amend chapter I of title 8 of the Code of Federal Regulations as follows:

PART 103—IMMIGRATION BENEFITS; BIOMETRIC REQUIREMENTS; AVAILABILITY OF RECORDS

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; Pub. L. 107–296, 116 Stat. 2135; 6 U.S.C. 1 *et seq.*; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2; Pub. L. 112–54.

§ 103.2 [Amended]

■ 2. Section 103.2 is amended by:

■ a. In paragraphs (a)(2) and (3) and (b)(6) and (10) by removing ''an benefit request'' and adding in its place ''a benefit request'', wherever it appears; and

■ b. In paragraph (b)(12) by removing ''An benefit request'' and adding in its place ''A benefit request'', wherever it appears.

PART 212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

■ 3. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1223, 1225, 1226, 1227, 1255, 1359; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458); 8 CFR part 2. Section 212.1(q) also issued under section 702, Public Law 110–229, 122 Stat. 754, 854.

■ 4. Amend § 212.7 by:

■ a. Removing the heading for paragraph (a);

■ b. Revising paragraphs (e) heading and introductory text and (e)(3)(i), (ii), (iii), (iv), (v), and (vi);

■ c. Remove paragraph (e)(3)(vii); and

■ d. Revising paragraphs (e)(4)(iii), (iv), (v), and (vi), (e)(5)(i), (e)(5)(ii)(E), (F), and (G), (e)(6)(ii), (e)(7), (8), (9), and (10), (e)(12)(i)(C), (e)(12)(ii), and (e)(14)(i), (iii), and (iv).

The revisions read as follows:

§ 212.7 Waivers of certain grounds of inadmissibility.

* * * * *

(e) *Provisional unlawful presence waivers of inadmissibility.* The provisions of this paragraph (e) apply to certain aliens who are pursuing consular immigrant visa processing.

* * * * *

(3) * * *

(i) Is present in the United States at the time of filing the application for a provisional unlawful presence waiver;

(ii) Provides biometrics to USCIS at a location in the United States designated by USCIS;

(iii) Upon departure, would be inadmissible only under section 212(a)(9)(B)(i) of the Act at the time of the immigrant visa interview;

(iv) Has a case pending with the Department of State, based on:

(A) An approved immigrant visa petition, for which the Department of State immigrant visa processing fee has been paid; or

(B) Selection by the Department of State to participate in the Diversity Visa Program under section 203(c) of the Act for the fiscal year for which the alien registered;

(v) Will depart from the United States to obtain the immigrant visa; and

(vi) Meets the requirements for a waiver provided in section 212(a)(9)(B)(v) of the Act.

(4) * * *

(iii) The alien does not have a case pending with the Department of State, based on:

(A) An approved immigrant visa petition, for which the Department of State immigrant visa processing fee has been paid; or

(B) Selection by the Department of State to participate in the Diversity Visa program under section 203(c) of the Act for the fiscal year for which the alien registered;

(iv) The Department of State initially acted to schedule the immigrant visa interview:

(A) Before January 3, 2013, for an immediate relative of a U.S. citizen with an approved immediate relative petition on which a provisional unlawful presence waiver is based, even if the interview was cancelled or rescheduled on or after January 3, 2013; or

(B) For all other immigrant visa applicants, before [EFFECTIVE DATE OF FINAL RULE], for the approved immigrant visa petition or the Diversity Visa program application on which a provisional unlawful presence waiver is based, even if the interview was cancelled or rescheduled on or after [EFFECTIVE DATE OF FINAL RULE];

(v) The alien is in removal proceedings, unless the removal proceedings are administratively closed and have not been recalendared at the time of filing the application for a provisional unlawful presence waiver;

(vi) The alien is subject to a final order of removal issued under section 217, 235, 238, or 240 of the Act or a final order of exclusion or deportation under former section 236 or 242 of the Act (pre-April 1, 1997), or any other provision of law (including an in absentia removal order under section 240(b)(5) of the Act);

* * * * *

(5) *Filing.* (i) An application for a provisional unlawful presence waiver of the unlawful presence inadmissibility bars under section 212(a)(9)(B)(i)(I) or (II) of the Act, including an application by an alien in removal proceedings that are administratively closed and have not been recalendared at the time of filing the application for a provisional unlawful presence waiver, must be filed in accordance with 8 CFR part 103 and on the form designated by USCIS. The prescribed fee under 8 CFR 103.7(b)(1) and supporting documentation must be submitted in accordance with the form instructions.

(ii) * * *

(E) Does not include evidence of:

(*1*) An approved immigrant visa petition;

(*2*) Selection by the Department of State to participate in the Diversity Visa Program under section 203(c) of the Act for the fiscal year for which the alien registered; or

(*3*) Eligibility as a derivative beneficiary of an approved immigrant visa petition or of an alien selected for participation in the Diversity Visa Program as provided in this section and outlined in section 203(d) of the Act.

(F) Fails to include documentation evidencing:

(*1*) That the alien has paid the immigrant visa processing fee to the Department of State for the immigrant visa application upon which the alien's approved immigrant visa petition is based; or

(*2*) In the case of a Diversity immigrant, that the Department of State selected the alien to participate in the Diversity Visa Program for the fiscal year for which the alien registered; or

(G) Has indicated on a provisional unlawful presence waiver application that the Department of State initially acted to schedule the immigrant visa interview:

(*1*) Before January 3, 2013, for an immediate relative of a U.S. citizen with an approved immediate relative petition on which a provisional unlawful presence waiver is based, even if the interview was cancelled or rescheduled on or after January 3, 2013; or

(*2*) For all other immigrant visa applicants, before [EFFECTIVE DATE OF FINAL RULE], for the approved immigrant visa petition or the Diversity Visa Program application upon which a provisional unlawful presence waiver is based, even if the interview was cancelled or rescheduled on or after [EFFECTIVE DATE OF FINAL RULE].

(6) * * *

(ii) *Failure to appear for biometric services.* If an alien fails to appear for a biometric services appointment or fails to provide biometrics in the United States as directed by USCIS, a provisional unlawful presence waiver application will be considered abandoned and denied under 8 CFR 103.2(b)(13). The alien may not appeal or file a motion to reopen or reconsider an abandonment denial under 8 CFR 103.5.

(7) *Burden and standard of proof.* The alien has the burden to establish, by a preponderance of the evidence, eligibility for a provisional unlawful presence waiver as described in this paragraph, and under section 212(a)(9)(B)(v) of the Act, including that

the alien merits a favorable exercise of discretion.

(8) *Adjudication.* USCIS will adjudicate a provisional unlawful presence waiver application in accordance with this paragraph and section 212(a)(9)(B)(v) of the Act. If USCIS finds that the alien is not eligible for a provisional unlawful presence waiver, or if USCIS determines in its discretion that a waiver is not warranted, USCIS will deny the waiver application. Notwithstanding 8 CFR 103.2(b)(16), USCIS may deny an application for a provisional unlawful presence waiver without prior issuance of a request for evidence or notice of intent to deny.

(9) *Notice of decision.* USCIS will notify the alien and the alien's attorney of record or accredited representative of the decision in accordance with 8 CFR 103.2(b)(19). USCIS may notify the Department of State of the denial of an application for a provisional unlawful presence waiver. A denial is without prejudice to the alien's filing another provisional unlawful presence waiver application under this paragraph (e), provided the alien meets all of the requirements in this part, including that the alien's case must be pending with the Department of State. An alien also may elect to file a waiver application under paragraph (a)(1) of this section after departing the United States, appearing for his or her immigrant visa interview at the U.S. Embassy or consulate abroad, and after the Department of State determines the alien's admissibility and eligibility for an immigrant visa. Accordingly, denial of an application for a provisional unlawful presence waiver is not a final agency action for purposes of section 10(c) of the Administrative Procedure Act, 5 U.S.C. 704.

(10) *Withdrawal of waiver applications.* An alien may withdraw his or her application for a provisional unlawful presence waiver at any time before USCIS makes a final decision. Once the case is withdrawn, USCIS will close the case and notify the alien and his or her attorney or accredited representative. The alien may file a new application for a provisional unlawful presence waiver, in accordance with the form instructions and required fees, provided that the alien meets all of the requirements included in this paragraph (e).

* * * * *

(12) * * *

(i) * * *

(C) Is determined to be otherwise eligible for an immigrant visa by the Department of State in light of the approved provisional unlawful presence waiver.

(ii) Waives the alien's inadmissibility under section 212(a)(9)(B) of the Act only for purposes of the application for an immigrant visa and admission to the United States as an immigrant based on the approved immigrant visa petition upon which a provisional unlawful presence waiver application is based or selection by the Department of State to participate in the Diversity Visa Program under section 203(c) of the Act for the fiscal year for which the alien registered, with such selection being the basis for the alien's provisional unlawful presence waiver application;

* * * * *

(14) * * *

(i) The Department of State determines at the time of the immigrant visa interview that the alien is ineligible to receive an immigrant visa for any reason other than under section 212(a)(9)(B)(i)(I) or (II) of the Act;

* * * * *

(iii) The immigrant visa registration is terminated in accordance with section 203(g) of the Act, and has not been reinstated in accordance with section 203(g) of the Act; or

(iv) The alien, at any time before or after approval of a provisional unlawful presence waiver or before an immigrant visa is issued, reenters or attempts to reenter the United States without being inspected and admitted or paroled.

Jeh Charles Johnson,

Secretary.

[FR Doc. 2015–17794 Filed 7–21–15; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM15–14–000]

Revised Critical Infrastructure Protection Reliability Standards

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to approve seven critical infrastructure protection (CIP) Reliability Standards: CIP–003–6 (Security Management Controls), CIP–004–6 (Personnel and Training), CIP–006–6 (Physical Security of BES Cyber Systems), CIP–007–6 (Systems Security Management), CIP–009–6 (Recovery Plans for BES Cyber Systems), CIP–010–2 (Configuration Change Management and Vulnerability Assessments), and CIP–011–2 (Information Protection). The North American Electric Reliability Corporation (NERC) submitted the proposed Reliability Standards in response to the Commission's Order No. 791. The proposed Reliability Standards address the cyber security of the bulk electric system and improve upon the current Commission-approved CIP Reliability Standards. In addition, the Commission proposes to direct NERC to develop certain modifications to Reliability Standard CIP–006–6 and to develop requirements addressing supply chain management.

DATES: Comments are due September 21, 2015.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways:

- Electronic Filing through *http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail/Hand Delivery:* Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

1. Pursuant to section 215 of the Federal Power Act (FPA),[1] the Commission proposes to approve seven critical infrastructure protection (CIP) Reliability Standards: CIP–003–6 (Security Management Controls), CIP–004–6 (Personnel and Training), CIP–006–6 (Physical Security of BES Cyber Systems), CIP–007–6 (Systems Security Management), CIP–009–6 (Recovery Plans for BES Cyber Systems), CIP–010–2 (Configuration Change Management

[1] 16 U.S.C. 824o.

and Vulnerability Assessments), and CIP–011–2 (Information Protection). The North American Electric Reliability Corporation, the Commission-certified Electric Reliability Organization (ERO), submitted the proposed Reliability Standards in response to Order No. 791.[2] The Commission also proposes to approve NERC's proposed implementation plan and violation risk factor and violation severity level assignments. In addition, we propose to approve NERC's proposed new or revised definitions for inclusion in the NERC Glossary of Terms Used in Reliability Standards (NERC Glossary). Further, the Commission proposes to approve the retirement of Reliability Standards CIP–003–5, CIP–004–5.1, CIP–006–5, CIP–007–5, CIP–009–5, CIP–010–1, and CIP–011–1.

2. The proposed Reliability Standards are designed to mitigate the cybersecurity risks to bulk electric system facilities, systems, and equipment, which, if destroyed, degraded, or otherwise rendered unavailable as a result of a cybersecurity incident, would affect the reliable operation of the Bulk-Power System.[3] As discussed below, we believe that the proposed CIP Reliability Standards are just and reasonable and address the directives in Order No. 791 by: (1) Eliminating the ''identify, assess, and correct'' language in 17 of the CIP version 5 Standard requirements; (2) providing enhanced security controls for Low Impact assets; (3) providing controls to address the risks posed by transient electronic devices (*e.g.,* thumb drives and laptop computers); and (4) addressing in an equally effective and efficient manner the need for a NERC Glossary definition for the term ''communication networks.'' Accordingly, we propose to approve the proposed CIP Reliability Standards because they improve the base-line cybersecurity posture of applicable entities compared to the current Commission-approved CIP Reliability Standards.

3. In addition, pursuant to FPA section 215(d)(5), the Commission proposes to direct NERC to develop certain modifications to Reliability Standard CIP–006–6. Specifically, while proposed CIP–006–6 would require protections for communication networks among a limited group of bulk electric system Control Centers, we propose to direct that NERC modify Reliability Standard CIP–006–6 to require protections for communication network components and data communicated between all bulk electric system Control Centers. In addition, we seek comment on the sufficiency of the security controls incorporated in the current CIP Reliability Standards regarding remote access used in relation to bulk electric system communications. Finally, as discussed in more detail below, we propose to direct NERC to develop requirements relating to supply chain management for industrial control system hardware, software, and services.

I. Background

A. Section 215 and Mandatory Reliability Standards

4. Section 215 of the FPA requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval. Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.[4] Pursuant to section 215 of the FPA, the Commission established a process to select and certify an ERO,[5] and subsequently certified NERC.[6]

B. Order No. 791

5. On November 22, 2013, in Order No. 791, the Commission approved the CIP version 5 Standards (Reliability Standards CIP–002–5 through CIP–009–5, and CIP–010–1 and CIP–011–1).[7] The Commission determined that the CIP version 5 Standards represented an improvement over prior iterations of the CIP Reliability Standards because, *inter alia,* they included a revised BES Cyber Asset categorization methodology that incorporated mandatory protections for all High, Medium, and Low Impact BES Cyber Assets, and because several new security controls improved the security posture of responsible entities.[8] In addition, pursuant to section 215(d)(5) of the FPA, the Commission directed NERC to: (1) Remove the ''identify, assess, and correct'' language in 17 of the CIP Standard requirements; (2) develop enhanced security controls for Low Impact assets; (3) develop controls to protect transient electronic devices (*e.g.,* thumb drives and laptop computers); (4) create a NERC Glossary definition for the term ''communication networks,'' and develop new or modified Reliability Standards to protect the nonprogrammable components of communications networks.

6. In addition, the Commission directed NERC to conduct a survey of Cyber Assets that are included or excluded under the new BES Cyber Asset definition and submit an informational filing within one year.[9] Finally, the NOPR directed Commission staff to convene a technical conference to examine the technical issues concerning communication security, remote access, and the National Institute of Standards and Technology (NIST) Risk Management Framework.[10]

C. Informational Filing

7. On February 3, 2015, NERC submitted an informational filing assessing the results of a survey conducted to identify the scope of assets subject to the definition of the term BES Cyber Asset as it is applied in the CIP version 5 Standards. NERC states that the results of the survey indicate that, in general, the application of the BES Cyber Asset definition, and the 15 minute parameter in particular, resulted in the identification of BES Cyber Assets consistent with the language and intent of the CIP version 5 Standards.[11] NERC maintained that the survey results demonstrate that the definition of BES Cyber Asset provides a sound basis for identifying the types of Cyber Assets that should be subject to the cyber security protections required by the CIP Reliability Standards.[12]

D. April 29, 2014 Technical Conference

8. On April 29, 2014, a staff-led technical conference was held pursuant to a directive in Order No. 791.[13] The topics discussed at the technical conference included: (1) The adequacy of the approved CIP version 5 Standards' protections for Bulk-Power System data being transmitted over data networks; (2) whether additional security controls are needed to protect Bulk-Power System communications networks, including remote systems access; and (3) the functional differences between the respective methods utilized for the identification,

[2] *Version 5 Critical Infrastructure Protection Reliability Standards,* Order No. 791, 78 FR 72,755 (Dec. 3, 2013), 145 FERC ¶ 61,160 (2013), *order on clarification and reh'g,* Order No. 791–A, 146 FERC ¶ 61,188 (2014).

[3] *See* NERC Petition at 3.

[4] 16 U.S.C. 824o(e).

[5] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards,* Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g,* Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[6] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g and compliance,* 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa, Inc.* v. *FERC,* 564 F.3d 1342 (D.C. Cir. 2009).

[7] Order No. 791, 145 FERC ¶ 61,160 at P 41.

[8] *Id.*

[9] *Id.* PP 76, 108, 136, 150.

[10] *Id.* P 225.

[11] *See* NERC Informational Filing, Docket No. RM13–5–000, at 3 (filed Feb. 3, 2015).

[12] *Id.*

[13] Order No. 791, 145 FERC ¶ 61,160 at P 225.

categorization, and specification of appropriate levels of protection for cyber assets using the CIP version 5 Standards as compared with those employed within the NIST Cybersecurity Framework.

9. With respect to the current state of protection for communications networks under the CIP version 5 Standards, some panelists opined that the CIP version 5 Standards lack controls to: (1) Protect communications outside of the Electronic Security Perimeter; (2) protect data in motion; (3) authenticate messages and commands to BES Cyber Assets; and (4) protect systems or communications using non routable protocols. On the subject of the adequacy of protections for Bulk-Power System data under the CIP version 5 Standards, several panelists stated that stronger measures, such as encryption, would enhance the overall protection for Bulk-Power System communications. However, other panelists also stated that encryption was not a universal solution because it could cause unacceptable latency (*i.e.,* time delay in communications) in certain applications.

10. Regarding the need for additional security controls for Bulk-Power System communications, panelists identified a number of worthwhile steps that could be explored to enhance remote access. Suggestions included the adoption of additional physical security controls, integrity checks, encryption (in certain cases), out of bounds detection for communications links, and coordination with vendors to enhance risk management. In addition, certain panelists stated their position that the use of intermediate systems, alone, is not sufficient to address remote access concerns.[14] Several panelists identified suggestions that could be explored to enhance protections for remote access, including the addition of logical or physical controls to provide additional network segmentation behind the intermediate systems.[15]

E. NERC Petition

11. On February 13, 2015, NERC submitted a petition seeking approval of Reliability Standards CIP–003–6, CIP–004–6, CIP–006–6, CIP–007–6, CIP–009–6, CIP–010–2, and CIP–011–2, as well as the proposed implementation plan,[16] associated violation risk factor and violation severity level assignments, proposed new or revised definitions,[17] and retirement of Reliability Standards CIP–003–5, CIP–004–5.1, CIP–006–5, CIP–007–5, CIP–009–5, CIP–010–1, and CIP–011–1.[18] NERC states that the proposed Reliability Standards are just, reasonable, not unduly discriminatory or preferential, and in the public interest because they satisfy the factors set forth in Order No. 672 that the Commission applies when reviewing a proposed Reliability Standard.[19] NERC maintains that the proposed Reliability Standards ''improve the cybersecurity protections required by the CIP Reliability Standards[.]'' [20]

12. NERC avers that the proposed CIP Reliability Standards satisfy the Commission directives in Order No. 791. Specifically, NERC states that the proposed Reliability Standards remove the ''identify, assess, and correct'' language, which represents the Commission's preferred approach to addressing the underlying directive.[21] In addition, NERC states that the proposed Reliability Standards address the Commission's directive regarding a lack of specific controls or objective criteria for Low Impact BES Cyber Systems by requiring responsible entities ''to implement cybersecurity plans for assets containing Low Impact BES Cyber Systems to meet specific security objectives relating to: (i) Cybersecurity awareness; (ii) physical security controls; (iii) electronic access controls; and (iv) Cyber Security Incident response.'' [22]

13. With regard to the Commission's directive that NERC develop specific controls to protect transient electronic devices (*e.g.,* thumb drives and laptop computers), NERC explains that the proposed Reliability Standards require responsible entities ''to implement controls to protect transient devices connected to their high impact and medium impact BES Cyber Systems and associated [Protected Cyber Assets].'' [23] In addition, NERC states that the proposed Reliability Standards address the protection of communication networks ''by requiring entities to implement security controls for nonprogrammable components of communication networks at Control Centers with high or medium impact BES Cyber Systems.'' [24] Finally, NERC explains that it has not proposed a definition of the term ''communication network'' because the term is not used in the CIP Reliability Standards. Additionally, NERC states that ''any proposed definition would need to be sufficiently broad to encompass all components in a communication network as they exist now and in the future.'' [25] NERC concludes that the proposed Reliability Standards ''meet the ultimate security objective of protecting communication networks (both programmable and nonprogrammable communication network components).'' [26]

14. Accordingly, NERC requests that the Commission approve the proposed Reliability Standards, the proposed implementation plan, the associated violation risk factor and violation severity level assignments, and the proposed new and revised definitions. NERC requests an effective date for the Reliability Standards of the later of April 1, 2016 or the first day of the first calendar quarter that is three months after the effective date of the Commission's order approving the proposed Reliability Standard, although NERC proposes that responsible entities will not have to comply with the requirements applicable to Low Impact BES Cyber Systems (CIP–003–6, Requirement R1, Part 1.2 and Requirement R2) until April 1, 2017.

II. Discussion

15. Pursuant to section 215(d)(2) of the FPA, we propose to approve Reliability Standards CIP–003–6, CIP–004–6, CIP–006–6, CIP–007–6, CIP–009–6, CIP–010–2 and CIP–011–2 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. In addition, pursuant to FPA section 215(d)(5), we propose to direct NERC to develop certain modifications to Reliability Standard CIP–006–6 and to develop requirements addressing supply chain management.

[14] An Intermediate System is defined as ''A Cyber Asset or collection of Cyber Assets performing access control to restrict Interactive Remote Access to only authorized users. The Intermediate System must not be located inside the Electronic Security Perimeter.'' NERC Glossary at 46 (April 29, 2015).

[15] *See* Transcript at pp. 176–177 (Kevin Perry speaking), 177–178 (Richard Kinas speaking), 178 (Dr. Andrew Wright speaking), 179 (Andrew Ginter speaking).

[16] The proposed implementation plan is designed to match the effective dates of the proposed Reliability Standards with the effective dates of the prior versions of those Reliability Standards under the implementation plan of the CIP version 5 Standards.

[17] The six new or revised definitions proposed for inclusion in the NERC Glossary are: (1) BES Cyber Asset; (2) Protected Cyber Asset; (3) Low Impact Electronic Access Point; (4) Low Impact External Routable Connectivity; (5) Removable Media; and (6) Transient Cyber Asset.

[18] The proposed Reliability Standards are available on the Commission's eLibrary document retrieval system in Docket No. RM15–14–000 and on the NERC Web site, *www.nerc.com.*

[19] *See* NERC Petition at 13 and Exhibit C (citing Order No. 672, FERC Stats. & Regs. ¶ 31,204 at PP 323–335).

[20] NERC Petition at 4.

[21] *Id.* at 4, 15.

[22] *Id.* at 5.

[23] *Id.* at 6.

[24] *Id.* at 8.

[25] *Id.* at 51–52.

[26] *Id.* at 52.

16. The proposed Reliability Standards address the Commission's directives from Order No. 791 and are an improvement over the current Commission-approved CIP Reliability Standards. Specifically, we propose to approve the removal of the ''identify, assess, and correct'' language in certain requirements of the CIP version 5 Standards. We also propose to approve NERC's submission regarding the protection of Low Impact BES Cyber Systems. With regard to the directive to create a NERC Glossary definition for the term ''communication networks,'' we propose to approve NERC's proposal as an equally effective and efficient method to achieve the reliability goal underlying that directive in Order No. 791.

17. The technical controls in proposed Reliability Standard CIP–006–6, which addresses the protection of non-programmable components of communication networks (*i.e.,* network cabling and switches), are generally consistent with the type of controls cited by the Commission in Order No. 791.[27] We are concerned, however, that the limited applicability of the proposed standard, *i.e.,* BES Cyber Assets within the same Electronic Security Perimeter but located outside of a Physical Security Perimeter, results in a reliability gap. For the reasons discussed below, we propose to direct that NERC modify Reliability Standard CIP–006–6 to require physical or logical protections for communication network components between all bulk electric system Control Centers.

18. Separately, we are concerned that changes in the bulk electric system cyber threat landscape, identified through recent malware campaigns targeting supply chain vendors, have highlighted a gap in the protections under the CIP Reliability Standards. These malware campaigns represent a new type of threat to the reliability of the bulk electric system where malicious code can infect the software of industrial control systems used by responsible entities. Therefore, we propose to direct NERC to develop a new Reliability Standard or modified Reliability Standard to provide security controls for supply chain management for industrial control system hardware, software, and services associated with bulk electric system operations.

19. We also propose to approve the new or revised definitions for inclusion in the NERC Glossary, and seek comment on the proposed definition for Low Impact External Routable Connectivity. Depending on the comments received, we may direct NERC to develop modifications to this definition to eliminate possible ambiguities and ensure that BES Cyber Assets receive adequate protection.

20. In addition, we propose to accept 19 violation risk factor and violation severity level assignments associated with the proposed Reliability Standards. Finally, we propose to approve NERC's proposed implementation plan and effective date. Below, we discuss the following matters: (A) Identify, assess, and correct language; (B) enhanced security controls for Low Impact assets; (C) protection of Transient Devices; (D) protection of bulk electric system communication networks; (E) supply chain management; (F) proposed definitions; (G) NERC's proposed implementation plan; and (H) proposed violation severity level and violation risk factor assignments.

A. Identify, Assess, and Correct Language

Order No. 791

21. In the proposed CIP version 5 Standards, NERC included language in 17 CIP requirements that would have required responsible entities to implement requirements in a manner to ''identify, assess, and correct'' deficiencies.[28] In Order No. 791, the Commission concluded that the ''identify, assess, and correct'' language proposed by NERC was unclear with respect to the obligations it would impose on responsible entities, how it would be implemented by responsible entities, and how it would be enforced.[29] The Commission explained that proposed Reliability Standards should be clear and unambiguous regarding what is required for compliance and who is required to comply.[30] The Commission directed NERC, pursuant to section 215(d)(5) of the FPA, to develop modifications to the CIP version 5 Standards to address the Commission's concerns with the ''identify, assess, and correct'' language. The Commission stated its preference that NERC should remove the ''identify, assess, and correct'' language from the 17 CIP version 5 requirements, while retaining the substantive provisions of those requirements.[31]

NERC Petition

22. In its Petition, NERC explains that it has addressed the Order No. 791 directive regarding the ''identify, assess, and correct'' language by removing the language from the 17 requirements that included the language in the CIP version 5 Standards.[32] NERC states that it is addressing the concerns underlying the development of the ''identify, assess, and correct'' language through ''transformation of its [Compliance Monitoring and Enforcement Program] and the implementation of a risk-based approach to compliance monitoring and enforcement activities.'' [33] NERC explains that the changes it is making to the Compliance Monitoring and Enforcement Program, outside the text of a reliability standard, ''directly accomplish the goal of the 'identify, assess, and correct' language by focusing ERO and industry resources on those areas that pose a more-than-minimal risk to reliability and helping to improve internal controls.'' [34]

Discussion

23. NERC's proposal to remove the ''identify, assess, and correct'' language from the 17 requirements that included the language in the CIP version 5 Standards, while retaining the substantive provisions of those requirements, reflects the Commission's preferred approach outlined in Order No. 791.[35] Consistent with the rationale underlying the Order No. 791 directive, removing the ''identify, assess, and correct'' language avoids the possibility of inconsistent application and enforcement of the requirements at issue by eliminating the possibility of multiple interpretations of that language.

24. Accordingly, we propose to approve NERC's removal of the ''identify, assess, and correct'' language from the 17 affected requirements.

B. Enhanced Security Controls for Low Impact Assets

Order No. 791

25. In Order No. 791, the Commission approved NERC's new approach to categorizing BES Cyber Systems based on the High, Medium or Low Impact that each system could have on the reliable operation of the bulk electric system. Specifically, the Commission noted that the new tiered approach, ''which requires at least a minimum classification of Low Impact for BES

[27] *See* Order No. 791, 145 FERC ¶ 61,160 at P 149.

[28] Order No. 791, 145 FERC ¶ 61,160 at P 44.

[29] *Id.* P 67.

[30] *Id.* P 68 (citing *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs. ¶ 31,242, at P 274, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007)).

[31] *Id.* P 67 (citing Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 186).

[32] NERC Petition at 15.

[33] *Id.* at 15–16.

[34] *Id.* at 18.

[35] Order No. 791, 145 FERC ¶ 61,160 at P 67.

Cyber Systems, better assures the protection of assets that can cause cyber security risks to the bulk electric system.'' [36] The Commission, however, raised concerns that the CIP version 5 Standards do not require any specific controls for BES Cyber Systems classified as Low Impact, nor do the standards contain clear, objective criteria ''to judge the sufficiency of the controls ultimately adopted by responsible entities for Low Impact BES Cyber Systems.'' [37] The Commission concluded that the lack of objective criteria to evaluate any controls adopted under proposed Reliability Standard CIP–003–5, Requirement R2 ''introduces an unacceptable level of ambiguity and potential inconsistency into the compliance process,'' resulting in an unnecessary gap in reliability.[38] The Commission therefore directed NERC, pursuant to section 215(d)(5) of the FPA, to develop modifications to the CIP version 5 Standards to address the ambiguity and potential for inconsistency in the compliance process created by the lack of objective criteria pertaining to Low Impact BES Cyber Systems.[39]

26. While not directing NERC to develop specific controls for Low Impact BES Cyber Systems, the Commission noted that NERC could address the lack of objective criteria in a number of ways, including: (1) Requiring specific controls for Low Impact assets, including subdividing the assets into different categories with different defined controls applicable to each subcategory; (2) developing objective criteria against which the controls adopted by responsible entities can be compared and measured in order to evaluate their adequacy, including subdividing the assets into different categories with different defined control objectives applicable to each subcategory; (3) defining with greater specificity the processes that responsible entities must have for Low Impact facilities under Reliability Standard CIP–003–5, Requirement R2; or (4) another equally efficient and effective solution.[40] Finally, the Commission emphasized that however NERC decides to address the Commission's concern, ''the criteria NERC proposes for evaluating a responsible entities' protections for Low Impact facilities should be clear, objective, commensurate with their impact on the system, and technically justified.'' [41]

NERC Petition

27. In its Petition, NERC states that the revised CIP Reliability Standards include ''additional specificity regarding the controls that responsible entities must implement for protecting their low impact BES Cyber Systems.'' [42] NERC explains that proposed Reliability Standard CIP–003–6, Requirement R1 requires responsible entities to develop cyber security policies for Low Impact BES Cyber Systems ''to communicate management's expectation for cybersecurity across the organization.'' [43] According to NERC, the cyber security policies required under proposed Reliability Standard CIP–003–6, Requirement R1 must include the four subject matter areas addressed by proposed Reliability Standard CIP–003–6, Requirement R2, Attachment 1, and must be reviewed and approved by the CIP Senior Manager at least once every 15 calendar months. NERC explains that, while a responsible entity has the flexibility to develop either a single comprehensive cyber security policy or single high-level umbrella policy with detail provided in lower-level documents, ''the purpose of these policies is to communicate the responsible entity's management goals, objectives, and expectations for the protection of low impact BES Cyber Systems and establish a culture of security and compliance across the organization.'' [44]

28. In addition, NERC explains that proposed Reliability Standard CIP–003–6, Requirement R2 requires responsible entities with Low Impact BES Cyber Systems to implement controls necessary to meet specific security objectives for: (1) Cyber security awareness; (2) physical security controls; (3) electronic access controls; and (4) cyber security incident response. NERC explains further that while the four topics addressed by Reliability Standard CIP–003–6, Requirement R2 are the same as those under the CIP version 5 Standards, focusing resources on the four identified subject matter areas ''will have the greatest cybersecurity benefit for low impact BES Cyber Systems without diverting resources necessary for the protection of high and medium impact BES Cyber Systems.'' [45]

29. NERC explains further that proposed Reliability Standard CIP–003–6, Requirement R2 provides responsible entities with flexibility to adopt security controls for Low Impact BES Cyber Systems ''in the manner that best suits the needs and characteristics of their organization, so long as the responsible entity can demonstrate that it designed its controls to meet the ultimate security objective.'' [46] NERC states that attempts to overly prescribe specific security controls would be problematic and could inhibit the development of innovative security controls due to the diversity of Low Impact BES Cyber Systems. However, NERC explains that by having responsible entities articulate clear security objectives, ''the ERO and the Commission will have a basis from which to judge the sufficiency of the controls ultimately adopted by a responsible entity.'' [47]

Discussion

30. We propose to approve proposed Reliability Standard CIP–003–6. NERC's proposal satisfies the Commission's Order No. 791 directive by providing responsible entities with a list of specific security objectives relevant to Low Impact BES Cyber Systems that must be addressed through one or more documented cyber security plans. Reliability Standard CIP–003–6, Requirement R2 provides clarity regarding what is expected for compliance and requires responsible entities to implement specific security controls to meet the four subject matter areas identified by NERC to address the risks associated with Low Impact BES Cyber Systems, providing enhanced protections for Low Impact assets.

31. As noted above, Attachment 1 to revised CIP–003–6, Requirement R2 identifies four topics addressed by the requirement, and describes the affirmative obligations associated with each topic, including: (1) Mandatory reinforcement of cyber security awareness practices at least once every 15 calendar months; (2) mandatory physical access controls to the asset or locations of the Low Impact BES Cyber Systems within the asset and Low Impact BES Cyber System Electronic Access Points, if any; (3) mandatory electronic access point protection to permit only necessary inbound and outbound bi-directional routable protocol access and mandatory authentication for all dialup connectivity that provides access to the Low Impact BES Cyber System; and (4) specific information to be included in

[36] *Id.* P 87.
[37] *Id.* P 107.
[38] *Id.* P 108.
[39] *Id.* P 108.
[40] *Id.* P 108.
[41] *Id.* P 110.
[42] NERC Petition at 23.
[43] *Id.* at 24.
[44] *Id.* at 32.
[45] *Id.* at 25.
[46] *Id.* at 25.
[47] *Id.* at 25.

incident response plans. We believe that Attachment 1 provides sufficient context to evaluate objectively the effectiveness of the procedures developed by a responsible entity to implement CIP–003–6 and judge the sufficiency of the controls ultimately adopted by a responsible entity under its security plans.

32. Furthermore, we agree that NERC's proposal to use clear security objectives in lieu of specific security controls for each Low Impact system is reasonable owing to the diversity of assets covered under the Low Impact category. With respect to the security subject matter areas covered under proposed CIP–003–6, we believe that NERC's proposal is reasonable in relation to the risk posed by Low Impact BES Cyber Systems, as well as the diversity of systems captured by the Low Impact category. Therefore, we propose to approve proposed Reliability Standard CIP–003–6.

C. Protection of Transient Devices

Order No. 791

33. In Order No. 791, the Commission approved the proposed definition of BES Cyber Asset that provides, in part, that ''[a] Cyber Asset is not a BES Cyber Asset if, for 30 consecutive calendar days or less, it is directly connected to a network within an [Electronic Security Perimeter], a Cyber Asset within an [Electronic Security Perimeter], or to a BES Cyber Asset, and it is used for data transfer, vulnerability assessment, maintenance, or troubleshooting purposes.'' [48] While the Commission had requested comment in the CIP version 5 NOPR on whether the 30 consecutive calendar day qualifier in the proposed definition of BES Cyber Asset ''could result in the introduction of malicious code or new attack vectors to an otherwise trusted and protected system,'' [49] the Commission concluded, based on comments, that ''it would be unduly burdensome to protect transient devices in the same manner as BES Cyber Assets because transient devices are portable and frequently connected and disconnected from systems.'' [50]

34. While accepting the 30-day exemption in the BES Cyber Asset definition, the Commission reiterated its concern whether the provisions of the CIP version 5 Standards ''provide adequately robust protection from the risks posed by transient devices.'' [51] Therefore, the Commission directed that NERC, pursuant to section 215(d)(5) of the FPA, develop either new or modified Reliability Standards to address the reliability risks posed by connecting transient devices to BES Cyber Assets and Systems. In particular, the Commission stated that it expects NERC to consider the following security elements for transient devices and removable media: (1) Device authorization as it relates to users and locations; (2) software authorization; (3) security patch management; (4) malware prevention; (5) detection controls for unauthorized physical access to a transient device; and (6) processes and procedures for connecting transient devices to systems at different security classification levels (*i.e.,* High, Medium, Low Impact).[52]

NERC Petition

35. In its Petition, NERC states that the revised CIP Reliability Standards satisfy the Commission's directive in Order No. 791 by requiring that applicable entities: (1) Develop plans and implement cybersecurity controls to protect Transient Cyber Assets and Removable Media associated with their High Impact and Medium Impact BES Cyber Systems and associated Protected Cyber Assets; and (2) train their personnel on the risks associated with using Transient Cyber Assets and Removable Media. NERC states that the purpose of the proposed revisions is to prevent unauthorized access to and use of transient devices, mitigate the risk of vulnerabilities associated with unpatched software on transient devices, and mitigate the risk of the introduction of malicious code on transient devices. NERC explains that the standard drafting team determined that the proposed requirements should only apply to transient devices associated with High and Medium Impact BES Cyber Systems, concluding that ''the application of the proposed transient devices requirements to transient devices associated with low impact BES Cyber Systems was unnecessary, and likely counterproductive, given the risks low impact BES Cyber Systems present to the Bulk Electric System.'' [53]

36. NERC proposes to add two terms to the NERC Glossary, Transient Cyber Asset and Removable Media, to clarify the types of transient devices subject to the CIP Reliability Standards. NERC also proposes to revise the definitions for BES Cyber Asset and Protected Cyber Asset to remove the 30-day exemption as the proposed definition for Transient Cyber Assets obviates the need for the 30-day exemption language. NERC indicates that, as defined, Transient Cyber Assets and Removable Media do not provide reliability services and are not part of the BES Cyber System to which they are connected.[54]

37. NERC proposes to define Transient Cyber Asset as: ''A Cyber Asset that (i) is capable of transmitting or transferring executable code, (ii) is not included in a BES Cyber System, (iii) is not a Protected Cyber Asset (PCA) and (iv) is directly connected (*e.g.,* using Ethernet, serial, Universal Serial Bus, or wireless, including near field or Bluetooth communication) for 30 consecutive calendar days or less to a BES Cyber Asset, a network within an [Electronic Security Perimeter], or a [Protected Cyber Asset].'' NERC explains that examples of Transient Cyber Assets include but are not limited to: Diagnostic test equipment, packet sniffers, equipment used for BES Cyber System maintenance, equipment used for BES Cyber System configuration or equipment used to perform vulnerability assessments, and may include devices or platforms such as laptops, desktops or tablet computers which run applications that support BES Cyber Systems.[55]

38. NERC proposes to define the term Removable Media as: ''Storage media that (i) are not Cyber Assets, (ii) are capable of transferring executable code, (iii) can be used to store, copy, move, or access data, and (iv) are directly connected for 30 consecutive calendar days or less to a BES Cyber Asset, a network within an [Electronic Security Perimeter] or a Protected Cyber Asset. Examples include but are not limited to floppy disks, compact disks, USB flash drives, external hard drives and other flash memory cards/drives that contain nonvolatile memory.'' [56]

39. NERC explains that proposed Reliability Standard CIP–010–2, Requirement R4 requires entities to document and implement a plan for managing and protecting Transient Cyber Assets and Removable Media in order to protect BES Cyber Systems from the risks associated with transient devices. Specifically, Requirement R4 provides that ''[e]ach responsible entity for its high impact and medium impact BES Cyber Systems and associated Protected Cyber Assets, shall implement, except under CIP Exceptional Circumstances, one or more documented plans for Transient Cyber

[48] Order No. 791, 145 FERC ¶ 61,160 at P 132.

[49] *Version 5 Critical Infrastructure Protection Reliability Standards,* 143 FERC ¶ 61,055, at P 78 (2013) (CIP Version 5 NOPR).

[50] Order No. 791, 145 FERC ¶ 61,160 at P 133.

[51] *Id.* P 132.

[52] *Id.* P 136.

[53] NERC Petition at 34–35.

[54] *Id.* at 36–37.

[55] *Id.* at 36.

[56] *Id.* at 36.

Assets and Removable Media that include the sections in Attachment 1 [to the proposed standard].'' NERC indicates that Attachment 1 does not prescribe a standard method or set of controls that each entity must implement to protect its transient devices, but rather requires responsible entities to meet certain security objectives by implementing the controls that the responsible entity determines are necessary to meet its affirmative obligation to protect BES Cyber Systems.[57]

40. NERC further explains that Attachment 1 to CIP–010–2, Requirement R4 requires a responsible entity to adopt controls to address the following areas: (1) Protections for Transient Cyber Assets managed by responsible entities; (2) protections for Transient Cyber Assets managed by another party; and (3) protections for Removable Media. NERC indicates that these provisions reflect the standard drafting team's recognition that the security controls required for a particular transient device must account for (1) the functionality of that device and (2) whether the responsible entity or a third party manages the device. NERC also states that, because Transient Cyber Assets and Removable Media have different capabilities, they present different levels of risk to the bulk electric system.[58]

Discussion

41. Based on our review, proposed Reliability Standard CIP–010–2 appears to provide a satisfactory level of security for transient devices used at High and Medium Impact BES Cyber Systems. As described above, proposed Reliability Standard CIP–010–2, Requirement R4 addresses the following security elements: (1) Device authorization; (2) software authorization; (3) security patch management; (4) malware prevention; and (5) unauthorized use. The proposed security controls, taken together, constitute a reasonable approach to address the reliability objectives outlined by the Commission in Order No. 791. The proposed security controls outlined in Attachment 1 should ensure that responsible entities apply multiple security controls to provide defense-in-depth protection to transient devices (*i.e.,* transient cyber assets and removable media) in the High and Medium Impact BES Cyber System environments.

42. We are concerned, however, that NERC's proposed revisions do not provide adequate security controls to address the risks posed by transient devices used at Low Impact BES Cyber Systems, including Low Impact control centers, due to the limited applicability of Requirement R4. We believe that this omission may result in a gap in protection for Low Impact BES Cyber Systems. For example, malware inserted via a USB flash drive at a single Low Impact substation could propagate through a network of many substations without encountering a single security control under NERC's proposal. In addition, we note that Low Impact security controls do not provide for the use of mandatory anti-malware/antivirus protections within the Low Impact facilities, heightening the risk that malware or malicious code could propagate through these systems without being detected.

43. We do not believe that NERC has provided an adequate justification to limit the applicability of Reliability Standard CIP–010–2. In its petition, NERC states that ''the application of the proposed transient devices requirements to transient devices associated with low impact BES Cyber Systems was unnecessary, and likely counterproductive, given the risks low impact BES Cyber Systems present to the Bulk Electric System.'' [59] Essentially, NERC posits that resources are better placed in the protection of High and Medium Impact devices. The burden of expanding the applicability of Reliability Standard CIP–010–2 to transient devices at Low Impact BES Cyber Systems, however, is not clear from the information in the record. Nor is it clear what information and analysis led NERC to conclude that the application of the transient device requirements to Low Impact BES Cyber Systems ''was unnecessary.'' [60] Therefore, we direct NERC to provide additional information supporting the proposed limitation in Reliability Standard CIP–010–2 to High and Medium Impact BES Cyber Systems. Depending on the information provided, we may direct NERC to address the potential reliability gap by developing a solution, which could include modifying the applicability section of CIP–010–2, Requirement R4 to include Low Impact BES Cyber Systems, that effectively addresses, and is appropriately tailored to address, the risks posed by transient devices to Low Impact BES Cyber Systems.

D. Protection of Bulk Electric System Communication Networks

Order No. 791

44. In Order No. 791, the Commission approved a revised definition of the NERC Glossary term Cyber Asset, including the removal of the phrase ''communication networks.'' In reaching its decision, the Commission recognized that maintaining the phrase ''communication networks'' in the definition of ''cyber asset'' could cause confusion and potentially complicate implementation of the CIP version 5 Standards ''as many communication network components, such as cabling, cannot strictly comply with the CIP Reliability Standards.'' [61]

45. However, while the Commission approved the revised Cyber Asset definition, the Commission also directed NERC to create a definition of communication networks. Specifically, the Commission stated that ''[t]he definition of communication networks should define what equipment and components should be protected, in light of the statutory inclusion of communication networks for the reliable operation of the Bulk-Power System.'' [62]

46. The Commission also directed NERC to develop new or modified Reliability Standards to address the reliability gap resulting from the removal of the phrase ''communication networks'' from the Cyber Asset definition. Specifically, the Commission found that a gap in protection may exist since the CIP version 5 Standards ''do not address security controls needed to protect the nonprogrammable components of communication networks.'' [63] The Commission explained that the new or modified Reliability Standards should require appropriate and reasonable controls to protect the non-programmable aspects of communication networks.[64] The Commission provided examples of other relevant information security standards that address the protection of the nonprogrammable aspects of communication networks by requiring, among other things, locked wiring closets, disconnected or locked spare jacks, protection of cabling by conduit or cable trays, or generally emphasizing the protection of communication network cabling from interception or damage.[65]

[57] *Id.* at 37.

[58] *Id.* at 38.

[59] NERC Petition at 34–35.

[60] *Id.*

[61] Order No. 791, 145 FERC ¶ 61,160 at P 148.

[62] *Id.* P 150.

[63] *Id.* P 149.

[64] *Id.* P 150.

[65] *Id.* P 149 (referencing NIST SP 800–53 Revision 3, security control family Physical and

NERC Petition

47. In its petition, NERC states that the standard drafting team concluded that it did not need to create a new definition for communication networks to address the Commission's concerns. NERC explains that the term communication network ''is generally understood to encompass both programmable and nonprogrammable components (*i.e.,* a communication network includes computer peripherals, terminals, and databases as well as communication mediums such as wires).'' [66] Therefore, NERC concludes that any proposed definition of communication network ''would need to be sufficiently broad to encompass all components in a communication network as they exist now and in the future.'' [67] NERC explains that, based on that conclusion, the standard drafting team identified the types of equipment and components that responsible entities must protect, and developed reasonable controls to secure those components based on the risk they pose to the bulk electric system, rather than develop a specific definition.

48. NERC states that the revised CIP Reliability Standards, as proposed, address the ultimate security objective of protecting both the programmable and nonprogrammable components of communication networks.[68] NERC explains that the proposed standards include protections for cables and other nonprogrammable components of communication networks through proposed Reliability Standard CIP–006–6, Requirement R1, Part 1.10, which augments the existing protections for programmable communication components by requiring entities to implement various security controls to restrict and manage physical access to Physical Security Perimeters.[69] NERC further states that the standard drafting team focused on nonprogrammable communication components at control centers with High or Medium Impact BES Cyber Systems because those locations present a heightened risk to the Bulk-Power System, warranting the increased protections.[70]

49. NERC explains that proposed Reliability Standard CIP–006–6, Requirement R1, Part 1.10 provides that, for High and Medium Impact BES Cyber Systems and their associated Protected Cyber Assets, responsible entities must restrict physical access to cabling and other nonprogrammable communication components used for connection between covered Cyber Assets within the same Electronic Security Perimeter in those instances when such cabling and components are located outside of a Physical Security Perimeter. NERC explains further that, where physical access restrictions to such cabling and components are not feasible, Part 1.10 provides that the responsible entity must document and implement encryption of data transmitted over such cabling and components and/or monitor the status of the communication link composed of such cabling and components. Further, pursuant to Part 1.10, a responsible entity must issue an alarm or alert in response to detected communication failures to the personnel identified in the BES Cyber Security Incident response plan within 15 minutes of detection, or implement an equally effective logical protection.[71]

50. NERC states that proposed Reliability Standard CIP–006–6 provides flexibility for responsible entities to implement the physical security measures that best suit their needs and to account for configurations where logical measures are necessary because the entity cannot implement physical access restrictions effectively. Responsible entities have the discretion as to the type of physical or logical protections to implement pursuant to Part 1.10, provided that the protections are designed to meet the overall security objective. According to NERC, the protections required by Part 1.10 will reduce the possibility of tampering and the likelihood that ''man-in-the-middle'' attacks could compromise the integrity of BES Cyber Systems or Protected Cyber Assets at control centers with High or Medium Impact BES Cyber Systems.[72]

51. NERC explains that proposed Part 1.10 applies only to nonprogrammable components outside of a Physical Security Perimeter because nonprogrammable components located within a Physical Security Perimeter are already subject to physical security protections by virtue of their location. NERC further states that Part 1.10 only applies to nonprogrammable components used for connection between applicable Cyber Assets within the same Electronic Security Perimeter because Reliability Standard CIP–005–5 already requires logical protections for communications between discrete Electronic Security Perimeters.[73]

52. In addition, NERC asserts that the proposed Reliability Standards will strengthen the defense-in-depth approach by further minimizing the ''attack surface'' of BES Cyber Systems. NERC also clarifies that the standard drafting team limited the applicability in this manner to clarify that responsible entities are not responsible for protecting nonprogrammable communication components outside of the responsible entity's control (*i.e.,* components of a telecommunication carrier's network).[74]

Discussion

53. We believe that NERC's proposed alternative approach to addressing the Commission's Order No. 791 directive regarding the definition of communication networks adequately addresses part of the underlying concerns set forth in Order No. 791. Proposed Reliability Standard CIP–006–6, Requirement R1.10 specifies the types of assets subject to mandatory protection by using the existing definitions of Electronic Security Perimeter [75] and Physical Security Perimeter.[76] Proposed Reliability Standard CIP–006–6 addresses protection for non-programmable components of communication networks, such as network cabling and switches, that are located within the same Electronic Security Perimeter, but span separate Physical Security Perimeters. Specifically, proposed Reliability Standard CIP–006–6 requires responsible entities to restrict physical access to cabling and other nonprogrammable communication components between BES Cyber Assets within the same Electronic Security Perimeter in those instances when such cabling and components are located outside of a Physical Security Perimeter. Where physical access restrictions to such cabling and components is not feasible, Part 1.10 provides that responsible entities must document and implement encryption of data transmitted over such cabling and components, monitor the status of the

Environmental Protection, Annex 2, page 54; BSI ISO/IEC (2005). *Information technology—Security techniques—Information security management systems—Requirements (ISO/IEC 27001:2005).*British Standards Institute).

[66] NERC Petition at 52 (citing *North American Electric Reliability Corp.,* 142 FERC ¶ 61,203, at PP 13–14 (2013)).

[67] *Id.* at 52.

[68] *Id.*

[69] *Id.* at 52–53.

[70] *Id.* at 48.

[71] *Id.* at 48–49.

[72] *Id.* at 49–50.

[73] *Id.* at 49.

[74] *Id.* at 51.

[75] Electronic Security Perimeter: The logical border surrounding a network to which Critical Cyber Assets are connected and for which access is controlled. *See* NERC Glossary at 33.

[76] Physical Security Perimeter: The physical, completely enclosed (''six-wall'') border surrounding computer rooms, telecommunications rooms, operations centers, and other locations in which Critical Cyber Assets are housed and for which access is controlled. *See* NERC Glossary at 60.

communication link composed of such cabling and components, or implement an equally effective logical protection.

54. We propose to accept NERC's proposed omission of a definition of communication networks based on NERC's explanation that responsible entities must develop controls to secure the non-programmable components of communication networks based on the risk they pose to the bulk electric system, rather than develop a specific definition of communication networks to identify assets for protection. NERC's proposal is an equally efficient and effective solution to the Commission's directive in Order No. 791 that NERC develop a definition of communication networks, subject to the proposed modification discussed below.

55. NERC's proposed solution for the protection of nonprogrammable components of communication networks, however, does not fully meet the intent of the Commission's Order No. 791 directive, resulting in a gap in security for bulk electric system communication systems. While the technical substance of CIP–006–6, Requirement R1, Part 1.10 appears to be adequate, we are concerned that the limited applicability of the provision results in limited protection for the nonprogrammable components of the communication systems at issue. Specifically, proposed CIP–006–6, Requirement R1, Part 1.10 would only apply to nonprogrammable components of communication networks within the same Electronic Security Perimeter, excluding from protection other programmable and non-programmable communication network components that may exist outside of a discrete Electronic Security Perimeter.

56. While NERC asserts that this limitation is justified by the controls required under Reliability Standard CIP–005–5, NERC's position does not appear to consider that the controls set forth in Reliability Standard CIP–005–5 are limited to interactive remote access into an Electronic Security Perimeter, and can only be applied on programmable electronic devices and data that exists within an Electronic Security Perimeter.[77] This limitation would exclude communication network components that may be necessary to facilitate the automated transmission of reliability data between bulk electric system Control Centers in discrete Electronic Security Perimeters and would also exclude real time monitoring data that is used by Reliability Coordinators to monitor and assess the operation of their control areas. In other words, revised Reliability Standard CIP–006–6, Requirement R1 provides mandatory protection against: (1) Physical attacks on nonprogrammable equipment; (2) man-in-the-middle attacks; and (3) session hijacking attacks within the confines of a bulk electric system Control Center, but does not extend protections to real-time data passing between Control Centers outside of a facility.

57. Comments from participants at the April 29, 2014 Technical Conference suggest that the Commission should take action to ensure the confidentiality, integrity, and availability of sensitive bulk electric system data when it is in motion both inside and outside of an Electronic Security Perimeter.[78] We understand that inter-Control Center communications play a vital role in maintaining bulk electric system reliability and, as a result, we believe that the communication links and data used to control and monitor the bulk electric system should receive protection under the CIP Reliability Standards.

58. We also recognize that third party communication infrastructure (*e.g.,* facilities owned by a telecommunications company) cannot necessarily be physically protected by responsible entities. This fact, however, does not alleviate the need to protect reliability data that traverses third party communication infrastructure. Proposed Reliability Standard CIP–006–6, Requirement R1, Part 1.10 mandates that logical controls, such as encryption and connection link monitoring, be applied to cabling and components that cannot be physically restricted by the responsible entity. However, similar protections are not afforded to communications and data leaving bulk electric system Control Centers where they may be intercepted and altered while traversing communication networks.

59. Therefore, pursuant to section 215(d)(5) of the FPA, we propose to direct NERC to develop a modification to proposed Reliability Standard CIP–006–6 to require responsible entities to implement controls to protect, at a minimum, all communication links and sensitive bulk electric system data communicated between all bulk electric system Control Centers. This includes communication between two (or more) Control Centers, but not between a Control Center and non-Control Center facilities such as substations. Also, if latency concerns mitigate against use of encryption as a logical control for any inter-Control Center communications, our understanding is that other logical protections are available, and we seek comment on this point.

60. Further, as discussed at the April 29, 2014 technical conference, panelists identified suggestions that could be explored to enhance protections for remote access, including the addition of logical or physical controls to provide additional network segmentation behind the intermediate systems. For example, the Commission is interested in comments that address the value achieved if the CIP standards were to require the incorporation of additional network segmentation controls, connection monitoring, and session termination controls behind responsible entity intermediate systems. We seek comment on whether these or other steps to improve remote access protection are needed, and whether the adoption of any additional security controls addressing this topic would provide substantial reliability and security benefits.

E. Risks Posed by Lack of Controls for Supply Chain Management

61. The information and communications technology and industrial control system supply chains provide hardware, software and operations support for computer networks. Such supply chains are complex, globally distributed and interconnected systems that have geographically diverse routes and consist of multiple tiers of outsourcing. The supply chain includes public and private sector entities that depend on each other to develop, integrate, and use information and communications technology and industrial control system supply chain products and services. Thus, the supply chain provides the opportunity for significant benefits to customers, including low cost, interoperability, rapid innovation, a variety of product features and choice.

62. However, the global supply chain also enables opportunities for adversaries to directly or indirectly affect the management or operations of companies that may result in risks to the end user. Supply chain risks may include the insertion of counterfeits, unauthorized production, tampering, theft, or insertion of malicious software, as well as poor manufacturing and development practices. To address these risks, NIST developed SP 800–161[79] to

[77] *See* Reliability Standard CIP–005–5 (Electronic Security Perimeters), Requirement R2.

[78] *See* Transcript at pp. 19, 24, 74–75 (Kevin Perry speaking), 79 (Mikhail Falkovich speaking).

[79] NIST SP 800–161, *Supply Chain Risk Management Practices for Federal Information Systems and Organizations* (April 2015), *available at: http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-161.pdf.*

provide guidance and controls that can be used to comply with Federal Information Processing Standard 199 Standards for Security Categorization of Federal Information and Information Systems for Federal Government Information Systems.[80] Similarly, the Department of Energy has developed guidance on cybersecurity procurement language for energy delivery systems.[81]

63. While the Commission did not address supply chain management in Order No. 791, changes in the bulk electric system cyber threat landscape identified through recent malware campaigns targeting supply chain vendors have highlighted a gap in the protections under the CIP Standards. Specifically, in 2014, after Order No. 791 was issued, the Industry Control System—Computer Emergency Readiness Team (ICS–CERT) reported on two focused malware campaigns.[82] This new type of malware campaign is based on the injection of malware while a product or service remains in the control of the hardware or software vendor, prior to delivery to the customer.

64. We believe that it is reasonable to direct NERC to develop a new or modified Reliability Standard to provide security controls for supply chain management for industrial control system hardware, software, and computing and networking services associated with bulk electric system operations. The reliability goal should be to create a forward-looking, objective-driven standard that encompasses activities in the system development life cycle: from research and development, design and manufacturing stages (where applicable), to acquisition, delivery, integration, operations, retirement, and eventual disposal of the Registered Entity's information and communications technology and industrial control system supply chain equipment and services. The standard should support and ensure security, integrity, quality, and resilience of the supply chain and the future acquisition of products and services.

65. Since security controls for supply chain management will likely vary greatly with each responsible entity due to variations in individual business practices, the right set of supply chain management security controls should accommodate for, among other things, an entity's: (1) Procurement process; (2) vendor relations; (3) system requirements; (4) information technology implementation; and (5) privileged commercial or financial information. The following Supply Chain Risk Management controls from NIST SP 800–161 may be instructional in the development of any new reliability standard to address this security topic:[83] (1) Access Control Policy and Procedures; (2) Security Assessment Authorization; (3) Configuration Management; (4) Identification and Authentication; (5) System Maintenance Policy and Procedures; (6) Personnel Security Policy and Procedures; (7) System and Services Acquisition; (8) Supply Chain Protection; and (9) Component Authenticity.[84]

66. Therefore, pursuant to section 215(d)(5) of the FPA, we propose to direct NERC to develop a new reliability standard or modified reliability standard to provide security controls for supply chain management for industrial control system hardware, software, and services associated with bulk electric system operations. In addition to the parameters discussed above, due to the broadness of the topic and the individualized nature of many aspects of supply chain management, we anticipate that a Reliability Standard pertaining to supply chain management security would:

- Respect section 215 jurisdiction by only addressing the obligations of registered entities. A reliability standard should not directly impose obligations on suppliers, vendors or other entities that provide products or services to registered entities.
- Be forward-looking in the sense that the reliability standard should not dictate the abrogation or re-negotiation of currently-effective contracts with vendors, suppliers or other entities.
- Recognize the individualized nature of many aspects of supply chain management by setting goals (the ''what''), while allowing flexibility in how a registered entity subject to the standard achieves that goal (the ''how'').[85]
- Given the types of specialty products involved and diversity of acquisition processes, the standard may need to allow exceptions, *e.g.,* to meet safety requirements and fill operational gaps if no secure products are available.
- Provide enough specificity so that compliance obligations are clear and enforceable. In particular, we anticipate that a reliability standard that simply requires a registered entity to ''have a plan'' addressing supply chain management would not suffice. Rather, to adequately address our concerns, we believe that a reliability standard should identify specific controls. As discussed above, NIST SP 800–161 may be instructional in identifying appropriate controls in the development of an effective supply chain management reliability standard.

We recognize that developing a supply chain management standard would likely be a significant undertaking and require extensive engagement with stakeholders to define the scope, content, and timing of the standard. Accordingly, to further that stakeholder engagement, we seek comment on this proposal, including: (1) The general proposal to direct that NERC develop a Reliability Standard to address supply chain management; (2) the anticipated features of, and requirements that should be included in, such a standard; and (3) a reasonable timeframe for development of a standard. We also direct staff, after receipt and consideration of those comments, to engage in additional outreach to further the Commission's consideration of the need for, and scope, content, and timing of, a supply chain management standard.

F. Proposed Definitions

67. The proposed revised CIP Reliability Standards include six new or revised definitions for inclusion in the NERC glossary. NERC's proposal includes four new definitions and two revised definitions. Specifically, NERC seeks approval for the following terms: (1) BES Cyber Asset; (2) Protected Cyber Asset; (3) Low Impact Electronic Access Point; (4) Low Impact External Routable Connectivity; (5) Removable Media; and (6) Transient Cyber Asset. We propose to approve the proposed definitions for inclusion in the NERC Glossary. We also seek comment on certain aspects of the proposed definition for Low Impact External Routable Connectivity, as discussed below. After receiving

[80] Federal Information Processing Standard Publication, *Standards for Security Categorization of Federal Information and Information Systems, available at: http://csrc.nist.gov/publications/fips/fips199/FIPS-PUB-199-final.pdf.*

[81] *Cybersecurity Procurement Language for Energy Delivery Systems,* April 2014 at page 1. *http://www.energy.gov/sites/prod/files/2014/04/f15/CybersecProcurementLanguage-EnergyDeliverySystems_040714_fin.pdf.*

[82] ICS–CERT is a division of the Department of Homeland Security that works to reduce risks within and across all critical infrastructure sectors by partnering with law enforcement agencies and the intelligence community. *See https://ics-cert.us-cert.gov/alerts/ICS-ALERT-14-176-02A;* and *https://ics-cert.us-cert.gov/alerts/ICS-ALERT-14-281-01B* for ''alert'' information on supply chain malware campaigns.

[83] The listed controls do not reflect a comprehensive scope of the proposed standard.

[84] *See* NIST SP 800–161.

[85] *See* Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 260.

comments, depending on the adequacy of the explanations provided in response to our questions, we may direct NERC to develop modifications to this definition to eliminate ambiguities and assure that the revised CIP Reliability Standards provide adequate protection for the bulk electric system.

Definition—Low Impact External Routable Connectivity

68. In its petition, NERC proposes the following definition for Low Impact External Routable Connectivity:

> Direct user-initiated interactive access or a direct device-to-device connection to a low impact BES Cyber System(s) from a Cyber Asset outside the asset containing those low impact BES Cyber System(s) via a bidirectional routable protocol connection. Point-to-point communications between intelligent electronic devices that use routable communication protocols for time-sensitive protection or control functions between Transmission station or substation assets containing low impact BES Cyber Systems are excluded from this definition (examples of this communication include. but are not limited to, IEC 61850 GOOSE or vendor proprietary protocols).[86]

69. NERC explains that the proposed definition describes the scenarios where responsible entities are required to apply Low Impact access controls under Reliability Standard CIP–003–6, Requirement R2 to their Low Impact assets. Specifically, if Low Impact External Routable Connectivity is used, a responsible entity must implement a Low Impact Electronic Access Point to permit only necessary inbound and outbound bidirectional routable protocol access.[87]

70. We seek comment on the following aspects of the proposed definition. First, we seek comment on the purpose of the meaning of the term ''direct'' in relation to the phrases ''direct user-initiated interactive access'' and ''direct device-to-device connection'' within the proposed definition. In addition, we seek comment on the implementation of the ''layer 7 application layer break'' contained in certain reference diagrams in the Guidelines and Technical Basis section of proposed Reliability Standard CIP–003–6.[88] It appears that guidance provided in the Guidelines and Technical Basis section of the proposed standard may conflict with the plain reading of the term ''direct.'' We are concerned that a conflict in the reading of the term ''direct'' could lead to complications in the implementation of the proposed CIP Reliability Standards, hindering the adoption of effective security controls for Low Impact BES Cyber Assets. Depending upon the responses received, we may direct NERC to develop a modification to the definition of Low Impact External Routable Connectivity.

G. Implementation Plan

71. NERC's proposed implementation plan for the proposed Reliability Standards is designed to match the effective dates of the proposed Reliability Standards with the effective dates of the prior versions of the related Reliability Standards under the implementation plan of the CIP version 5 Standards. NERC states that the purpose of this approach is to provide regulatory certainty by limiting the time, if any, that the CIP version 5 Standards with the ''identify, assess, and correct'' language would be effective. Specifically, pursuant to the CIP version 5 implementation plan, the effective date of each of the CIP version 5 Standards is April 1, 2016, except for the effective date for Requirement R2 of CIP–003–5, which is April 1, 2017. Consistent with those dates, the proposed implementation plan provides that: (1) each of the proposed reliability Standards shall become effective on the later of April 1, 2016 or the first day of the first calendar quarter that is three months after the effective date of the Commission's order approving the proposed Reliability Standard; and (2) responsible entities will not have to comply with the requirements applicable to Low Impact BES Cyber Systems (CIP–003–6, Requirement R1, Part 1.2 and Requirement R2) until April 1, 2017.[89]

72. NERC's proposed implementation plan also includes effective dates for the new and modified definitions associated with: (1) transient devices (*i.e.,* BES Cyber Asset, Protected Cyber Asset, Removable Media, and Transient Cyber Asset); and (2) Low Impact controls (*i.e.,* Low Impact Electronic Access Point and Low Impact External Routable Connectivity). Specifically, NERC proposes: (1) That the definitions associated with transient device become effective on the compliance date for Reliability Standard CIP–010–2, Requirement R4; and (2) that the definitions addressing the Low Impact controls become enforceable on the compliance date for Reliability Standard CIP–003–6, Requirement R2. Lastly, NERC proposes that the retirement of Reliability Standards CIP–003–5, CIP–004–5.1, CIP–006–5, CIP–007–5, CIP–009–5, CIP–010–1 and CIP–011–1 become effective on the effective date of the proposed Reliability Standards.[90]

73. We propose to approve NERC's implementation plan for the proposed CIP Reliability Standards, as described above.

H. Violation Risk Factor/Violation Severity Level Assignments

74. NERC requests approval of the violation risk factors and violation severity levels assigned to the proposed Reliability Standards. Specifically, NERC requests approval of 19 violation risk factor and violation severity level assignments associated with the proposed Reliability Standards.[91] We propose to accept these violation risk factors and violation severity levels.

III. Information Collection Statement

75. The FERC–725B information collection requirements contained in this Proposed Rule are subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.[92] OMB's regulations require approval of certain information collection requirements imposed by agency rules.[93] Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number. The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

76. The Commission based its paperwork burden estimates on the changes in paperwork burden presented by the proposed CIP Reliability Standards as compared to the CIP version 5 Standards. The Commission has already addressed the burden of implementing the CIP version 5 Standards.[94] As discussed above, the immediate rulemaking addresses four areas of modification to the CIP standards: (1) Removal of the ''identify.

[86] NERC Petition at 28.

[87] *Id.* at 29.

[88] *See* CIP–003–6 Guidelines and Technical Basis Section, Reference Model 6 at p. 39.

[89] *Id.* at 53–54.

[90] *Id.* at 56.

[91] *Id.,* Exhibit E.

[92] 44 U.S.C. 3507(d).

[93] 5 CFR 1320.11 (2012).

[94] *See* Order No. 791, 145 FERC ¶ 61,160 at PP 226–244.

assess, and correct'' language from 17 CIP requirements; (2) development of enhanced security controls for low impact assets; (3) development of controls to protect transient devices (*e.g.* thumb drives and laptop computers); and (4) protection of communications networks. We do not anticipate that the removal of the ''identify, assess and correct'' language will impact the reporting burden, as the substantive compliance requirements would remain the same, while NERC indicates that the concept behind the deleted language continues to be implemented within NERC's compliance function. The development of controls to protect transient devices and protection of communication networks (as proposed by NERC) have associated reporting burdens that will affect a limited number of entities, *i.e.,* those with Medium and High Impact BES Cyber Systems. The enhanced security controls for Low Impact assets are likely to impose a reporting burden on a much larger group of entities.

77. The NERC Compliance Registry, as of June 2015, identifies approximately 1,435 U.S. entities that are subject to mandatory compliance with Reliability Standards. Of this total, we estimate that 1,363 entities will face an increased paperwork burden under the proposed CIP Reliability Standards, and we estimate that a majority of these entities will have one or more Low Impact assets. In addition, we estimate that approximately 23 percent of the entities have assets that will be subject to Reliability Standards CIP–006–6 and CIP–010–2. Based on these assumptions, we estimate the following reporting burden:

Registered entities	Number of entities	Total burden hours in year 1	Total burden hours in year 2	Total burden hours in year 3
Entities subject to CIP–006–6 and CIP–010–2 with Medium and/or High Impact Assets	313	75,120	130,208	130,208
Totals	313	75,120	130,208	130,208

78. The following shows the annual cost burden for each group, based on the burden hours in the table above:

- Year 1: Entities subject to CIP–006–6 and CIP–010–2 with Medium and/or High Impact Assets: 313 × 240 hours/entity * $76/hour = $5,709,120.
- Years 2 and 3: 313 entities × 416 hours/entity * $76/hour = $9,895,808 per year.
- The paperwork burden estimate includes costs associated with the initial development of a policy to address requirements relating to transient devices, as well as the ongoing data collection burden. Further, the estimate reflects the assumption that costs incurred in year 1 will pertain to policy development, while costs in years 2 and 3 will reflect the burden associated with maintaining logs and other records to demonstrate ongoing compliance.

Registered entities	Number of entities	Total burden hours in year 1	Total burden hours in year 2	Total burden hours in year 3
Entities subject to CIP–003–6 with low impact Assets	1,363	163,560	283,504	283,504
Totals	1,363	163,560	283,504	283,504

79. The following shows the annual cost burden for each group, based on the burden hours in the table above:

- Year 1: Entities subject to CIP–003–6 with Low Impact Assets: 1,363 × 120 hours/entity * $76/hour = $12,430,560.
- Years 2 and 3: 1,363 entities × 208 hours/entity * $76/hour = $21,546,304 per year.
- The paperwork burden estimate includes costs associated with the modification of existing policies to address requirements relating to low impact assets, as well as the ongoing data collection burden, as set forth in CIP–003–6, Requirements R1.2 and R2, and Attachment 1. Further, the estimate reflects the assumption that costs incurred in year 1 will pertain to revising existing policies, while costs in years 2 and 3 will reflect the burden associated with maintaining logs and other records to demonstrate ongoing compliance.

80. The estimated hourly rate of $76 is the average loaded cost (wage plus benefits) of legal services ($129.68 per hour), technical employees ($58.17 per hour) and administrative support ($39.12 per hour), based on hourly rates and average benefits data from the Bureau of Labor Statistics.[95]

81. *Title:* Mandatory Reliability Standards, Revised Critical Infrastructure Protection Standards.

Action: Proposed Collection FERC–725B.

OMB Control No.: 1902–0248.

Respondents: Businesses or other for-profit institutions; not-for-profit institutions.

Frequency of Responses: On Occasion.

Necessity of the Information: This proposed rule proposes to approve the requested modifications to Reliability Standards pertaining to critical infrastructure protection. As discussed above, the Commission proposes to approve NERC's proposed revised CIP Reliability Standards pursuant to section 215(d)(2) of the FPA because they improve the currently-effective suite of cyber security CIP Reliability Standards.

Internal Review: The Commission has reviewed the proposed Reliability Standards and made a determination that its action is necessary to implement section 215 of the FPA.

82. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, email: *DataClearance@ferc.gov,* phone: (202) 502–8663, fax: (202) 273–0873].

83. For submitting comments concerning the collection(s) of information and the associated burden estimate(s), please send your comments to the Commission, and to the Office of Management and Budget, Office of

[95] *See http://bls.gov/oes/current/naics2_22.htm* and *http://www.bls.gov/news.release/ecec.nr0.htm.* Hourly figures as of June 1, 2015.

Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–4638, fax: (202) 395–7285]. For security reasons, comments to OMB should be submitted by email to: *oira_submission@omb.eop.gov*. Comments submitted to OMB should include Docket Number RM15–14–000 and OMB Control Number 1902–0248.

IV. Regulatory Flexibility Act Analysis

84. The Regulatory Flexibility Act of 1980 (RFA) generally requires a description and analysis of Proposed Rules that will have significant economic impact on a substantial number of small entities.[96] The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[97] The SBA revised its size standard for electric utilities (effective January 22, 2014) to a standard based on the number of employees, including affiliates (from the prior standard based on megawatt hour sales).[98] Proposed Reliability Standards CIP–003–6, CIP–004–6, CIP–006–6, CIP–007–6, CIP–009–6, CIP–010–2, and CIP–011–2 are expected to impose an additional burden on 1,363 entities [99] (reliability coordinators, generator operators, generator owners, interchange coordinators or authorities, transmission operators, balancing authorities, transmission owners, and certain distribution providers).

85. Of the 1,363 affected entities discussed above, we estimate that 444 entities are small entities. We estimate that 399 of these 444 small entities do not own BES Cyber Assets or BES Cyber Systems that are classified as Medium or High Impact and, therefore, will only be affected by the proposed modifications to Reliability Standard CIP–003–6. As discussed above, proposed Reliability Standard CIP–003–6 enhances reliability by providing criteria against which NERC and the Commission can evaluate the sufficiency of an entity's protections for Low Impact BES Cyber Assets. We estimate that each of the 399 small entities to whom the proposed modifications to Reliability Standard CIP–003–6 applies will incur one-time costs of approximately $149,358 per entity to implement this standard, as well as the ongoing paperwork burden reflected in the Information Collection Statement (approximately $15,000 per year per entity). We do not consider the estimated costs for these 399 small entities a significant economic impact.

86. In addition, we estimate that 14 small entities own Medium Impact substations and that 31 small transmission operators own Medium or High impact control centers. These 45 small entities represent 10.1 percent of the 444 affected small entities. We estimate that each of these 45 small entities may experience an economic impact of $50,000 per entity in the first year of initial implementation to meet proposed Reliability Standard CIP–010–2 and $30,000 in ongoing annual costs,[100] for a total of $110,000 per entity over the first three years. Therefore, we estimate that each of these 45 small entities will incur a total of $258,654 in costs over the first three years. We conclude that 10.1 percent of the total 444 affected small entities does not represent a substantial number in terms of the total number of regulated small entities.

87. Based on the above analysis, we propose to certify that the proposed Reliability Standards will not have a significant economic impact on a substantial number of small entities.

V. Environmental Analysis

88. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[101] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[102] The actions proposed herein fall within this categorical exclusion in the Commission's regulations.

VI. Comment Procedures

89. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due September 21, 2015. Comments must refer to Docket No. RM15–14–000, and must include the commenter's name, the organization they represent, if applicable, and address.

90. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

91. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

92. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VII. Document Availability

93. In addition to publishing the full text of this document in the **Federal Register,** the Commission provides all interested persons an opportunity to view and/or 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.

94. 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/or downloading. To access this document in eLibrary, type the docket number of this document, excluding the last three digits, in the docket number field.

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. Email the Public Reference Room at *public.referenceroom@ferc.gov*.

By direction of the Commission.

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[96] 5 U.S.C. 601–12.

[97] 13 CFR 121.101 (2013).

[98] SBA Final Rule on ''Small Business Size Standards: Utilities,'' 78 FR 77343 (Dec. 23, 2013).

[99] Public utilities may fall under one of several different categories, each with a size threshold based on the company's number of employees, including affiliates, the parent company, and subsidiaries. For the analysis in this NOPR, we are using a 500 employee threshold for each affected entity to conduct a comprehensive analysis.

[100] Estimated annual cost for year 2 and forward.

[101] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

[102] 18 CFR 380.4(a)(2)(ii).

Issued: July 16, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–17920 Filed 7–21–15; 8:45 am]

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 550

[BOP–1168–P]

RIN 1120–AB68

Drug Abuse Treatment Program

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) proposes revisions to the Residential Drug Abuse Treatment Program (RDAP) regulations to allow greater inmate participation in the program and positively impact recidivism rates.

DATES: Comments are due by September 21, 2015.

ADDRESSES: The public is encouraged to submit comments on this proposed rule using the *www.regulations.gov* comment form. Written comments may also be submitted to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street NW., Washington, DC 20534. You may view an electronic version of this regulation at *www.regulations.gov.* When submitting comments electronically you must include the BOP Docket Number in the subject box.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *www.regulations.gov.*

Personal identifying information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

Discussion

In this document, the Bureau proposes revisions to the Residential Drug Abuse Treatment Program (RDAP) regulations in four areas to allow greater inmate participation in the program and positively impact recidivism rates. Specifically, the Bureau proposes to (1) remove the regulatory requirement for RDAP written testing because it is more appropriate to assess an inmate's progress through clinical evaluation of behavior change (the written test is no longer used in practice); (2) remove existing regulatory provisions which automatically expel inmates who have committed certain acts (*e.g.,* abuse of drugs or alcohol, violence, attempted escape); (3) limit the time frame for review of prior offenses for early release eligibility purposes to ten years before the date of federal imprisonment; and (4) lessen restrictions relating to early release eligibility.

Community Treatment Services. Currently, the Bureau's regulations contain the term ''Transitional drug abuse treatment (TDAT)'' in 28 CFR 550.53(a)(3) and in the title and paragraphs (a) and (b) of § 550.56. We propose to replace this phrase because the name of this program has been changed to ''Community Treatment Services (CTS).'' This is a minor change to more accurately reflect the nature of the treatment program.

§ 550.50 Purpose and scope. We propose changes to this regulation to more accurately describe the purpose of the subpart and to reflect the source of drug treatment services within the Bureau of Prisons. The current regulation states that Bureau facilities have drug abuse treatment specialists who are supervised by a Coordinator and that facilities with residential drug abuse treatment programs (RDAP) should have additional specialists for treatment in the RDAP unit. This is inaccurate. We propose to change the regulation to explain that the Bureau's drug abuse treatment programs, which include drug abuse education, RDAP and non-residential drug abuse treatment services, are provided by the Psychology Services Department.

We likewise propose to make a minor corresponding change in § 550.53(a)(1), which also refers inaccurately to the Drug Abuse Program Coordinator, when instead the course of activities referenced in that regulation is provided by the Psychology Services Department.

§ 550.53 Residential Drug Abuse Treatment Program (RDAP)(f)(2). The Bureau proposes to remove subparagraph (f)(2) of § 550.53, which requires inmates to pass RDAP testing procedures and refers to an RDAP exam. The RDAP program no longer includes written testing as a requirement for completion of the program. Instead, RDAP uses clinical observation and clinical evaluation of inmate behavior change to assess readiness for completion. Therefore, the current language is inaccurate and imposes a requirement upon inmates that no longer exists.

In 2010, the Bureau converted the Residential Drug Abuse Treatment Programs to the Modified Therapeutic Community Model of treatment (MTC). This evidenced-based model is designed to assess progress through treatment as determined by the participants' completion of treatment goals and activities on their individualized treatment plan, and demonstrated behavior change. Each participant jointly works with their treatment specialist to create the content of their treatment plan. Every three months, or more often if necessary, each participant meets with their clinical team (four or more treatment staff) to review their progress in treatment. Progress in treatment is determined through assessing the accomplishment of their treatment goals and activities, along with demonstrated behavior change, such as improved personal and social conduct, no disciplinary incidents, etc. Unsatisfactory progress is evident when the participant does not accomplish

their treatment goals and does not demonstrate mastery of skill development.

There are several studies about the effectiveness of the MTC model of treatment. The most seminal study pertaining to this topic is titled ''Outcome Evaluation of A Prison Therapeutic Community for Substance Abuse Treatment.'' [1]

This behavioral form of assessing progress is a much more powerful form of assessment than assessing the results of a written test. The written test assesses knowledge, but knowledge does not necessarily demonstrate whether the program has positively affected an individual's behavior or addictive lifestyle.

All of the treatment specialists in the Bureau have a doctorate degree in psychology. They are well qualified to use their knowledge of treatment and the behavior of individuals suffering from substance abuse to objectively determine if a participant is ready to complete the program. There are three decades of evaluation research that support the efficacy of the therapeutic community model of treatment. The most comprehensive source of program description, theory, and summary of research associated with this model of treatment is found in the book entitled *The Therapeutic Community: Theory, Model, and Method.* New York: Springer Publishing Company, Inc. (De Leon, G. (2000).

§ 550.53(g) Expulsion from RDAP. We propose to remove § 550.53(g)(3), which requires Discipline Hearing Officers (DHOs) to remove an inmate automatically from RDAP if there is a finding that the inmate has committed a prohibited act involving alcohol, drugs, violence, escape, or any 100-level series incident.

Removing the language would give the Bureau more latitude and clinical discretion when determining which inmates should be expelled from the program. If the language is deleted, inmates will then only be expelled from RDAP according to criteria in § 550.53(g)(1) which allows inmates to be removed from the program by the Drug Abuse Program Coordinator because of disruptive behavior related to the program or unsatisfactory progress in treatment, and requires at least one formal warning before removal, unless there is documented lack of compliance and the inmate's continued presence would present an immediate problem for staff and other inmates.

Removing paragraph (g)(3) removes the automatic expulsion of inmates committing the listed prohibited acts and allows for greater possibility of continuance of the program for inmates with discipline problems.

§ 550.55(b) Inmates not eligible for early release. We propose to make two changes to § 550.55(b). The first is to modify the current language of (b)(4), which precludes inmates from consideration for early release if they have a prior felony or misdemeanor conviction for homicide, forcible rape, robbery, aggravated assault, arson, kidnaping, or an offense that involves sexual abuse of minors. The Bureau proposes to modify the language of (b)(4) to clarify that we intend to limit consideration of ''prior felony or misdemeanor'' convictions to those which were imposed within the ten years prior to the date of sentencing for the inmate's current commitment. By making this change, the Bureau clarifies that it will not preclude from early release eligibility those inmates whose prior felony or misdemeanor convictions were imposed longer than ten years before the date of sentencing for the inmate's current commitment.

Title 18 U.S.C. 3621(e) provides the Director of the Bureau of Prisons the discretion to grant an early release of up to one year upon the successful completion of a residential drug abuse treatment program. In exercising the Director's statutory discretion, we considered the crimes of homicide, rape, robbery, aggravated assault, arson, and kidnaping. In the FBI's Uniform Crime Reporting (UCR) Program, violent crime is composed of four offenses: Murder and nonnegligent manslaughter, rape, robbery, and aggravated assault. Violent crimes are defined in the UCR Program as those offenses which involve force or threat of force. The Director exercised his discretion, therefore, to include these categories of violent crimes and also expanded the list to include arson and kidnaping, as they also are crimes of an inherently violent nature and particular dangerousness to the public.

The Director exercises discretion to deny early release eligibility to inmates who have a prior felony or misdemeanor conviction for theses offenses because commission of such offenses rationally reflects the view that such inmates displayed readiness to endanger the public. The UCR explained that ''because of the variances in punishment for the same offenses in different state codes, no distinction between felony and misdemeanor crimes was possible.''

The application of national standards to the numerous local, state, tribal, and federal prior convictions promotes uniformity, but creates unique issues since each separate entity will have its own criminal statutory schemes in which offenses may be categorized as either misdemeanors or felonies. Limiting the Bureau to an analysis of how an offense is categorized in local, state, tribal, or federal criminal codes, rather than to an analysis of the nature of the prior offense, would effectively prevent the Director from exercising the discretion authorized by 18 U.S.C. 3621(e). Furthermore, eliminating the analysis of prior violent misdemeanor convictions would allow inmates to receive the benefit of early release merely because of the manner in which the prior convictions were categorized.

Additionally, 28 CFR 550.55(b)(6) provides that inmates who have been convicted of an attempt, conspiracy, or other offense which involved certain underlying offenses are also precluded from early release eligibility. Many state statutes provide that ''attempt'' convictions are to be categorized as one degree lower than the underlying offense (*e.g.,* Alaska Statutes sec. 11.31.100(d), N.C. Gen Stat. sec. 14–2.5, Tex. Penal Code sec. 15.01(d), and Wash. Rev. Code sec. 9A.28.020(3)). Therefore, eliminating the analysis of prior misdemeanor convictions may result in offenders convicted of attempting to commit a precluding offense being found eligible for early release, despite the provisions of 28 CFR 550.55(b)(6).

Further, based on a random sampling of inmates who participated in RDAP but were precluded from RDAP early release eligibility, the Bureau estimates that of the 856 inmates precluded in the year 2014 based only on convictions for prior offense, at least half that number would have been eligible for early release if the Bureau had not considered prior offenses greater than 10 years old. The Fiscal Year 2015 estimated annual marginal rate to incarcerate an inmate in the Bureau of Prisons is $11,324 per inmate. Based on an estimate of 400 inmates released up to a year early if this proposed rule change is made, that could equate to a cost avoidance of over $4.5 million per year.

We also propose to narrow the language in § 550.55(b)(6) relating to early release eligibility. In § 550.55(b), the Director exercises his discretion to disallow particular categories of inmates from eligibility for early release, including, in (b)(6), those who were convicted of an attempt, conspiracy, or

[1] *Wexler, H., Falkin, G., Lipton, D., (1990). Outcome Evaluation of A Prison Therapeutic Community for Substance Abuse Treatment. Criminal Justice and Behavior, vol.17 No.1, March 1990 71–92, 1990 American Association for Correctional Psychology.*

other offense which involved an underlying offense listed in paragraph (b)(4) and/or (b)(5) of § 550.55.

We propose to narrow the language of § 550.55(b)(6) to preclude only those inmates whose prior conviction involved direct knowledge of the underlying criminal activity and who either participated in or directed the underlying criminal activity. The proposed change would more precisely tailor the regulation to the congressional intent to exclude from early release consideration only those inmates who have been convicted of a violent offense. Furthermore, the changed language would potentially expand early release benefits to more inmates.

Beginning in 1991, in coordination with the National Institute on Drug Abuse, the Bureau conducted a 3-year outcome study of the RDAP. Federal Bureau of Prisons (2000). *TRIAD Drug Treatment Evaluation Project Final Report of Three-Year Outcomes: Part I.* (''TRIAD Study''). The study evaluated the effect of treatment on both male and female inmates (1,842 men and 473 women). This study demonstrates that the Bureau's RDAP makes a positive difference in the lives of inmates and improves public safety.

The TRIAD study showed that the RDAP program is effective in reducing recidivism. Male participants were 16 percent less likely to recidivate and 15 percent less likely to relapse than similarly situated inmates who do not participate in residential drug abuse treatment for up to 3 years after release. The analysis also found that female inmates who participate in RDAP are 18 percent less likely to recidivate than similarly situated female inmates who do not participate in treatment.

The TRIAD study defined criminal recidivism was defined two ways: (1) An arrest for a new offense or (2) an arrest for a new offense *or* supervision revocation. Revocation was defined as occurring only when the revocation was solely the result of a technical violation of one or more conditions of supervision (*e.g.,* detected drug use, failure to report to probation officer). Drug use as a post-release outcome, for the purposes of the study, referred to the *first* occurrence of drug or alcohol use as reported by U.S. Probation officers (*i.e.,* a positive urinalysis (u/a), refusal to submit to a urinalysis, admission of drug use to the probation officer, or a positive breathalyser test).

Offenders who completed the residential drug abuse treatment program and had been released to the community for three years were less likely to be re-arrested or to be detected for drug use than were similar inmates who did not participate in the drug abuse treatment program. Specifically, 44.3 percent of male inmates who completed the program were likely to be re-arrested or revoked within three years after release to supervision in the community, compared to 52.5 percent of those inmates who did not receive such treatment. For women, 24.5 percent of those who completed the residential drug abuse treatment program were arrested or revoked within three years after release, compared to 29.7 percent of the untreated women.

With respect to drug use, 49.4 percent of men who completed treatment were likely to use drugs within 3 years following release, compared to 58.5 percent of those who did not receive treatment. Among female inmates who completed treatment, 35.2 percent were likely to use drugs within the three-year postrelease period in the community, compared to 42.6 percent of those who did not receive such treatment.

§ 550.56 Community Transitional Drug Abuse Treatment Program (TDAT).

In addition to changing ''Transitional Drug Abuse Treatment Program (TDAT)'' to ''Community Treatment Services (CTS)'' throughout this regulation as indicated earlier, we also propose to delete paragraph (c) which appears to require that inmates successfully completing RDAP and participating in transitional treatment programming must participate in such programming for one hour per month. The provision in the regulation is an error. It does not relate to Community Treatment Services (CTS), but instead relates to RDAP. It is therefore unnecessary to retain this language. The substance of this language will be retained as implementing text in the relevant policy statement as part of RDAP procedures.

Executive Orders 12866 and 13563

This proposed regulation has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' section 1(b), Principles of Regulation, and Executive Order 13563, ''Improving Regulation and Regulatory Review.'' These executive orders direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Director, Bureau of Prisons has determined that this proposed rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f), and accordingly this proposed rule has been reviewed by the Office of Management and Budget.

As context regarding the current impact of the RDAP (*i.e.,* without the changes proposed in this rule), in FY 2014, 18,102 inmates participated in the residential drug abuse treatment program. Title 18 U.S.C. 3621(e)(2) allows the Bureau to grant a non-violent offender up to one year off his/her term of imprisonment for successful completion of the RDAP. In fiscal year 2014, 5,229 inmates received a reduction in their term of imprisonment resulting in a cost avoidance of nearly $50 million based on this law (average reduction was 10.4 months and the marginal cost avoidance was $10,994 annually). The changes made by this proposed rule would increase the number of current inmates who benefit from the RDAP program and would increase the number of inmates who may be eligible for early release, thereby resulting in cost avoidance to the Bureau in the future.

For instance, the change we propose to make to § 550.55(b)(6), regarding changing ''other offense'' to ''solicitation to commit,'' based on prior year data (Jan 2014 through Dec 2014), we estimate that approximately 45 inmates would be made eligible for early release as a result of the suggested change.

We will not require more resources in order to put more individuals through RDAP. RDAP is a nine-month program. The program has a treatment capacity large enough to accommodate about 8,400 participants at any given time. Therefore, during a year, program capacity is filled twice, which means that at least 16,800 participants can be accommodated every year. It is not uncommon for more than 16,800 to participate. For example, in FY 2014, approximately 18,000 inmates participated. This number also reflects inmates who may drop out of the program and are replaced with other inmates on the wait list.

Executive Order 13132

This proposed regulation would not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rulemaking does not have sufficient federalism implications

for which we would prepare a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation. By approving it, the Director certifies that it will not have a significant economic impact upon a substantial number of small entities because: This proposed rule is about the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This proposed rule will not cause State, local and tribal governments, or the private sector, to spend $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. We do not need to take action under the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This proposed rule would not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 550

Prisoners.

Charles E. Samuels, Jr.,

Director, Bureau of Prisons.

Under the rulemaking authority vested in the Attorney General in 5 U.S.C. 301; 28 U.S.C. 509, 510 and delegated to the Director, Bureau of Prisons in 28 CFR 0.96, we propose to amend 28 CFR part 550 as follows:

PART 550—DRUG PROGRAMS

■ 1. The authority citation for part 550 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3521–3528, 3621, 3622, 3624, 4001, 4042, 4046, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 21 U.S.C. 848; 28 U.S.C. 509, 510; Title V, Pub. L. 91–452, 84 Stat. 933 (18 U.S.C. Chapter 223).

■ 2. Revise § 550.50 to read as follows:

§ 550.50 Purpose and scope.

The purpose of this subpart is to describe the Bureau's drug abuse treatment programs for the inmate population, to include drug abuse education, non-residential drug abuse treatment services, and residential drug abuse treatment programs (RDAP). These services are provided by Psychology Services department.

■ 3. Amend § 550.53 by revising paragraphs (a)(1), (a)(3), (f), and (g) to read as follows:

§ 550.53 Residential Drug Abuse Treatment Program (RDAP).

(a) * * *

(1) *Unit-based component.* Inmates must complete a course of activities provided by the Psychology Services Department in a treatment unit set apart from the general prison population. This component must last at least six months.

* * * * *

(3) *Community Treatment Services (CTS).* Inmates who have completed the unit-based program and (when appropriate) the follow-up treatment and transferred to a community-based program must complete CTS to have successfully completed RDAP and receive incentives. The Warden, on the basis of his or her discretion, may find an inmate ineligible for participation in a community-based program; therefore, the inmate cannot complete RDAP.

* * * * *

(f) *Completing the unit-based component of RDAP.* To complete the unit-based component of RDAP, inmates must have satisfactory attendance and participation in all RDAP activities.

(g) *Expulsion from RDAP.* (1) Inmates may be removed from the program by the Drug Abuse Program Coordinator because of disruptive behavior related to the program or unsatisfactory progress in treatment.

(2) Ordinarily, inmates must be given at least one formal warning before removal from RDAP. A formal warning is not necessary when the documented lack of compliance with program standards is of such magnitude that an inmate's continued presence would create an immediate and ongoing problem for staff and other inmates.

(3) We may return an inmate who withdraws or is removed from RDAP to his/her prior institution (if we had transferred the inmate specifically to participate in RDAP).

* * * * *

■ 4. Revise § 550.55(b)(4) and (6) to read as follows:

§ 550.55 Eligibility for early release.

* * * * *

(b) * * *

(4) Inmates who have a prior felony or misdemeanor conviction within the ten years prior to the date of sentencing for their current commitment for:

(i) Homicide (including deaths caused by recklessness, but not including deaths caused by negligence or justifiable homicide);

(ii) Forcible rape;

(iii) Robbery;

(iv) Aggravated assault;

(v) Arson;

(vi) Kidnaping; or

(vii) An offense that by its nature or conduct involves sexual abuse offenses committed upon minors;

* * * * *

(6) Inmates who have been convicted of an attempt, conspiracy, or solicitation to commit an underlying offense listed in paragraph (b)(4) and/or (b)(5) of this section; or

* * * * *

■ 5. Revise § 550.56 to read as follows:

§ 550.56 Community Treatment Services (CTS).

(a) For inmates to successfully complete all components of RDAP, they must participate in CTS. If inmates refuse or fail to complete CTS, they fail RDAP and are disqualified for any additional incentives.

(b) Inmates with a documented drug use problem who did not choose to participate in RDAP may be required to participate in CTS as a condition of participation in a community-based program, with the approval of the Supervisory Community Treatment Services Coordinator.

[FR Doc. 2015–17707 Filed 7–21–15; 8:45 am]

BILLING CODE 4410–05–P

POSTAL REGULATORY COMMISSION

39 CFR part 3050

[Docket No. RM2015–11; Order No. 2593]

Periodic Reporting

AGENCY: Postal Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is noticing a recent Postal Service filing requesting that the Commission initiate an informal rulemaking proceeding to consider changes to analytical principles relating to periodic reports (Proposal Three). This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 31, 2015. *Reply Comments are due:* September 10, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Summary of Proposal
III. Initial Commission Action
IV. Ordering Paragraphs

I. Introduction

On July 14, 2015, the Postal Service filed a petition pursuant to 39 CFR 3050.11 requesting that the Commission initiate an informal rulemaking proceeding to consider a proposed change in analytical principles relating to periodic reports.[1] A description of Proposal Three is attached to the Petition. Petition at 1. The Petition identifies the proposed change as a modification to the analytical method used to estimate shape and weight for a portion of the ''Origin-Destination Information System—Revenue, Pieces and Weight'' (ODIS–RPW) sampling frame related to letter and card shaped mailpieces. *Id.*

II. Summary of Proposal

The Postal Service explains that ODIS–RPW is a probability-based destinating mail sampling system that primarily supplies the official ''Revenue, Pieces and Weight By Class and Special Services'' (RPW) report estimates of revenue, volume, and weight for single-piece stamped and metered mail. *Id.,* Proposal Three at 4. Currently, ODIS–RPW data collectors travel to randomly selected Mail Exit Points (MEPs) on randomly selected days and manually sample mail as it arrives at these locations. *Id.* These data collectors record mail characteristics from the sampled mail pieces, such as revenue, volume, weight, mail class, subclass, and indicia. *Id.*

Under Proposal Three, a portion of MEPs would begin digitally capturing the images of letter and card shaped mail from Delivery Barcode Sequencing (DBCS) second pass operations. *Id.* at 3. The remaining portion of MEPs would continue to employ the existing manual ODIS–RPW sampling techniques. *Id.* at 4–5. The Postal Service asserts that all of the mail characteristics currently collected from manually sampled mailpieces can be collected from digitally captured images of sampled mailpieces, except for weight and shape. *Id.* at 3. The Postal Service proposes to use the weight and shape data from those MEPs that continue to employ manual sampling techniques as a distribution key for the digitally sampled mailpieces. *Id.* at 5.

The Postal Service plans to implement the change in Proposal Three beginning on January 1, 2016. *Id.* at 3. The Postal Service asserts that the proposed change would only impact three mail categories: First-Class Mail single-piece cards, First-Class Mail single-piece stamped letters, and First-Class Mail single-piece metered letters. *Id.* at 5.

The Postal Service states that the change in Proposal Three would have very little impact on the business needs that the ODIS–RPW system supports. *Id.* at 10. Moreover, the Postal Service notes that the changes in Proposal Three will result in cost savings through the elimination of travel time and on-site work hours for ODIS–RPW data collectors. *Id.* at 5 n.1.

III. Initial Commission Action

The Commission establishes Docket No. RM2015–11 for consideration of matters raised by the Petition. Additional information concerning the Petition may be accessed via the Commission's Web site at *http://www.prc.gov.* Interested persons may submit comments on the Petition and Proposal Three no later than August 31, 2015. Reply comments are due no later than September 10, 2015. Pursuant to 39 U.S.C. 505, Katalin K. Clendenin is designated as an officer of the Commission to represent the interests of the general public (Public Representative) in this proceeding.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. RM2015–11 for consideration of the matters raised by the Petition of the United States Postal Service Requesting Initiation of a Proceeding to Consider a Proposed Change in Analytical Principles (Proposal Three), filed July 14, 2015.

2. Comments are due no later than August 31, 2015. Reply comments are due no later than September 10, 2015.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Katalin K. Clendenin to serve as Public Representative in this docket.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2015–17939 Filed 7–21–15; 8:45 am]

BILLING CODE 7710–FW–P

[1] Petition of the United States Postal Service Requesting Initiation of a Proceeding to Consider a Proposed Change in Analytical Principles (Proposal Three), July 14, 2015 (Petition).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2015–0268; FRL–9930–92–Region 7]

Approval and Promulgation of Implementation Plans; State of Missouri; Control of Petroleum Liquid Storage, Loading and Transfer

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the State Implementation Plan (SIP) revision submitted by the state of Missouri. This revision includes regulatory amendments that remove the requirements of stage II vapor recovery control systems at gasoline dispensing facilities in the St. Louis area, revises certification and testing procedures for stage I vapor recovery systems, prohibits above ground storage tanks at gasoline dispensing facilities, and includes general revisions to better clarify the rule. These revisions to Missouri's SIP do not have an adverse effect on air quality as demonstrated in Missouri's technical demonstration document and EPA's technical support demonstration which is a part of this docket.

DATES: Comments must be received on or before August 21, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2015–0268, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *Email: brown.steven@epa.gov.*

3. *Mail or Hand Delivery or Courier:* Steven Brown, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2015–0268. EPA's policy is that all comments

received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket. All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Steven Brown Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551–7718, or by email at *brown.steven@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' or ''our'' refer to EPA. This section provides additional information by addressing the following:

I. What is being addressed?
II. Have the requirements for approval of a SIP revision been met?
III. What action is EPA taking?

I. What is being addressed?

EPA proposes to approve the SIP revision submitted by the state of Missouri that removes the requirements of stage II vapor recovery control systems at gasoline dispensing facilities in the St. Louis area including minor revisions to the rule as described below.

On November 20, 2014, MDNR submitted a request to revise the SIP to include the following revision to Missouri Rule 10 CSR 10–5.220, ''Control of Petroleum Liquid Storage, Loading and Transfer'': (1) Removes the requirements of stage II vapor recovery control systems at gasoline dispensing facilities in the St. Louis area, (2) revises certification and testing procedures for the remaining stage I systems consistent with California Air Resources Board (CARB) vapor recovery requirements instead of the Missouri Performance Evaluation and Test Procedures (MOPETP), (3) the prohibition of above ground storage tanks at gasoline dispensing facilities, and (4) general text revisions to better clarify the rule.

II. Have the requirements for approval of a SIP revision been met?

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained in this proposed action, the revisions meet the substantive SIP requirements of the CAA, including section 110(l) and section 193 and implementing regulations. EPA has determined that the revisions meet all applicable CAA regulations, policy and guidance as detailed in EPA Technical Support Document and Missouri's technical support documentation which is part of this docket.

III. What action is EPA taking?

We are processing this as a proposed action because we are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments.

Statutory and Executive Order Reviews

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the Missouri Regulation ''Control of Petroleum Liquid Storage, Loading and Transfer'' described in the proposed amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human

health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

Dated: June 29, 2015.

Mark Hague,

Acting Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA proposes to amend 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart AA—Missouri

■ 2. In § 52.1320(c), the table is amended by revising the entry for 10–5.220 to read as follows:

§ 52.1320 Identification of Plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA Approval date	Explanation
Missouri Department of Natural Resources				
* * * * * * *				
Chapter 5—Air Quality Standards and Air Pollution Control Regulations for the St. Louis Metropolitan Area				
* * * * * * *				
10–5.220	Control of Petroleum Liquid Storage, Loading and Transfer.	07/21/14	07/22/15 *[Insert **Federal Register** citation].*	
* * * * * * *				

* * * * *

[FR Doc. 2015–17853 Filed 7–21–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2015–0212; FRL–9929–12]

RIN 2070–ZA16

Aldicarb, Alternaria destruens, Ampelomyces quisqualis, Azinphos-methyl, Etridiazole, Fenarimol, et al.; Proposed Tolerance and Tolerance Exemption Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing, in follow-up to canceled product registrations or uses, to revoke certain tolerances for acephate, aldicarb, azinphos-methyl, etridiazole, fenarimol, imazamethabenz-methyl, tepraloxydim, thiacloprid, thiazopyr, and tralkoxydim, and tolerance exemptions for certain pesticide active ingredients. Also, EPA is proposing to make minor revisions to the section heading and introductory text for *Pythium oligandrum* DV 74. In addition, in accordance with current Agency practice, EPA is proposing to make minor revisions to the tolerance expression for imazamethabenz-methyl, and remove expired tolerances and tolerance exemptions for certain pesticide active ingredients.

DATES: Comments must be received on or before September 21, 2015.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2015–0212, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Joseph Nevola, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8037; email address: *nevola.joseph@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).

- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

C. What can I do if I wish the agency to maintain a tolerance that the agency proposes to revoke?

This proposed rule provides a comment period of 60 days for any person to state an interest in retaining a tolerance proposed for revocation. If EPA receives a comment within the 60-day period to that effect, EPA will not proceed to revoke the tolerance immediately. However, EPA will take steps to ensure the submission of any needed supporting data and will issue an order in the **Federal Register** under the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(f), if needed. The order would specify data needed and the timeframes for its submission, and would require that within 90 days some person or persons notify EPA that they will submit the data. If the data are not submitted as required in the order, EPA will take appropriate action under FFDCA.

EPA issues a final rule after considering comments that are submitted in response to this proposed rule. In addition to submitting comments in response to this proposal, you may also submit an objection at the time of the final rule. If you fail to file an objection to the final rule within the time period specified, you will have waived the right to raise any issues resolved in the final rule. After the specified time, issues resolved in the final rule cannot be raised again in any subsequent proceedings.

II. Background

A. What action is the agency taking?

EPA is proposing, in follow-up to canceled product registrations or uses, to revoke certain tolerances for the fungicides etridiazole and fenarimol; the herbicides imazamethabenz-methyl, tepraloxydim, thiazopyr, and tralkoxydim; the insecticides acephate, aldicarb, azinphos-methyl, and thiacloprid, in or on commodities listed in the regulatory text; and revoke certain tolerance exemptions for various microbial or biochemical pesticides. Also, EPA is proposing to make minor revisions to the section heading and introductory text for *Pythium oligandrum* DV 74. In addition, in accordance with current Agency practice, EPA is proposing to make minor revisions to the tolerance expression for imazamethabenz-methyl, and remove expired tolerances and tolerance exemptions for various pesticide active ingredients.

In addition, EPA is proposing to revoke certain specific tolerances because either they are no longer needed or are associated with food uses that are no longer registered under FIFRA. Those instances where registrations were canceled were because the registrant failed to pay the required maintenance fee and/or the registrant voluntarily requested cancellation of one or more registered uses of the pesticide. It is EPA's general practice to propose revocation of those tolerances for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person in comments on the proposal indicates a need for the tolerance to cover residues in or on imported commodities or legally treated domestic commodities.

1. *Acephate.* In the **Federal Register** notice of July 13, 2011 (76 FR 41250) (FRL–8879–7), EPA announced its receipt of voluntary requests by registrants to amend certain registrations, including amendments that would terminate the use of acephate on succulent beans as a food use on technical registrations for acephate. In the **Federal Register** notice of September 14, 2011 (76 FR 56753) (FRL–8888–2), EPA granted the requested amendments to terminate certain uses, including use of acephate on succulent beans as a food use. In late 2012 and early 2013, EPA issued letters to registrants with end-use registrations for acephate use on succulent beans to explain that all end-use products needed amendment to prohibit such use as a food. Since then, all but three of those acephate product labels with a food use on succulent beans have been voluntarily amended with restrictions that prohibit use on succulent beans as a food. One of the remaining acephate products with use on succulent beans as a food is now canceled. In the **Federal Register** notice of March 12, 2015 (80 FR 12996) (FRL–9923–27), EPA announced its receipt of voluntary requests by registrants to cancel certain product registrations, including certain acephate products, one of which is registered for use on succulent beans as a food. In the **Federal Register** notice of June 3, 2015 (80 FR 31596) (FRL–9926–88), EPA published a cancellation order in follow-up to the March 12, 2015 notice and granted the requested product cancellations for acephate. Because the registrant ended the manufacture and distribution of these canceled acephate products about 6 to 7 years ago, EPA believes that existing stocks for these canceled acephate products are now exhausted. Two of the remaining acephate products with food uses for succulent beans have labels that are in process to be amended, to prohibit such use as a food, and await approval by the Agency. One product's label has been re-submitted for Agency review, while another product's label, recently in review, needs to be sent back to the registrant for re-submission to the Agency. EPA expects that both acephate labels could be submitted and their amendments approved by the Agency before a final rule is published in the **Federal Register** in follow-up to this proposed rule. Upon completion of the amendments for the two acephate products in process, there would no longer be any active food uses for acephate on succulent beans and therefore no longer any need for the acephate tolerances on succulent beans. Therefore, EPA is proposing to revoke the tolerances for acephate in 40 CFR 180.108(a)(1) and (a)(3) on bean, succulent.

2. *Aldicarb.* In the **Federal Register** notice of October 8, 2008 (73 FR 58958) (FRL–8385–2), EPA announced its receipt of voluntary requests by registrants to cancel and amend certain product registrations, including deletion of the sorghum use for aldicarb from two registrations. In the **Federal Register** notice of May 20, 2009 (74 FR 23690) (FRL–8412–8), EPA published a cancellation order and granted the requested amendments to terminate certain uses in follow-up to the October 8, 2008 notice, including deletion of the sorghum uses for aldicarb from two

registrations. EPA permitted persons other than the registrant to sell, distribute, or use the existing stocks until supplies are exhausted. Also, in the **Federal Register** notice of December 10, 2008 (73 FR 75105) (FRL–8393–7), EPA announced its receipt of voluntary requests by registrants to cancel certain product registrations, including the last aldicarb registration with sorghum use in the United States. In a letter to the registrant dated June 8, 2009, EPA cancelled the last aldicarb registration with sorghum use and permitted persons other than the registrant to sell, distribute, or use the existing stocks until supplies are exhausted. EPA believes that existing stocks regarding these three aldicarb registrations described herein are now exhausted. Therefore, EPA is proposing to revoke the tolerances for aldicarb in 40 CFR 180.269(a) on sorghum, grain, bran; sorghum, grain, grain; and sorghum, grain, stover.

3. *Alternaria destruens strain 059.* In the **Federal Register** of July 24, 2009 (74 FR 36699) (FRL–8427–4), EPA published a list of cancellation orders issued for non-payment of the annual maintenance fee to keep pesticide registrations in effect. That list included cancellation orders for the last active registrations for *Alternaria destruens* strain 059. There have been no active registrations for over 5 years, and therefore the tolerance exemption for *Alternaria destruens* strain 059 is no longer needed and should be revoked. Consequently, EPA is proposing to revoke the tolerance exemption when used in or on all raw agricultural commodities for *Alternaria destruens* strain 059 in 40 CFR 180.1256.

4. *Azinphos-methyl (AZM).* In the **Federal Register** notice of August 8, 2007 (72 FR 44511) (FRL–8134–7), EPA announced its receipt of voluntary requests by registrants to cancel all remaining AZM products registered for use in the United States by September 30, 2012. In the **Federal Register** notice of February 20, 2008 (73 FR 9328) (FRL–8349–8), as corrected on March 26, 2008 (73 FR 16006) (FRL–8355–1), EPA published a cancellation order in follow-up to the August 8, 2007 notice, and granted the requested product cancellations for AZM. Among the AZM cancellations, EPA permitted distribution, sale, and use of existing stocks of the last AZM products (use on apples, blueberries, cherries, parsley, and pears) until September 30, 2012. On November 28, 2012 (77 FR 70998) (FRL–9363–9), EPA modified the cancellation order of February 20, 2008 to permit use of existing stocks of the last AZM products (use on apples, blueberries, cherries, parsley, and pears) until September 30, 2013. Because existing stocks may no longer be used, the tolerances are no longer needed and should be revoked. Consequently, EPA is proposing to revoke the tolerances for AZM in 40 CFR 180.154(a) on almond; almond, hulls; apple; blackberry; blueberry; boysenberry; Brussels sprouts; cherry; crabapple; loganberry; parsley, leaves; parsley, turnip rooted, roots; peach; pear; pistachio; plum, prune; quince; raspberry; and walnut. Also, EPA proposes to remove the AZM tolerance in 40 CFR 180.154(a) on cranberry which expired on December 31, 2012.

5. *Butylate.* Because the tolerances in 40 CFR 180.232 for residues of butylate all expired on March 23, 2013, EPA proposes to remove that section in its entirety.

6. *Cacodylic acid.* Because the sole tolerance in 40 CFR 180.311 for cacodylic acid residues of concern expired on January 1, 2012, EPA proposes to remove that section in its entirety.

7. *Chloroneb.* Because the tolerances in 40 CFR 180.257 for chloroneb residues of concern all expired on April 16, 2012, EPA proposes to remove that section in its entirety.

8. *Clofencet.* Because the tolerances in 40 CFR 180.497 for residues of clofencet all expired on July 14, 2012, EPA proposes to remove that section in its entirety.

9. Delta endotoxin of *Bacillus thuringiensis* variety *San Diego* encapsulated into killed *Pseudomonas fluorescens.* In the **Federal Register** of November 6, 2003 (68 FR 62785) (FRL–7331–3), EPA published a list of cancellation orders issued for non-payment of the annual maintenance fee to keep pesticide registrations in effect. That list included cancellation orders for the last active registration for the delta endotoxin of *Bacillus thuringiensis* variety *San Diego.* There have been no active registrations for over eleven years, and therefore the tolerance exemption for them is no longer needed and should be revoked. Consequently, EPA is proposing to revoke the tolerance exemption in or on all raw agricultural commodities for the delta endotoxin of *Bacillus thuringiensis* variety *San Diego* in 40 CFR 180.1108.

10. *2,2-Dimethyl-1,3-benzodioxol-4-ol methylcarbamate.* Because the two tolerances in 40 CFR 180.530 for residues of 2,2-dimethyl-1,3-benzodioxol-4-ol methylcarbamate expired on April 26, 2005, EPA proposes to remove that section in its entirety.

11. *Etridiazole (5-ethoxy-3-(trichloromethyl)-1,2,4-thiadiazole).* In the **Federal Register** notice of November 20, 2013 (78 FR 69666) (FRL–9902–40), EPA announced its receipt of voluntary requests by registrants to cancel certain product registrations, including the last etridiazole product registered for use on specific food commodities (barley, bean, corn, pea, peanut, safflower, sorghum, soybean, and wheat) in the United States. In the **Federal Register** notice of March 13, 2014 (79 FR 14247) (FRL–9905–37), EPA published a cancellation order in follow-up to the November 20, 2013 notice and granted the requested product cancellations for etridiazole. EPA permitted the registrant to sell and distribute existing stocks of those etridiazole products until March 13, 2015 and persons other than the registrant to sell, distribute, or use the existing stocks until supplies are exhausted. EPA believes that existing stocks are likely to be exhausted by March 13, 2016. However, as explained in Unit II.C., EPA is proposing that the actions herein become effective 6 months after the date of publication of the final rule in the **Federal Register**. Consequently, EPA expects that the effective date of the final rule will occur after existing stocks are exhausted; *i.e.*, after March 13, 2016. Therefore, EPA is proposing to revoke the tolerances for etridiazole (5-ethoxy-3-(trichloromethyl)-1,2,4-thiadiazole) in 40 CFR 180.370(a) on barley, grain; barley, hay; corn, field, forage; corn, field, grain; corn, field, stover; corn, sweet, forage; corn, sweet, stover; peanut; peanut, hay; safflower, seed; sorghum, grain, forage; sorghum, grain, grain; vegetable, foliage of legume, group 7; vegetable, legume, group 6; wheat, forage; wheat, grain; and wheat, straw.

12. *Eucalyptus oil.* Because time-limited tolerance exemptions in 40 CFR 180.1241 for the use of the pesticide Eucalyptus oil on honey and honeycomb expired on June 30, 2007, EPA is proposing to remove them from 40 CFR 180.1241, and remove that section in its entirety.

13. *Fenarimol.* In the **Federal Register** notice of February 22, 2012 (77 FR 10516) (FRL–9336–4), EPA announced its receipt of voluntary requests by registrants to cancel certain product registrations, including the last fenarimol products registered for use on specific food commodities (apple, cherry, grape, hazelnut, hops, pear, and pecan) in the United States. In the **Federal Register** notice of May 2, 2012 (77 FR 26004) (FRL–9347–4), EPA published a cancellation order in follow-up to the February 22, 2012

notice and granted the requested product cancellations for fenarimol. EPA permitted the registrant to sell and distribute existing stocks of those fenarimol products until July 31, 2013 and persons other than the registrant to sell and distribute existing stocks through July 31, 2015, and use the existing stocks until supplies are exhausted. EPA believes that existing stocks are likely to be exhausted by July 31, 2016. Therefore, EPA is proposing to revoke the tolerances for fenarimol in 40 CFR 180.421(a) on apple; apple, wet pomace; cattle, fat; cattle, kidney; cattle, meat; cattle, meat byproducts, except kidney; cherry, sweet; cherry, tart; goat, fat; goat, kidney; goat, meat; goat, meat byproducts, except kidney; grape; hazelnut; hop, dried cones; horse, fat; horse, kidney; horse, meat; horse, meat byproducts, except kidney; pear; pecan; sheep, fat; sheep, kidney; sheep, meat; and sheep, meat byproducts, except kidney; each with an expiration/revocation date of July 31, 2016.

Also, EPA is proposing to re-instate a footnote for the import tolerance on banana in 40 CFR 180.421(a), which was inadvertently removed on September 15, 2006 (71 FR 54423) (FRL–8077–9), as shown in the regulatory text at the end of this document.

14. *Flusilazole.* Because the tolerances in 40 CFR 180.630 for residues of flusilazole all expired on December 31, 2010, EPA proposes to remove that section in its entirety.

15. *Gentamicin.* Because the sole tolerance in 40 CFR 180.642 for residues of gentamicin expired on December 31, 2010, EPA proposes to remove that section in its entirety.

16. *Imazamethabenz-methyl (2-(4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl)-p-toluate and methyl 6-(4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl)-m-toluate).* In the **Federal Register** notice of May 20, 2014 (79 FR 28920) (FRL–9909–40), EPA announced its receipt of voluntary requests by registrants to cancel certain product registrations, including the last imazamethabenz-methyl products registered for use in or on food in the United States. In the **Federal Register** notice of August 6, 2014 (79 FR 45798) (FRL–9914–09), EPA published cancellation orders in follow-up to the May 20, 2014 notice, and granted the requested product cancellations for imazamethabenz-methyl. EPA permitted the registrant to sell and distribute existing stocks of one of the last imazamethabenz-methyl products for use in or on food until August 6, 2015 and the other until December 31, 2015 (per the registrant's request). Persons other than the registrant were permitted to sell, distribute, or use existing stocks until supplies are exhausted. EPA believes that existing stocks are likely to be exhausted by December 31, 2016. Therefore, EPA is proposing to revoke the tolerances for imazamethabenz-methyl in 40 CFR 180.437 on barley, grain; barley, straw; sunflower, seed; wheat, grain; and wheat, straw; each with an expiration/revocation date of December 31, 2016, revise the section heading to imazamethabenz-methyl, and designate the existing introductory text as paragraph (a). In addition, in order to describe more clearly the measurement and scope or coverage of the tolerances, EPA is proposing to revise the text in newly designated paragraph (a) to read as set out in the proposed regulatory text at the end of this document. The revision would not substantively change the tolerance or, in any way, modify the permissible level of residues permitted by the tolerance.

Also, in accordance with current Agency practice, EPA is proposing to revise 40 CFR 180.437 by adding separate paragraphs (b), (c), and (d), and reserving those sections for tolerances with section 18 emergency exemptions, regional registrations, and indirect or inadvertent residues, respectively.

17. *Kaolin.* Because the time-limited tolerance exemption in 40 CFR 180.1180(a) for the use of the pesticide kaolin on crops (apples, apricots, bananas, beans, cane berries, citrus fruits, corn, cotton, cranberries, cucurbits, grapes, melons, nuts, ornamentals, peaches, peanuts, pears, peppers, plums, potatoes, seed crops, small grains, soybeans, strawberries, sugar beets, and tomatoes) expired on December 31, 1999, EPA proposes to remove that paragraph and proposes to revise 40 CFR 180.1180(b) to 40 CFR 180.1180.

18. *Lagenidium giganteum.* In the **Federal Register** of September 28, 2011 (76 FR 60025) (FRL–8889–7), EPA published a notice which granted registrant-requested cancellations. That list included cancellation orders for the last active registrations for *Lagenidium giganteum.* The registrant was permitted to sell and distribute existing pesticide stocks until September 28, 2012. Persons other than the registrant were permitted to sell, distribute, and use existing stocks until exhaustion. EPA believes that existing stocks are exhausted; *i.e.*, more than 2 years after the registrant was no longer permitted to sell and distribute them, and therefore the tolerance exemptions for them are no longer needed and should be revoked. Consequently, EPA is proposing to revoke the tolerance exemptions for residues in or on aspirated grain fractions; grass, forage; grass, hay; rice, grain; rice, straw; soybean, seed; soybean, forage; soybean, hay; and rice, wild, grain for *Lagenidium giganteum* in 40 CFR 180.1113.

19. *Methamidophos.* Because the tolerances in 40 CFR 180.315 for residues of methamidophos all expired, some on December 31, 2012 and others on December 31, 2013, EPA proposes to remove that section in its entirety.

20. *Methyl parathion.* Because the tolerances in 40 CFR 180.121 for residues of methyl parathion all expired on December 31, 2013, EPA proposes to remove that section in its entirety.

21. *Multiple active ingredients.* In the **Federal Register** of October 27, 2004 (69 FR 62666) (FRL–7683–7), EPA published a list of cancellation orders issued for non-payment of the annual maintenance fee to keep pesticide registrations in effect. That list included cancellation orders for the last active registrations for the following pesticide active ingredients: Delta endotoxin of *Bacillus thuringiensis* variety *kurstaki* encapsulated into killed *Pseudomonas fluorescens, Ampelomyces quisqualis* isolate M10, *Candida oleophila* isolate I-182, and CryIA(c) and CryIC derived delta-endotoxins of *Bacillus thuringiensis* var. *kurstaki* encapsulated in killed *Pseudomonas fluorescens,* and the expression plasmid and cloning vector genetic constructs. They have had no active registrations for over ten years, and therefore the tolerance exemptions for them are no longer needed and should be revoked. Consequently, EPA is proposing to revoke the tolerance exemptions for the following: Delta endotoxin of *Bacillus thuringiensis* variety *kurstaki* in 40 CFR 180.1107, *Ampelomyces quisqualis* isolate M10 in 40 CFR 180.1131, *Candida oleophila* isolate I-182 in 40 CFR 180.1144, and CryIA(c) and CryIC derived delta-endotoxins of *Bacillus thuringiensis* var. *kurstaki* encapsulated in killed *Pseudomonas fluorescens,* and the expression plasmid and cloning vector genetic constructs in 40 CFR 180.1154.

22. *Phosalone.* Because the tolerances in 40 CFR 180.263 for residues of phosalone all expired on September 30, 2013, EPA proposes to remove that section in its entirety.

23. *Pseudomonas fluorescens strain PRA-25.* Because the temporary tolerance exemption in 40 CFR 180.1200 for the use of the pesticide *Pseudomonas fluorescens* strain PRA-25 on peas, snap beans, and sweet corn expired on July 31, 2001, EPA proposes to remove that section in its entirety.

24. *Pseudozyma flocculosa strain PF-A22 UL.* In the **Federal Register** of July 27, 2011 (76 FR 44907) (FRL–8879–8), EPA published a list of cancellation orders issued for non-payment of the annual maintenance fee to keep pesticide registrations in effect. That list included cancellation orders for the last active registrations for *Pseudozyma flocculosa* strain PF-A22 UL. There have been no active registrations for over 3 years, and therefore the tolerance exemption for them is no longer needed and should be revoked. Consequently, EPA is proposing to revoke the tolerance exemption when used in or on all food commodities for *Pseudozyma flocculosa* strain PF-A22 UL in 40 CFR 180.1221.

25. *Pythium oligandrum DV 74.* EPA is proposing in 40 CFR 180.1275 to revise the section heading from ''Pythium'' to ''*Pythium oligandrum* DV 74'' and make minor grammatical, non-substantive revisions to the introductory text to read as set out in the proposed regulatory text at the end of this document.

26. *Tepraloxydim.* In the **Federal Register** notice of May 20, 2014 (79 FR 28920) (FRL–9909–40), EPA announced its receipt of voluntary requests by registrants to cancel certain product registrations, including the last tepraloxydim products registered for use in the United States. In the **Federal Register** notice of August 6, 2014 (79 FR 45798) (FRL–9914–09), EPA published cancellation orders in follow-up to the May 20, 2014 notice, and granted the requested product cancellations for tepraloxydim. The registrant indicated to EPA that tepraloxydim products were never marketed in the United States since the time of first registration, and therefore provisions for them to sell and distribute existing stocks are not necessary. Persons other than the registrant were permitted by EPA to sell, distribute, or use existing stocks until supplies are exhausted. The registrant stated that the products will continue to be used in Canada through 2017 and requested that EPA maintain the existing tolerances through 2018 in order to avoid trade barriers of tepraloxydim-treated commodities such as canola and dried peas and beans. Consequently, EPA is proposing to revoke the tolerances in 40 CFR 180.573(a)(1) on cotton, undelinted seed; cotton, gin byproducts; flax, seed; grain, aspirated fraction; pea and bean, dried shelled, except soybean, subgroup 6C; soybean, seed; soybean, hulls; and sunflower subgroup 20B; each with an expiration/revocation date of December 31, 2018.

Also, EPA is proposing to revoke the tolerances in 40 CFR 180.573(a)(2) on cattle, fat; cattle, kidney; cattle, meat; cattle, meat byproducts, except kidney; egg; goat, fat; goat, kidney; goat, meat; goat, meat byproducts, except kidney; hog, fat; hog, kidney; hog, meat; hog, meat byproducts, except kidney; horse, fat; horse, kidney; horse, meat; horse, meat byproducts, except kidney; milk; poultry, fat; poultry, liver; poultry, meat; poultry, meat byproducts, except liver; sheep, fat; sheep, kidney; sheep, meat; and sheep, meat byproducts, except kidney; each with an expiration/revocation date of December 31, 2018.

In addition, EPA is proposing to revoke the tolerance in 40 CFR 180.573(c) on canola, seed with an expiration/revocation date of December 31, 2018.

27. *Thiacloprid.* In the **Federal Register** notice of May 20, 2014 (79 FR 28920) (FRL–9909–40), EPA announced its receipt of voluntary requests by registrants to cancel certain product registrations, including the last thiacloprid products registered for use in the United States. In the **Federal Register** notice of August 6, 2014 (79 FR 45798) (FRL–9914–09), EPA published cancellation orders in follow-up to the May 20, 2014 notice, and granted the requested product cancellations for thiacloprid. EPA permitted the registrant to sell and distribute existing stocks of one of the last thiacloprid products until August 6, 2015 and the other until February 8, 2016 (per the registrant's request). Persons other than the registrant were permitted to sell, distribute, or use existing stocks until supplies are exhausted. EPA believes that existing stocks are likely to be exhausted by February 8, 2017. Therefore, EPA is proposing to revoke the tolerances for thiacloprid in 40 CFR 180.594(a) on apple, wet pomace; cattle, fat; cattle, kidney; cattle, liver; cattle, meat; cattle, meat byproducts; cherry subgroup 12–12A; cotton, gin byproducts; cotton, undelinted seed; fruit, pome, group 11; goat, fat; goat, kidney; goat, liver; goat, meat; goat, meat byproducts; horse, fat; horse, kidney; horse, liver; horse, meat; horse, meat byproducts; milk; peach subgroup 12–12B; pepper; plum subgroup 12–12C; sheep, fat; sheep, kidney; sheep, liver; sheep, meat; sheep, meat byproducts; each with an expiration/revocation date of February 8, 2017.

28. *Thiazopyr.* In the **Federal Register** notice of June 13, 2012 (77 FR 35379) (FRL–9351–7), EPA announced its receipt of voluntary requests by the registrants to cancel certain product registrations, including the last thiazopyr products registered for use on specific food commodities (grapefruit and orange) in the United States. In the **Federal Register** notice of September 12, 2012 (77 FR 56202) (FRL–9359–1), EPA published a cancellation order in follow-up to the June 13, 2012 notice and granted the requested product cancellations for thiazopyr. EPA permitted the registrant to sell and distribute existing stocks of those thiazopyr products until September 12, 2013 and persons other than the registrant to sell, distribute, and use existing stocks until supplies are exhausted. EPA believes that existing stocks are now exhausted. Therefore, EPA is proposing to revoke the tolerances for thiazopyr in 40 CFR 180.496 on grapefruit and orange, sweet.

29. *Tralkoxydim.* In the **Federal Register** notices of June 12, 2013 (78 FR 35268) (FRL–9388–5) and August 21, 2013 (78 FR 51721) (FRL–9396–5), EPA announced its receipt of voluntary requests by registrants to cancel certain product registrations, including the last tralkoxydim products registered for use in the United States. In the **Federal Register** notices of September 20, 2013 (78 FR 57850) (FRL–9396–3) and October 30, 2013 (78 FR 64938) (FRL–9403–2), EPA published cancellation orders in follow-up to the June 12, 2013 and August 21, 2013 notices, respectively, and granted the requested product cancellations for tralkoxydim. EPA permitted the registrant to sell and distribute existing stocks of those last tralkoxydim products until November 1, 2014 and persons other than the registrant to sell, distribute, or use existing stocks until supplies are exhausted. EPA believes that existing stocks are likely to be exhausted by November 1, 2015. However, as explained in Unit II.C., EPA is proposing that the actions herein become effective 6 months after the date of publication of the final rule in the **Federal Register**. Consequently, EPA expects that the effective date of the final rule will occur after the existing stocks are exhausted; *i.e.*, after November 1, 2015. Therefore, EPA is proposing to revoke the tolerances for tralkoxydim in 40 CFR 180.548(a) on barley, grain; barley, hay; barley, straw; wheat, forage; wheat, grain; wheat, hay; and wheat, straw.

30. *Tralomethrin.* Because the tolerances in 40 CFR 180.422 for tralomethrin residues of concern all expired on July 9, 2013, EPA proposes to remove that section in its entirety.

31. *Trichoderma harzianum strain T-39.* In the **Federal Register** of August 3, 2005 (70 FR 44637) (FRL–7726–4), EPA published a list of cancellation orders issued for non-payment of the annual maintenance fee to keep pesticide registrations in effect. That list

included cancellation orders for the last active registration for *Trichoderma harzianum* strain T-39. There have been no active registrations for over 9 years, and therefore the tolerance exemption for them is no longer needed and should be revoked. Consequently, EPA is proposing to revoke the tolerance exemption on all food commodities for *Trichoderma harzianum* strain T-39 in 40 CFR 180.1201.

32. *Zucchini yellow mosaic virus-weak strain.* In the **Federal Register** of July 28, 2010 (75 FR 44240) (FRL–8835–2), EPA published a list of cancellation orders issued for non-payment of the annual maintenance fee to keep pesticide registrations in effect. That list included cancellation orders for the last active registration for Zucchini yellow mosaic virus-weak strain. There have been no active registrations for over 4 years, and therefore the tolerance exemption for them is no longer needed and should be revoked. Consequently, EPA is proposing to revoke the tolerance exemption when used in or on all raw cucurbits for Zucchini yellow mosaic virus-weak strain in 40 CFR 180.1279.

B. What is the agency's authority for taking this action?

A ''tolerance'' represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 346a, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under FFDCA section 402(a), 21 U.S.C. 342(a). Such food may not be distributed in interstate commerce, 21 U.S.C. 331(a). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* Food-use pesticides not registered in the United States must have tolerances in order for commodities treated with those pesticides to be imported into the United States.

EPA's general practice is to propose revocation of tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

Furthermore, as a general matter, the Agency believes that retention of import tolerances not needed to cover any imported food may result in unnecessary restriction on trade of pesticides and foods. Under FFDCA section 408, a tolerance may only be established or maintained if EPA determines that the tolerance is safe based on a number of factors, including an assessment of the aggregate exposure to the pesticide and an assessment of the cumulative effects of such pesticide and other substances that have a common mechanism of toxicity. In doing so, EPA must consider potential contributions to such exposure from all tolerances. If the cumulative risk is such that the tolerances in aggregate are not safe, then every one of these tolerances is potentially vulnerable to revocation. Furthermore, if unneeded tolerances are included in the aggregate and cumulative risk assessments, the estimated exposure to the pesticide would be inflated. Consequently, it may be more difficult for others to obtain needed tolerances or to register needed new uses. To avoid potential trade restrictions, the Agency is proposing to revoke tolerances for residues on crops uses for which FIFRA registrations no longer exist, unless someone expresses a need for such tolerances. Through this proposed rule, the Agency is inviting individuals who need these import tolerances to identify themselves and the tolerances that are needed to cover imported commodities.

Parties interested in retention of the tolerances should be aware that additional data may be needed to support retention. These parties should be aware that, under FFDCA section 408(f), if the Agency determines that additional information is reasonably required to support the continuation of a tolerance, EPA may require that parties interested in maintaining the tolerances provide the necessary information. If the requisite information is not submitted, EPA may issue an order revoking the tolerance at issue.

C. When do these actions become effective?

EPA is proposing that the actions herein become effective 6 months after the date of publication of the final rule in the **Federal Register**. EPA is proposing this effective date for these actions to allow a reasonable interval for producers in exporting members of the World Trade Organization's (WTO's) Sanitary and Phytosanitary (SPS) Measures Agreement to adapt to the requirements of a final rule. With the exception of the proposed revocation of tolerances with expiration dates for fenarimol, imazamethabenz-methyl, tepraloxydim, and thiacloprid, the Agency believes that existing stocks of pesticide products labeled for the uses associated with the tolerances proposed for revocation have been completely exhausted and that treated commodities have cleared the channels of trade. Where EPA is proposing revocation with expiration dates for fenarimol, imazamethabenz-methyl, tepraloxydim, and thiacloprid, the Agency believes that this revocation date allows users to exhaust stocks and allows sufficient time for passage of treated commodities through the channels of trade. If you have comments regarding existing stocks and whether the effective date allows sufficient time for treated commodities to clear the channels of trade, please submit comments as described under **SUPPLEMENTARY INFORMATION**.

Any commodities listed in this proposal treated with the pesticides subject to this proposal, and in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by FQPA. Under this unit, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that:

1. The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and

2. The residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates when the pesticide was applied to such food.

III. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever

possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for etridiazole, imazamethabenz-methyl, tepraloxydim, thiazopyr, and tralkoxydim.

The Codex has established MRLs for acephate, in or on various commodities, including beans, except broad bean and soya bean at 5 milligrams/kilogram (mg/kg). The beans, except broad bean and soya bean MRL is different than the tolerance established for alidicarb on succulent bean in the United States because of a difference in use pattern and/or agricultural practice.

The Codex has established MRLs for aldicarb, in or on various commodities, including sorghum at 0.1 mg/kg, which is covered by a current U.S. tolerance at a higher level than the MRL, and sorghum straw and fodder, dry at 0.5 mg/kg, which is the same as the U.S. tolerance. The sorghum MRL is different than the tolerance established for alidicarb in the United States because of a difference in use pattern and/or agricultural practice.

The Codex has established MRLs for azinphos-methyl in or on various commodities, including almond hulls and blueberries at 5 m/kilogram (mg/kg), cherries, peach, and plums (including prunes) at 2 mg/kg, and walnuts at 0.3 mg/kg. These MRLs are the same as the tolerances established for azinphos-methyl in the United States.

The Codex has established MRLs for azinphos-methyl, in or on various commodities, including almonds and apple at 0.05 mg/kg (which are covered by current U.S. tolerances at a higher level than the MRLs), and pear at 2 mg/kg. These MRLs are different than the tolerances established for azinphos-methyl in the United States because of differences in use patterns and/or agricultural practices.

The Codex has established MRLs for fenarimol in or on various commodities, including cattle, liver at 0.05 mg/kg, cherries at 1 mg/kg, hops, dry at 5 mg/kg, and pecan at 0.02 mg/kg. These MRLs are the same as the tolerances established for fenarimol in the United States.

The Codex has established MRLs for fenarimol, in or on various commodities, including cattle kidney and cattle meat at 0.02 mg/kg; and grapes at 0.3 mg/kg. These MRLs are different than the tolerances established for fenarimol in the United States because of differences in use patterns and/or agricultural practices.

The Codex has established MRLs for thiacloprid in or on various commodities, including cotton seed at 0.02 mg/kg, peppers, sweet at 1 mg/kg, and stone fruits at 0.5 mg/kg (for U.S. tolerances on cherry subgroup and peach subgroup). These MRLs are the same as the tolerances established for thiacloprid in the United States.

The Codex has established MRLs for thiacloprid, in or on various commodities, including milks at 0.05 mg/kg; pome fruits at 0.7 mg/kg, and stone fruits at 0.5 mg/kg (for U.S. tolerance on plum subgroup). These MRLs are different than the tolerances established for thiacloprid in the United States because of differences in use patterns and/or agricultural practices.

IV. Statutory and Executive Order Reviews

In this proposed rule, EPA is proposing to revoke specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (*e.g.,* tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled ''*Regulatory Planning and Review''* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, entitled ''*Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use''* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*). Nor does it require any special considerations as required by Executive Order 12898, entitled ''*Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations''* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled ''*Protection of Children from Environmental Health Risks and Safety Risks''* (62 FR 19885, April 23, 1997). This proposed rule does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published in the **Federal Register** of December 17, 1997 (62 FR 66020) (FRL–5753–1), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this proposed rule, the Agency hereby certifies that this proposed rule will not have a significant negative economic impact on a substantial number of small entities. In a memorandum dated May 25, 2001, EPA determined that eight conditions must all be satisfied in order for an import tolerance or tolerance exemption revocation to adversely affect a significant number of small entity importers, and that there is a negligible joint probability of all eight conditions holding simultaneously with respect to any particular revocation. (This Agency document is available in the docket of this proposed rule). Furthermore, for the pesticides named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposed rule that would change EPA's previous analysis. Any comments about the Agency's determination should be submitted to the EPA along with comments on the proposed rule, and will be addressed prior to issuing a final rule. In addition, the Agency has determined that this proposed rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled ''*Federalism''* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process

to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule directly regulates growers, food processors, food handlers, and food retailers, not States. This proposed rule does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *''Consultation and Coordination with Indian Tribal Governments''* (65 FR 67249, November 9, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 7, 2015.

Jack E. Housenger,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

§ 180.108 [Amended]

■ 2. In § 180.108, remove the entries for ''Bean, succulent'' from the tables in paragraphs (a)(1) and (3).

§§ 180.121, 180.154, 180.232, 180.257, and 180.263 [Removed]

■ 3. Remove §§ 180.121, 180.154, 180.232, 180.257, and 180.263.

§ 180.269 [Amended]

■ 4. In § 180.269, remove the entries for ''Sorghum, grain, bran,'' ''Sorghum, grain, grain,'' and ''Sorghum, grain, stover,'' from the table in paragraph (a).

§§ 180.311 and 180.315 [Removed]

■ 5. Remove §§ 180.311 and 180.315.

■ 6. In § 180.370, revise the table in paragraph (a) to read as follows:

§ 180.370 5-Ethoxy-3-(trichloromethyl)-1,2,4-thiadiazole; tolerances for residues.

(a) * * *

Commodity	Parts per million
Cotton, gin byproducts	0.1
Cotton, undelinted seed	0.1
Tomato	0.15

* * * * *

■ 7. In § 180.421, revise the table in paragraph (a) to read as follows:

§ 180.421 Fenarimol; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/ revocation date
Apple	0.3	7/31/16
Apple, wet pomace	0.3	7/31/16
Banana[1]	0.25	None
Cattle, fat	0.01	7/31/16
Cattle, kidney	0.01	7/31/16
Cattle, meat	0.01	7/31/16
Cattle, meat byproducts, except kidney	0.05	7/31/16
Cherry, sweet	1.0	7/31/16
Cherry, tart	1.0	7/31/16
Goat, fat	0.01	7/31/16
Goat, kidney	0.01	7/31/16
Goat, meat	0.01	7/31/16
Goat, meat byproducts, except kidney	0.05	7/31/16
Grape	0.1	7/31/16
Hazelnut	0.02	7/31/16
Hop, dried cones	5.0	7/31/16
Horse, fat	0.01	7/31/16
Horse, kidney	0.01	7/31/16
Horse, meat	0.01	7/31/16
Horse, meat byproducts, except kidney	0.05	7/31/16
Pear	0.1	7/31/16
Pecan	0.02	7/31/16
Sheep, fat	0.01	7/31/16
Sheep, kidney	0.01	7/31/16
Sheep, meat	0.01	7/31/16
Sheep, meat byproducts, except kidney	0.05	7/31/16
Vegetable, cucurbit, group 9[2]	0.20	None

[1] There are no U.S. registrations for bananas as of April 26, 1995.

[2] There are no U.S. registrations for cucurbit vegetable group 9 as of August 27, 2010.

* * * * *

§ 180.422 [Removed]

■ 8. Remove § 180.422.

■ 9. Revise § 180.437 to read as follows:

§ 180.437 Imazamethabenz-methyl; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide imazamethabenz-methyl, including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only imazamethabenz-methyl (methyl 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-4-methylbenzoate) or (methyl 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-methylbenzoate), as the sum of its para- and meta-isomers in or on the commodity.

Commodity	Parts per million	Expiration/ revocation date
Barley, grain	0.10	12/31/16
Barley, straw	2.00	12/31/16
Sunflower, seed	0.10	12/31/16
Wheat, grain	0.10	12/31/16
Wheat, straw	2.00	12/31/16

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§§ 180.496, 180.497, 180.530, and 180.548 [Removed]

■ 10. Remove §§ 180.496, 180.497, 180.530, and 180.548.

■ 11. In § 180.573, revise the table in paragraphs (a)(1), (a)(2), and (c) to read as follows:

§ 180.573 Tepraloxydim; tolerances for residues.

(a) * * * (1) * * *

Commodity	Parts per million	Expiration/ revocation date
Cotton, undelinted seed	0.2	12/31/18
Cotton, gin byproducts	3.0	12/31/18
Flax, seed	0.10	12/31/18
Grain, aspirated fraction	1200.0	12/31/18
Pea and bean, dried shelled, except soybean, subgroup 6C [1]	0.10	12/31/18
Soybean, seed	6.0	12/31/18
Soybean, hulls	8.0	12/31/18
Sunflower subgroup 20B [1]	0.20	12/31/18

[1] There are no U.S. registrations for commodities in this subgroup.

(2) * * *

Commodity	Parts per million	Expiration/ revocation date
Cattle, fat	0.15	12/31/18
Cattle, kidney	0.50	12/31/18
Cattle, meat	0.20	12/31/18
Cattle, meat, byproducts, except kidney	0.20	12/31/18
Egg	0.20	12/31/18
Goat, fat	0.15	12/31/18
Goat, kidney	0.50	12/31/18
Goat, meat	0.20	12/31/18
Goat, meat, byproducts, except kidney	0.20	12/31/18
Hog, fat	0.15	12/31/18
Hog, kidney	0.50	12/31/18
Hog, meat	0.20	12/31/18
Hog, meat, byproducts, except kidney	0.20	12/31/18
Horse, fat	0.15	12/31/18
Horse, kidney	0.50	12/31/18
Horse, meat	0.20	12/31/18
Horse, meat, byproducts, except kidney	0.20	12/31/18
Milk	0.10	12/31/18
Poultry, fat	0.30	12/31/18
Poultry, liver	1.00	12/31/18
Poultry, meat	0.20	12/31/18
Poultry, meat byproducts, except liver	0.20	12/31/18
Sheep, fat	0.15	12/31/18

Commodity	Parts per million	Expiration/ revocation date
Sheep, kidney	0.50	12/31/18
Sheep, meat	0.20	12/31/18
Sheep, meat byproducts, except kidney	0.20	12/31/18

* * * * *

(c) * * *

Commodity	Parts per million	Expiration/ revocation date
Canola, seed	0.50	12/31/18

* * * * *

■ 12. In § 180.594, revise the table in paragraph (a) to read as follows:

§ 180.594 Thiacloprid; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/ revocation date
Apple, wet pomace	0.60	2/8/17
Cattle, fat	0.020	2/8/17
Cattle, kidney	0.050	2/8/17
Cattle, liver	0.15	2/8/17
Cattle, meat	0.030	2/8/17
Cattle, meat byproducts	0.050	2/8/17
Cherry subgroup 12–12A	0.5	2/8/17
Cotton, gin byproducts	11.0	2/8/17
Cotton, undelinted seed	0.020	2/8/17
Fruit, pome, group 11	0.30	2/8/17
Goat, fat	0.020	2/8/17
Goat, kidney	0.050	2/8/17
Goat, liver	0.15	2/8/17
Goat, meat	0.030	2/8/17
Goat, meat byproducts	0.050	2/8/17
Horse, fat	0.020	2/8/17
Horse, kidney	0.050	2/8/17
Horse, liver	0.15	2/8/17
Horse, meat	0.030	2/8/17
Horse, meat byproducts	0.050	2/8/17
Milk	0.030	2/8/17
Peach subgroup 12–12B	0.5	2/8/17
Pepper	1.0	2/8/17
Peach subgroup 12–12C	0.05	2/8/17
Sheep, fat	0.020	2/8/17
Sheep, kidney	0.050	2/8/17
Sheep, liver	0.15	2/8/17
Sheep, meat	0.030	2/8/17
Sheep, meat byproducts	0.050	2/8/17

* * * * *

§ § 180.630, 180.642, 180.1107, 180.1108, 180.1113, 180.1131, 180.1144, and 180.1154 [Removed]

■ 13. Remove § § 180.630, 180.642, 180.1107, 180.1108, 180.1113, 180.1131, 180.1144, and 180.1154.

■ 14. Revise § 180.1180 to read as follows:

§ 180.1180 Kaolin; exemption from the requirement of a tolerance.

Kaolin is exempted from the requirement of a tolerance for residues when used on or in food commodities to aid in the control of insects, fungi, and bacteria (food/feed use).

§ § 180.1200, 180.1201, 180.1221, 180.1241, and 180.1256 [Removed]

■ 15. Remove §§ 180.1200, 180.1201, 180.1221, 180.1241, and 180.1256.

■ 16. Revise § 180.1275 to read as follows:

§ 180.1275 *Pythium oligandrum* DV 74; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established on all food/feed commodities for residues of *Pythium oligandrum* DV 74 when the pesticide is used on food crops.

§ 180.1279 [Removed]

■ 17. Remove § 180.1279.

[FR Doc. 2015–17628 Filed 7–21–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 711

[EPA–HQ–OPPT–2014–0809; FRL–9928–99]

RIN 2070–AK01

Partial Exemption of Certain Chemical Substances From Reporting Additional Chemical Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the list of chemical substances that are partially exempt from reporting additional information under the Chemical Data Reporting (CDR) rule. EPA has determined that, based on the totality of information available on the chemical substances listed in this proposed rule, there is a low current interest in their CDR processing and use information. EPA reached this conclusion after considering a number of factors, including the risk of adverse human health or environmental effects, information needs for CDR processing and use information, and the availability of other sources of comparable processing and use information.

DATES: Comments must be received on or before September 21, 2015.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2014–0809, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Christina Thompson, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–0983; email address: *thompson.christina@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. What action is the agency taking?

This partial exemption would eliminate an existing reporting requirement under 40 CFR 711.6(b)(2). EPA is proposing to add the following chemical substances to the list of chemical substances that are exempt from reporting the information described in 40 CFR 711.15(b)(4): Fatty acids, C14–18 and C16–18 unsaturated, methyl esters (Chemical Abstract Services Registry Number (CASRN) 67762–26–9); Fatty acids, C16–18 and C–18 unsaturated, methyl esters (CASRN 67762–38–3); fatty acids, canola oil, methyl esters (CASRN 129828–16–6); Fatty acids, corn oil, methyl esters (CASRN 515152–40–6); Fatty acids, tallow, methyl esters (CASRN 61788–61–2); and Soybean oil, methyl esters (CASRN 67784–80–9). However, by existing terms at 40 CFR 711.6, this partial exemption will become inapplicable to a subject chemical substance in the event that the chemical substance later becomes the subject of a rule proposed or promulgated under section 4, 5(a)(2), 5(b)(4), or 6 of the Toxic Substances Control Act (TSCA); an enforceable consent agreement (ECA) developed under the procedures of 40 CFR part 790; an order issued under TSCA section 5(e) or 5(f); or relief that has been granted under a civil action under TSCA section 5 or 7.

B. Why is the agency taking this action?

This proposed rule is in response to a petition EPA received for these chemical substances (Refs. 2 and 3) submitted under 40 CFR 711.6(b)(2)(iii)(A). EPA reviewed the information put forward in the petition and additional information against the considerations listed at 40 CFR 711.6(b)(2)(ii). EPA's chemical substance-specific analysis is detailed in supplementary documents available in the docket under docket ID number EPA–HQ–OPPT–2014–0809 (Refs. 4, 5, 6, 7, 8, and 9). The Agency is proposing to add these chemical substances to the partially exempt chemical substances list because it has concluded that, based on the totality of information available, the CDR processing and use information for these chemical substances is of low current interest.

In the January 27, 2015 **Federal Register** (80 FR 4482) (FRL–9921–56), EPA published a direct final rule to add these six chemical substances to the list of chemical substances that are partially exempt from reporting additional information under the CDR rule. EPA received an adverse comment that is pertinent to all six of the chemical substances that were the subject of that direct final rule (EPA–HQ–OPPT–2014–0809–0014). In accordance with the procedures described in the January 27, 2015 **Federal Register** document, EPA withdrew the direct final rule. EPA is now proposing to make the same additions to the list of partially exempt chemical substances. Before taking final action on this proposal, EPA will consider the adverse comment it received in response to the direct final rule, together with any other timely comments it receives on this proposed rule. On the basis of comments received, EPA may finalize this proposed rule or revise its prior determination that the CDR processing and use information for these six chemical substances is of low current interest.

C. What is the agency's authority for taking this action?

This action is proposed under the authority of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2600 *et seq.,* to carry out the provisions of section 8(a), 15 U.S.C. 2607(a). TSCA section 8(a) authorizes EPA to promulgate rules under which manufacturers of chemical substances and mixtures must submit such information as the Agency may reasonably require. The partial exemption list was established in 2003 (Ref. 10) and can be found in 40 CFR 711.6.

D. What are the impacts of this action?

There are no costs associated with this action and the benefits provided would be related to avoiding potential costs. This partial exemption would eliminate an existing reporting requirement without imposing any new requirements. See also the discussion in Unit V of the January 27, 2015 **Federal Register** document.

E. Does this action apply to me?

You may be potentially affected by this action if you manufacture (defined by statute at 15 U.S.C. 2602(7) to include import) the chemical substances contained in this rule. The North American Industrial Classification System (NAICS) codes provided here are not intended to be exhaustive, but rather provide a guide to help readers determine whether this document

applies to them. Potentially affected entities may include chemical manufacturers subject to CDR reporting of one or more subject chemical substances (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.

F. What should I consider as I prepare my comments for EPA?

Do not submit CBI information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

II. Background

EPA published a direct final rule in the **Federal Register** of January 27, 2015 (80 FR 4482) (FRL–9921–56). The preamble to that direct final rule explained our reasons for amending the list of chemical substances that are partially exempt from reporting additional information under the TSCA CDR rule. In addition, EPA explained the low current interest partial exemption and petition process in 40 CFR 711.6(b)(2)(iv), and further explained that we would withdraw the amendment presented in the direct final rule if written adverse comment was received within 30 days of the publication of that direct final rule. Since EPA received written adverse comment, EPA has withdrawn the direct final rule in a separate document published in the **Federal Register** of March 30, 2015 (80 FR 16576) (FRL–9924–84), and is now issuing this proposed rule for the six chemical substances. The record for the direct final rule was established as docket EPA–HQ–OPPT–2014–0809.

III. References

The following is a listing of the documents that have been placed in the docket for this proposed rule. The docket contains information considered by EPA in developing this proposed rule, including the documents listed in this unit, which are physically located in the docket. In addition, interested parties should consult documents that are referenced in the documents that EPA has placed in the docket, regardless of whether the referenced document is physically located in the docket. For assistance in locating documents that are referenced in documents that EPA has placed in the docket, but that are not physically located in the docket, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**. The docket is available for review as specified under **ADDRESSES**.

1. Public Comment from G. Valasek to EPA, February 26, 2015.
2. Letter from Biobased and Renewable Products Advocacy Group, to EPA, OPPT CDR Submission Coordinator, October 21, 2014. Docket ID number EPA–HQ–OPPT–2014–0809, regarding request for exemption of biodiesel products.
3. Letter from Biobased and Renewable Products Advocacy Group, to EPA, OPPT CDR Submission Coordinator, November 5. Docket ID number EPA–HQ–OPPT–2014–0809, supplement to request for exemption of biodiesel products.
4. EPA, OPPT. Fatty acids, C14–18 and C16–18 unsaturated, methyl esters (CASRN 67762–26–9) Partial Exemption Analysis. December 2014.
5. EPA, OPPT. Fatty acids, C16–18 and C–18 unsaturated, methyl esters (CASRN 67762–38–3) Partial Exemption Analysis. December 2014.
6. EPA, OPPT. Fatty acids, canola oil, methyl esters (CASRN 129828–16–6) Partial Exemption Analysis. December 2014.
7. EPA, OPPT. Fatty acids, corn oil, methyl esters (CASRN 515152–40–6) Partial Exemption Analysis. December 2014.
8. EPA, OPPT. Fatty acids, tallow, methyl esters (CASRN 61788–6–2) Partial Exemption Analysis. December 2014.
9. EPA, OPPT. Soybean oil, methyl esters (CASRN 67784–80–9) Partial Exemption Analysis. December 2014.
10. EPA. TSCA Inventory Update Rule Amendments; Final Rule. **Federal Register** (68 FR 848, January 7, 2003) (FRL–6767–4).

IV. Statutory and Executive Order Reviews

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

This action is not a significant regulatory action as defined by Executive Order 12866 (58 FR 51735, October 4, 1993). Accordingly, this action was not submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

According to the PRA, 44 U.S.C. 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, as applicable.

The information collection requirements related to CDR have already been approved by OMB pursuant to the PRA under OMB control number 2070–0162 (EPA ICR No. 1884.06). Since this action will create a partial exemption from that reporting, without creating any new reporting or recordkeeping requirements, this action will not impose any new burdens that require additional OMB approval.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. § 601 *et seq.* In making this determination, the impact of concern is any significant adverse economic impact on small entities, because the primary purpose of a final regulatory flexibility analysis is to identify and address regulatory alternatives that ''minimize the significant economic impact on small entities'' 5 U.S.C. 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule has no net burden effect on the small entities subject to the rule.

As indicated previously, EPA is proposing to eliminate an existing reporting requirement for the chemical identified in this document. In granting a partial exemption from existing reporting, this rule will not have a significant economic impact on any affected entities, regardless of their size.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. In granting a partial exemption from existing reporting, this action will impose no new enforceable duty on any State, local or tribal governments, or on the private sector. In addition, based on EPA's experience with chemical data reporting under TSCA, State, local, and Tribal governments are not engaged in the activities that would require them to report chemical data under 40 CFR part 711.

E. Executive Order 13132: Federalism

This action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action will not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This action will not significantly or uniquely affect the communities of Indian Tribal governments, nor involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175 (65 FR 67249, November 9, 2000) do not apply to this rule.

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because this action does not address environmental health or safety risks disproportionately affecting children.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

I. National Technology Transfer Advancement Act (NTTAA)

Since this action does not involve any technical standards, NTTAA section 12(d), 15 U.S.C. 272 note, does not apply to this action.

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

EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. As such, this action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898 (59 FR 7629, February 16, 1994).

List of Subjects in 40 CFR Part 711

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: July 13, 2015.

James Jones,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 711—[AMENDED]

■ 1. The authority citation for part 711 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

■ 2. In § 711.6, add in numerical order by CASRN number the following entries to Table 2 in paragraph (b)(2)(iv) to read as follows:

§ 711.6 Chemical substances for which information is not required.

* * * * *

(b) * * *

(2) * * *

(iv) * * *

TABLE 2—CASRN OF PARTIALLY EXEMPT CHEMICAL SUBSTANCES

CASRN	Chemical
* * * * * * *	
61788–61–2	Fatty acids, tallow, methyl esters.
* * * * * * *	
67762–26–9	Fatty acids, C14–18 and C16–18 unsaturated, methyl esters.
67762–38–3	Fatty acids, C16–18 and C–18 unsaturated, methyl esters.
67784–80–9	Soybean oil, methyl esters.
* * * * * * *	
129828–16–6	Fatty acids, canola oil, methyl esters.
515152–40–6	Fatty acids, corn oil, methyl esters.
* * * * * * *	

* * * * *

[FR Doc. 2015–17629 Filed 7–21–15; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 80, No. 140
Wednesday, July 22, 2015

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Delta-Bienville Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Delta-Bienville Resource Advisory Committee (RAC) will meet in Forest, Mississippi. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. Additional RAC information, including the meeting agenda and the meeting summary/minutes can be found at the following Web site: *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/RAC/ADA00765529071A58825754A0055730D?OpenDocument.*

DATES: The meeting will be held at 6:00 p.m. on August 17, 2015.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held at Bienville Ranger District, 3473 Hwy 35 South, Forest, Mississippi. Interested parties may also attend via teleconference by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**; or via video teleconference at the Delta Ranger District, 68 Frontage Road, Rolling Fork, Mississippi.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Bienville Ranger District. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Michael Esters, Designated Federal Officer, by phone at 601–469–3811 or via email at *mesters@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is:

1. Review projects submitted; and
2. Recommend projects for approval.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by August 10, 2015, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Michael T. Esters, Designated Federal Officer, Bienville Ranger District, 3473 Hwy 35 South, Forest, Mississippi 39074; by email to *mesters@fs.fed.us,* or via facsimile to 601–469–2513.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: July 15, 2015.

Michael T. Esters,

Designated Federal Officer.

[FR Doc. 2015–17965 Filed 7–21–15; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Effective date: July 22, 2015.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave. NW., Washington, DC 20230, telephone: (202) 482–3692.

SUPPLEMENTARY INFORMATION: Section 702 of the Trade Agreements Act of 1979 (as amended) (the Act) requires the Department of Commerce (the Department) to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(h) of the Act, and to publish quarterly updates to the type and amount of those subsidies. We hereby provide the Department's quarterly update of subsidies on articles of cheese that were imported during the periods January 1, 2015, through March 31, 2015.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies, as defined in section 702(h) of the Act, being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available. The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Enforcement and

Compliance, U.S. Department of Commerce, 14th Street and Constitution Ave. NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: July 15, 2015.

Paul Piquado,

Assistant Secretary, for Enforcement and Compliance.

Appendix

SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY

Country	Program(s)	Gross [1] subsidy ($/lb)	Net [2] subsidy ($/lb)
28 European Union Member States [3]	European Union Restitution Payments	0.00	0.00
Canada	Export Assistance on Certain Types of Cheese	0.42	0.42
Norway	Indirect (Milk) Subsidy	0.00	0.00
	Consumer Subsidy	0.00	0.00
	Total	0.00	0.00
Switzerland	Deficiency Payments	0.00	0.00

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).
[3] The 28 member states of the European Union are: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

[FR Doc. 2015–17982 Filed 7–21–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–028]

Hydrofluorocarbon Blends and Components Thereof From the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: *Effective date:* July 22, 2015.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey or Dennis McClure at (202) 482–0193 and (202) 482–5973, respectively; AD/CVD Operations, Enforcement and Compliance, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petition

On June 25, 2015, the Department of Commerce (the Department) received an antidumping duty (AD) petition concerning imports of certain hydrofluorocarbon blends and certain single hydrofluorocarbon components thereof (HFCs) from the People's Republic of China (PRC), filed in proper form on behalf of the American HFC Coalition and its individual members,[1] as well as District Lodge 154 of the International Association of Machinists and Aerospace Workers (collectively, the petitioners).[2] The petitioners are either domestic manufacturers or blenders of HFCs, or a union representing the HFC industry.[3]

On June 30, 2015, the Department requested additional information and clarification of certain areas of the Petition.[4] The petitioners filed responses to these requests on July 6, 2015, July 7, 2015, and July 14, 2015.[5]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that imports of HFCs from the PRC are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States. Also, consistent with section 732(b)(1) of the Act and 19 CFR 351.202(b), the Petition is accompanied by information reasonably available to the petitioners supporting their allegations.

The Department finds that the petitioners filed the Petition on behalf of the domestic industry because the petitioners are interested parties as defined in sections 771(9)(C), (D), and (F) of the Act. The Department also finds that the petitioners demonstrated sufficient industry support with respect to the initiation of this AD investigation.[6]

Period of Investigation

Because the Petition was filed on June 25, 2015, pursuant to 19 CFR 351.204(b)(1), the period of investigation (POI) is October 1, 2014, through March 31, 2015.

Scope of the Investigation

The products covered by this investigation are blended HFCs and certain single HFC components of those blends thereof, from the PRC. For a full description of the scope of this investigation, see the ''Scope of the Investigation,'' in Appendix I of this notice.

Comments on Scope of the Investigation

During our review of the Petition, the Department issued questions to, and received responses from, the petitioners pertaining to the proposed scope to ensure that the scope language in the Petition would be an accurate reflection of the products for which the domestic

[1] The individual members of the American HFC Coalition are: Amtrol Inc., Arkema Inc., The Chemours Company FC LLC, Honeywell International Inc., Hudson Technologies, Mexichem Fluor Inc., and Worthington Industries, Inc.

[2] *See* Petition for the Imposition of Antidumping Duties on Imports of Hydrofluorocarbon Blends and Components from the PRC, dated June 25, 2015 (the Petition).

[3] *See* Volume I of the Petition, at 1, 5, and 6.

[4] *See* Letter from the Department to the Petitioners entitled ''Re: Petition for the Imposition of Antidumping Duties on Imports of Hydrofluorocarbon Blends and Components from the PRC: Supplemental Questions'' dated June 30, 2015 (Supplemental Questionnaire).

[5] *See* Response to the Department's June 30, 2015, Questionnaire Regarding Volume I of the Petition for Antidumping Duties, dated July 6, 2015 (Petition Supplement).

[6] *See* the ''Determination of Industry Support for the Petition'' section below.

industry is seeking relief.[7] In the scope provided by the petitioners was the following substantive provision:

> This investigation includes any Chinese HFC components that are blended in a third country to produce a subject HFC blend before being imported into the United States. Also included are semi-finished blends of Chinese HFC components. Semi-finished blends are blends of one or more of the single-component Chinese HFCs used to produce the subject HFC blends, whether or not blended in China or a third country, that have not been blended to the specific proportions required to meet the definition of one of the subject HFC blends described above (R–404A, R–407A, R–407C, R–410A, and R–507A). Single-component HFCs and semi-finished HFC blends are not excluded from the scope of this investigation when blended with HFCs from non-subject countries.

The Department has not adopted this provision for the purposes of initiation because the additional language has presented the Department with some novel and complex issues with respect to administering any potential AD order and, as such, we believe this warrants further discussion and analysis from parties to this proceeding.[8] As discussed in the preamble to the Department's regulations,[9] we are setting aside a period for interested parties to raise issues regarding product coverage (scope). The period for scope comments is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination. If scope comments include factual information (*see* 19 CFR 351.102(b)(21)), all such factual information should be limited to public information. The Department encourages all interested parties to submit such comments by 5:00 p.m. Eastern Time (ET) on Tuesday, August 4, 2015, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on Friday, August 14, 2015.

The Department requests that any factual information the parties consider relevant to the scope of the investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact the Department and request permission to submit the additional information.

Filing Requirements

All submissions to the Department must be filed electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).[10] An electronically-filed document must be received successfully in its entirety by the time and date when it is due. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Comments on Product Characteristics for AD Questionnaire

The Department requests comments from interested parties regarding the appropriate physical characteristics of HFCs to be reported in response to the Department's AD questionnaire. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant factors of production (FOPs).

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics and (2) product-comparison criteria. We note that it is not always appropriate to use all product characteristics as product-comparison criteria. We base product-comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe HFCs, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaire, all comments must be filed by 5:00 p.m. ET on Tuesday, August 4, 2015, which is 20 calendar days from the signature date of this notice. Any rebuttal comments must be filed by 5:00 p.m. ET on Friday, August 14, 2015. All comments and submissions to the Department must be filed electronically using ACCESS, as explained above.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,[11] they do so for different purposes and pursuant to a separate and distinct authority. In

[7] *See* Supplemental Questionnaire; *see also* Petition Supplement.

[8] The Department has independent authority to determine the scope of its investigations. *See Diversified Products Corp.* v. *United States,* 572 F. Supp. 883, 887 (CIT 1983).

[9] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997).

[10] *See* 19 CFR 351.303 (for general filing requirements); *see also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011) for details of the Department's electronic filing requirements, which went into effect on August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

[11] *See* section 771(10) of the Act.

addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[12]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the Petition).

With regard to the domestic like product, the petitioners do not offer a definition of the domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that HFCs constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product.[13]

In determining whether the petitioners have standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation,'' in Appendix I of this notice. The petitioners provided their production of HFC blends in 2014, and estimated the potential maximum U.S. production of HFC blends for the entire domestic industry using data on merchant market shipments and imports of HFC components.[14] To establish industry support, the petitioners compared their own production of HFC blends to estimated potential maximum production of HFC blends for the entire domestic industry.[15]

Our review of the data provided in the Petition, Petition Supplements, and other information readily available to the Department indicates that the petitioners have established industry support.[16] First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.,* polling).[17] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[18] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[19] Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

The Department finds that the petitioners filed the Petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C), (D), and (F) of the Act and they have demonstrated sufficient industry support with respect to the AD investigation that they are requesting the Department initiate.[20]

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than fair value. In addition, the petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[21]

The petitioners contend that the industry's injured condition is illustrated by reduced market share; underselling and price depression or suppression; lost sales and revenues; negative impact on domestic industry capacity, capacity utilization, and employment; and negative impact on domestic industry sales revenues and operating profits.[22] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[23]

Allegation of Sales at Less Than Fair Value

The following is a description of the allegation of sales at less than fair value upon which the Department based its decision to initiate an investigation of imports of HFCs from the PRC. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the initiation checklist.

Export Price

The petitioners based export price (EP) on price lists and PRC export data.[24] The petitioners made deductions from U.S. price for certain movement expenses consistent with the delivery terms.[25] Where applicable, the petitioners also deducted from U.S. price sales commission and trading company mark-ups estimated using the petitioners' knowledge of the PRC HFC industry.[26]

Normal Value

The Department has always treated the PRC as a non-market economy (NME) country. In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of

[12] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[13] For a discussion of the domestic like product analysis in this case, *see* Antidumping Duty Investigation Initiation Checklist: Certain Hydrofluorocarbon Blends and Certain Single Hydrofluorocarbon Components Thereof from the People's Republic of China (Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping Duty Petition Covering Certain Hydrofluorocarbon Blends and Certain Single Hydrofluorocarbon Components Thereof from the People's Republic of China (Attachment II). This checklist is dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

[14] *See* Volume I of the Petition, at 9–10 and Exhibit I–1; *see also* Volume II of the Petition, at Exhibits II–2 and II–5; Petition Supplement, at 11–13 and Exhibits 3 and 4; and Second Petition Supplement.

[15] *Id.* For further discussion, see Initiation Checklist, at Attachment II.

[16] *See* Initiation Checklist, at Attachment II.

[17] *See* section 732(c)(4)(D) of the Act; *see also* Initiation Checklist, at Attachment II.

[18] *See* Initiation Checklist, at Attachment II.

[19] *Id.*

[20] *Id.*

[21] *See* Volume I of the Petition, at 37–38; *see also* Petition Supplement, at 13 and Exhibit 5.

[22] *See* Volume I of the Petitions, at 2–4, 39–52; *see also* Volume II of the Petition, at Exhibits II–1 through II–3 and II–5 through II–13; and Petition Supplement, at 13–14 and Exhibits 5–6.

[23] *See* Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping Duty Petition Covering Certain Hydrofluorocarbon Blends and Certain Single Hydrofluorocarbon Components Thereof from the People's Republic of China.

[24] *See* Initiation Checklist. The petitioners also based EP on prices calculated from other pricing data but we have not relied on these prices for purposes of initiation.

[25] *Id.*

[26] *Id.*

this investigation. Accordingly, the NV of the product is appropriately based on FOPs valued in a surrogate market economy country, in accordance with section 773(c) of the Act. In the course of this investigation, all parties, and the public, will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters.

The petitioners claim that Thailand is an appropriate surrogate country because it is a market economy that is at a level of economic development comparable to that of the PRC, it is a significant producer of the merchandise under consideration, and the data for valuing FOPs, factory overhead, selling, general and administrative (SG&A) expenses, and profit are both available and reliable.[27]

Based on the information provided by the petitioners, we believe it is appropriate to use Thailand as a surrogate country for initiation purposes. Interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs within 30 days before the scheduled date of the preliminary determination.

Factors of Production

The petitioners based the FOPs for materials, labor, and energy on petitioning U.S. producers' consumption rates for producing HFCs.[28] The petitioners valued the estimated factors of production for most material using surrogate values from Thailand.[29]

Valuation of Raw Materials

The petitioners valued the FOPs for raw materials (*e.g.,* hydrofluoric acid, methylene chloride, lime, caustic soda, sodium sulfite, etc.) using reasonably available, public import data for Thailand from the Global Trade Atlas (GTA) for the POI.[30] In addition, the petitioners valued the FOPs for 1,1,1-trichloroethane, chlorine, and hydrogen chloride using reasonably available, public import data for Bulgaria from the GTA for the POI because the petitioners claim that the Thai import data for these materials were either aberrational or did not exist.[31] The petitioners excluded all import values from countries previously determined by the Department to maintain broadly available, non-industry-specific export subsidies and from countries previously determined by the Department to be NME countries. In addition, in accordance with the Department's practice, the average import value excludes imports that were labeled as originating from an unidentified country. The Department determines that the surrogate values in the petition are those that are reasonably available to the petitioners and, thus, are acceptable for purposes of initiation.

Valuation of Labor

The petitioners valued labor using data published by Thailand's National Statistics Office (NSO).[32] Specifically, the petitioners relied on Thai NSO data for the manufacturing industry (public and private) for the fourth quarter of 2014 and the first quarter of 2015. As the Thai wage data are monthly data denominated in Thai Baht, the petitioners converted these wage rates to hourly rates and then converted them to U.S. dollars using the average exchange rate during the POI.[33] The petitioners then applied that resulting labor rate to the labor hours expended by a U.S. producer of HFCs.[34]

Valuation of Energy

The petitioners used published rates by the Electricity Generating Authority of Thailand (EGAT) for 2013 to value electricity.[35] The petitioners adjusted the EGAT rate information for inflation using the International Monetary Fund's producer price index and converted to U.S. dollars.[36] The petitioners calculated the cost of natural gas in Thailand using the average unit value of imports of liquid natural gas for the period, as reported by GTA.[37] Using universal conversion factors, the petitioners converted that cost to the U.S. producer-reported factor unit of million British thermal units to ensure the proper comparison.[38]

Valuation of Factory Overhead, SG&A Expenses, and Profit

The petitioners calculated surrogate financial ratios (*i.e.,* manufacturing overhead, SG&A expenses, and profit) using the 2013 audited financial statements of Air Liquide, Air Products, and Bangkok Industrial Gas, Thai producers of comparable merchandise (*i.e.,* industrial gases).[39]

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of HFCs from the PRC are being, or are likely to be, sold in the United States at less than fair value. Based on comparisons of EP to NV, in accordance with section 773(c) of the Act, the estimated dumping margins for HFCs from the PRC range from 111.20 to 300.30 percent.[40]

Initiation of Less-than-Fair-Value Investigation

Based upon the examination of the Petition on HFCs from the PRC, we find that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an AD investigation to determine whether imports of HFCs from the PRC are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Respondent Selection

The petitioners named 44 companies as producers/exporters of HFCs.[41] In accordance with our standard practice for respondent selection in AD cases involving NME countries, we intend to issue quantity-and-value (Q&V) questionnaires to each potential respondent for which we have a complete address, and base respondent selection on the responses received. In addition, the Department will post the Q&V questionnaire along with filing instructions on the Enforcement and Compliance Web site at *http://www.trade.gov/enforcement/news.asp.*

Exporters/producers of HFCs from the PRC that do not receive Q&V questionnaires by mail may still submit a response to the Q&V questionnaire and can obtain a copy from the Enforcement and Compliance Web site.

[27] *Id.*

[28] *See* Volume I of the Petition, at 55–56.

[29] *See* Volume III of the Petition, at Exhibit III–6; *see also* Petition Supplement, at 16–17 and Exhibit 8. Additionally, in certain cases, the petitioners used surrogate values from Bulgaria, as discussed in ''Valuation of Raw Materials,'' above. *Id.*

[30] *Id.*

[31] *See* Volume I of the Petition, at 56–57; *see also* Petition Supplement, at 14–16. Bulgaria has also recently been found to be a level of economic development comparable to the PRC by the Department.

[32] *See* Volume III of the Petition, at Exhibit III–11.

[33] *See* Volume I of the Petition, at 59.

[34] *See* Volume III of the Petition, at Exhibit III–12.

[35] *See* Volume I of the Petition, at page 58 and Volume III of the Petition, at Exhibit III–10.

[36] *See* Volume III of the Petition, at Exhibits III–6 and III–10.

[37] *Id.,* at Exhibit III–6.

[38] *Id.,* at Exhibit III–10; *see also* Petition Supplement, at 17–18.

[39] *See* Volume I of the Petition, at 59; *see also* Petition Supplement, at Exhibit 9.

[40] *See* Initiation Checklist; *see also* Petition Supplement, at Exhibit 14.

[41] *See* the Volume I of the Petition, at 27 and Volume III of the Petition, at Exhibit III–1.

The Q&V response must be submitted by all PRC exporters/producers no later than 5:00 p.m. ET on July 29, 2015, which is two weeks from the signature date of this notice. With very limited exceptions, all Q&V responses should be filed electronically via ACCESS.[42]

Separate Rates

In order to obtain separate-rate status in an NME investigation, exporters and producers must submit a separate-rate application.[43] The specific requirements for submitting a separate-rate application in the PRC investigation are outlined in detail in the application itself, which is available on the Department's Web site at *http://enforcement.trade.gov/nme/nme-sep-rate.html.* The separate-rate application will be due 30 days after publication of this initiation notice.[44] Exporters and producers who submit a separate-rate application and have been selected as mandatory respondents will be eligible for consideration for separate-rate status only if they respond to all parts of the Department's AD questionnaire as mandatory respondents. The Department requires that respondents from the PRC submit a response to both the Q&V questionnaire and the separate-rate application by 5:00 p.m. ET on their respective deadlines in order to receive consideration for separate-rate status.

Use of Combination Rates

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. The Separate Rates and Combination Rates Bulletin states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME Investigation will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.[45]

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petition have been provided to the government of the PRC via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of HFCs from the PRC are materially injuring or threatening material injury to a U.S. industry.[46] A negative ITC determination will result in the investigation being terminated;[47] otherwise, this investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). The regulation requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Please review the regulations prior to submitting factual information in this investigation.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under Part 351, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under Part 351 expires. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Review *Extension of Time Limits,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in this investigation.

Certification Requirements

Any party submitting factual information in an AD proceeding must certify to the accuracy and completeness of that information.[48] Parties are hereby reminded that revised certification requirements are in effect for company/government officials, as well as their representatives. Investigations initiated on the basis of petitions filed on or after August 16, 2013, and other segments of any AD proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications found in the Department's regulations at 19 CFR 351.303(g).[49] The Department intends to reject factual submissions if the submitting party does not comply with

[42] *See, e.g.,* 19 CFR 351.303(b)(2)(ii)(B).

[43] *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation involving Non-Market Economy Countries (April 5, 2005), available at *http://enforcement.trade.gov/policy/bull05-1.pdf* (Policy Bulletin 05.1).

[44] Although in past investigations this deadline was 60 days, consistent with section 351.301 (a) of the Department's regulations, which states that ''the Secretary may request any person to submit factual information at any time during a proceeding,'' this deadline is now 30 days.

[45] *See* Policy Bulletin 05.1 at 6 (emphasis added).

[46] *See* section 733(a) of the Act.

[47] *Id.*

[48] *See* section 782(b) of the Act.

[49] *See also Certification of Factual Information to Import Administration during Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (for additional information about the certification requirements); *see also* frequently asked questions regarding the *Final Rule,* available at: *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

the applicable revised certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3627 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed in 19 CFR 351.103(d)).

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: July 15, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The products subject to this investigation are blended hydrofluorocarbons (HFCs) and single HFC components of those blends thereof, whether or not imported for blending. HFC blends covered by the scope are R–404, a zeotropic mixture consisting of 52 percent 1,1,1-Trifluoroethane, 44 percent Pentafluoroethane, and 4 percent 1,1,1,2-Tetrafluoroethane; R–407A, a zeotropic mixture of 20 percent Difluoromethane, 40 percent Pentafluoroethane, and 40 percent 1,1,1,2-Tetrafluoroethane; R–407C, a zeotropic mixture of 23 percent Difluoromethane, 25 percent Pentafluoroethane, and 52 percent 1,1,1,2-Tetrafluoroethane; R–410A, a zeotropic mixture of 50 percent Difluoromethane and 50 percent Pentafluoroethane; and R–507A, an azeotropic mixture of 50 percent Pentafluoroethane and 50 percent 1,1,1-Trifluoroethane also known as R–507. The foregoing percentages are nominal percentages by weight. Actual percentages of single component refrigerants by weight may vary by plus or minus two percent points from the nominal percentage identified above.[50]

The single component HFCs covered by the scope are R–32, R–125, and R–143a. R–32 or Difluoromethane has the chemical formula CH_2F_2, and is registered as CAS No. 75–10–5. It may also be known as HFC–32, FC–32, Freon-32, Methylene difluoride, Methylene fluoride, Carbon fluoride hydride, halocarbon R32, fluorocarbon R32, and UN 3252. R–125 or 1,1,1,2,2-Pentafluoroethane has the chemical formula CF_3CHF_2 and is registered as CAS No. 354–33–6. R–125 may also be known as R–125, HFC–125, Pentafluoroethane, Freon 125, and Fc–125, R–125. R–143a or 1,1,1-Trifluoroethane has the chemical formula CF_3CH_3 and is registered as CAS No. 420–46–2. R–143a may also be known as R–143a, HFC–143a, Methylfluoroform, 1,1,1-Trifluoroform, and UN2035.

Excluded from this investigation are blends of refrigerant chemicals that include products other than HFCs, such as blends including chlorofluorocarbons (CFCs) or hydrochlorofluorocarbons (HCFCs).

Also excluded from this investigation are patented HFC blends, such as ISCEON® blends, including MO99™ (RR–438A), MO79 (R–422A), MO59 (R–417A), MO49*Plus*™ (R–437A) and MO29™ (R–4 22D), and Genetron® Performax™ LT (R–407F).

HFC blends covered by the scope of this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 3824.78.0000. Single component HFCs are currently classified at subheading 2903.39.2030, HTSUS. Although the HTSUS subheadings and CAS registry numbers are provided for convenience and customs purposes, the written description of the scope is dispositive.

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[50] R–404A is sold under various trade names, including Forane® 404A, Genetron® 404A, Solkane® 404A, Klea® 404A, and Suva®404A. R–407A is sold under various trade names, including Forane® 407A, Solkane® 407A, Klea®407A, and Suva®407A. R–407C is sold under various trade names, including Forane® 407C, Genetron® 407C, Solkane® 407C, Klea® 407C and Suva® 407C. R–410A is sold under various trade names, including EcoFluor R410, Forane® 410A, Genetron® R410A and AZ–20, Solkane® 410A, Klea® 410A, Suva® 410A, and Puron®. R–507A is sold under various trade names, including Forane® 507, Solkane® 507, Klea®507, Genetron®AZ–50, and Suva®507. R–32 is sold under various trade names, including Solkane®32, Forane®32, and Klea®32. R–125 is sold under various trade names, including Solkane®125, Klea®125, Genetron®125, and Forane®125. R–143a is sold under various trade names, including Solkane®143a, Genetron®143a, and Forane®125.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–905]

Certain Polyester Staple Fiber From the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review; 2013–2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the ''Department'') is conducting an administrative review of the antidumping duty order on certain polyester staple fiber from the People's Republic of China (''PRC''), for the period of review (''POR''), June 1, 2013, to May 31, 2014.

DATES: *Effective date:* July 22, 2015.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2243.

SUPPLEMENTARY INFORMATION

Background

The Department preliminarily determines that Zhaoqing Tifo New Fibre Co., Ltd. (''Zhaoqing Tifo'') failed to establish that it is entitled to a separate rate for the POR and, thus, we are treating Zhaoqing Tifo as part of the PRC-wide entity.[1] In addition, we preliminarily determine that Takayasu Industrial (Jiangyin) Co., Ltd. (''Takayasu'') had no shipments during the POR and, therefore, did not have any reviewable entries. If these preliminary results are adopted in the final results, the Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results.

Scope of the Order

The merchandise subject to the order is certain polyester staple fiber. The product is currently classified under the Harmonized Tariff Schedule of the United States (''HTSUS'') numbers 5503.20.0045 and 5503.20.0065. Although the HTSUS numbers are provided for convenience and customs purposes, the written description of the scope of the order remains dispositive.[2]

Methodology

The Department conducted this review in accordance with section 751(a)(1)(B) of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.[3] The Preliminary Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''ACCESS''). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, room B8024 of the main

[1] *See* Decision Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, entitled ''Preliminary Results of 2013–2014 Antidumping Duty Administrative Review: Certain Polyester Staple Fiber from the People's Republic of China'' (''Preliminary Decision Memorandum'') issued concurrently with this notice for a complete description of the Scope of the Order.

[2] For a full description of the scope of the *Order, see* Preliminary Decision Memorandum.

[3] A list of topics discussed in the Preliminary Decision Memorandum is provided at Appendix I to this notice.

Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://www.trade.gov/enforcement/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

The Department initiated a review for two companies.[4] The Department preliminarily determines that Zhaoqing Tifo failed to cooperate by not acting to the best of its ability to comply with the Department's request for information and, therefore, is not eligible for a separate rate. Accordingly, the Department preliminarily finds that the PRC-wide entity includes Zhaoqing Tifo.[5] We also note that the Department's change in policy [6] regarding conditional review of the PRC-wide entity applies to this administrative review.[7]

In addition, the Department preliminarily determines that Takayasu had no shipments during the POR and, therefore, had no reviewable entries.

Public Comment and Opportunity to Request a Hearing

Interested parties may submit case briefs within 30 days after the date of publication of these preliminary results of review.[8] Rebuttals to case briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the time limit for filing case briefs.[9] Parties who submit arguments are requested to submit with the argument (a) a statement of the issue, (b) a brief summary of the argument, and (c) a table of authorities.[10] Parties submitting briefs should do so pursuant to the Department's electronic filing system, ACCESS.

Any interested party may request a hearing within 30 days of publication of this notice.[11] Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.[12] If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.[13]

The Department intends to issue the final results of this administrative review, which will include the results of our analysis of all issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, unless extended, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[14] The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review.

For any individually examined respondent whose weighted average dumping margin is above *de minimis* (*i.e.,* 0.50 percent) in the final results, the Department will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of sales, in accordance with 19 CFR 351.212(b)(1). Where an importer- (or customer-) specific *ad valorem* rate is greater than *de minimis,* the Department will instruct CBP to collect the appropriate duties at the time of liquidation.[15] Where either a respondent's weighted average dumping margin is zero or *de minimis,* or an importer- (or customer-) specific *ad valorem* rate is zero or *de minimis,* the Department will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[16] We intend to instruct CBP to liquidate entries containing subject merchandise exported by the PRC-wide entity at the PRC-wide rate.

The Department announced a refinement to its assessment practice in non-market economy (''NME'') cases.[17] Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during the administrative review, the Department will instruct CBP to liquidate such entries at the PRC-wide rate. Additionally, if the Department determines that an exporter had no shipments of the subject merchandise, any suspended entries, other than Takayasu's sample shipments, that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the PRC-wide rate.[18] For Takayasu's sample suspended entries, the Department will instruct CBP to liquidate such entries without regard to antidumping duties.

In accordance with section 751(a)(2)(C) of the Act, the final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For any companies listed that have a separate rate, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis,* then zero cash deposit will be required); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the PRC-wide entity; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 79 FR 44390 (July 31, 2014).

[5] *See* section 776(b) of the Act.

[6] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[7] Under this policy, the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. Because no party requested a review of the PRC-wide entity in this review, the entity is not under review.

[8] *See* 19 CFR 351.309(c)(1)(ii).

[9] *See* 19 CFR 351.309(d)(1)–(2).

[10] *See* 19 CFR 351.309(c)(2), (d)(2).

[11] *See* 19 CFR 351.310(c).

[12] *Id.*

[13] *See* 19 CFR 351.310(d).

[14] *See* 19 CFR 351.212(b).

[15] *See* 19 CFR 351.212(b)(1).

[16] *See* 19 CFR 351.106(c)(2).

[17] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

[18] *Id.*

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: June 30, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Preliminary Decision Memorandum

Summary

1. Summary
2. Case History
3. Scope of the Order
4. Non-Market Economy Status
5. PRC-Wide Entity
6. Preliminary Determination of No Shipments

[FR Doc. 2015–17983 Filed 7–21–15; 8:45 am]

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DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number: 150702573–5573–01]

Announcement of Requirements and Registration for National Institute of Standards and Technology Prize Competition—Reference Data Challenge

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST), a non-regulatory agency of the United States Department of Commerce, is conducting this prize competition to spur the development of innovative mobile applications that utilize NIST datasets to help better share the data and provide a useful service to those who can best use it. NIST Standard Reference Data (SRD) are well-documented numeric data used in technical problem-solving, research, and development; over 100 types are available for use in scientific and engineering applications, with over 19 million downloads recorded annually (excluding web-based time services). Most of these data sets are currently freely accessible through web-based interfaces or are made available on CD upon request. Mobile applications that can readily access and utilize this data will help drive further innovation and support research through easy and low-barrier access to the results of U.S. taxpayer funded research.

Participants in this prize competition are invited to submit Apps (as defined in this Notice) that use eligible NIST Standard Reference Data (SRD) datasets listed on the Event Web site, *http://nistdata.challengepost.com.* These eligible datasets pertain to physics and chemistry and are frequently used by high school, college, and graduate students in advanced chemistry and physics coursework.

DATES: *Submission Period:* July 27, 2015–September 28, 2015.

Announcement of Winners: November 16, 2015.

The Submission Period begins July 27, 2015, at 9 a.m. EDT and ends September 28, 2015, at 5 p.m. EDT. Prize competition dates are subject to change at the discretion of NIST. Entries submitted before or after the Submission Period will not be reviewed or considered for award.

FOR FURTHER INFORMATION CONTACT: Questions about the prize competition can be directed to NIST via the Event Web site, or by email to Heather Evans at *Appchallenge@nist.gov,* phone 301–975–4525.

Changes or updates to the prize competition rules will be posted and can be viewed at the Event Web site, *http://nistdata.challengepost.com.*

Results of the prize competition will be announced on the Event Web site, *http://nistdata.challengepost.com* and on the NIST Web site, *www.nist.gov.*

SUPPLEMENTARY INFORMATION:

Competition Sponsor

This prize competition (''Competition'') is sponsored by the National Institute of Standards and Technology (NIST; *www.nist.gov*), a non-regulatory Federal agency within the United States Department of Commerce. Founded in 1901, NIST's mission is to promote U.S. innovation and industrial competitiveness by advancing measurement science, standards, and technology in ways that enhance economic security and improve our quality of life. NIST carries out its mission through its programs, which include: The NIST Laboratories, conducting world-class research, often in close collaboration with industry, that advances the Nation's technology infrastructure and helps U.S. companies continually improve products and services; the Hollings Manufacturing Extension Partnership (MEP), a nationwide network of local centers offering technical and business assistance to smaller manufacturers to help them create and retain jobs, increase profits, and save time and money; and the Baldrige Performance Excellence Program, which promotes performance excellence among U.S. manufacturers, service companies, educational institutions, health care providers, and nonprofit organizations, conducts outreach programs, and manages the annual Malcolm Baldrige National Quality Award, which recognizes performance excellence and quality achievement. The agency operates in two locations: Gaithersburg, Maryland (headquarters—234-hectare/578-acre campus); and Boulder, Colorado (84-hectare/208-acre campus). NIST employs about 3,000 scientists, engineers, technicians, and support and administrative personnel. NIST also hosts about 2,700 associates from academia, industry, and other government agencies, who collaborate with NIST staff and access user facilities. In addition, NIST partners with more than 1,300 manufacturing specialists and staff at more than 400 local MEP centers around the country. NIST provides measurement and calibration services via its Standard Reference Materials®, calibration services, and Standard Reference Data.

Eligibility Rules for Participating in the Competition

This Competition is open to all individuals over the age of 18 that are residents of the 50 United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa, and to for-profit or non-profit corporations, institutions, or other validly formed legal entities organized or incorporated in, *and* which maintain a primary place of business in, any of the preceding jurisdictions. An individual, whether participating singly or with a group, must be a citizen or permanent resident of the United States.

To be eligible to win a Competition prize, a Participant (whether an individual or legal entity) must have registered to participate, must have complied with all the requirements under section 3719 of title 15, United States Code (''Prize competitions'').

A Participant shall not be deemed ineligible because the Participant used Federal facilities or consulted with

Federal employees in preparing its submission to the Competition if the facilities and employees are made available to all Participants on an equitable basis.

Multiple entries are permitted. Each entry will be reviewed independently. Multiple individuals and/or legal entities may collaborate as a group to submit a single entry, in which case all members of the group must satisfy the eligibility requirements, and a single individual from the group must be designated as an official representative for each entry. That designated individual will be responsible for meeting all entry and evaluation requirements. Participation is subject to all U.S. federal, state and local laws and regulations. Void where prohibited or restricted by law. Participants are responsible for checking applicable laws and regulations in their jurisdiction(s) before participating in this Competition, to ensure that their participation is legal. Individuals entering on behalf of or representing a company, institution or other legal entity are responsible for confirming that their entry does not violate any policies of that company, institution or legal entity.

NIST employees, NIST associates, and any other individuals or legal entities involved with the design, production, execution, distribution or evaluation of the Competition, are not eligible to enter. NIST employees and NIST Guest Researchers are not eligible to enter. Federal entities and non-NIST Federal employees acting in their official capacities are not eligible to enter. Non-NIST Federal employees acting in their personal capacities should consult with their respective agency ethics officials to determine whether their participation in this Competition is permissible.

Entry Process for Participants

To enter, create a user account at ChallengePost by visiting challengepost.com and register your interest in participating in the Competition at the Event Web site, *http://nistdata.challengepost.com.* Create an App (as defined herein) that uses at least one of the eligible NIST datasets identified on the Event Web site.

NIST provides free online access to high quality scientific data in a wide range of disciplines. The eligible NIST datasets for this Competition pertain to physics and chemistry and are frequently used by high school, college, and graduate students in advanced chemistry and physics coursework. For example, below are links to four NIST Standard Reference Data that represent some of the eligible NIST datasets for this Competition:

(1) Ground Levels and Ionization Energies for the Neutral Atoms (SRD 111, *http://www.nist.gov/pml/data/ion_energy.cfm*),

(2) Atomic Weights and Isotopic Compositions (SRD 144, *http://www.nist.gov/pml/data/comp.cfm*),

(3) CODATA Fundamental Physical Constants (SRD 121, *http://physics.nist.gov/cuu/Constants/*), and

(4) the NIST Computational Chemistry Comparison and Benchmark Database (SRD 101, *http://cccbdb.nist.gov*).

These four datasets are a subset of the eligible NIST SRD datasets that are listed on the Event Web site, *http://nistdata.challengepost.com.* The four datasets listed above represent some of the most fundamental data in the NIST SRD collection—from the speed of light to the atomic weight of carbon. Participants in this Competition are invited to integrate other freely available datasets into their applications to increase the usefulness of the data to a wider audience. For example, additional free online NIST Standard Reference Data can be found by searching the NIST Data Gateway at *http://srdata.nist.gov/gateway.*

While not required, other freely available scientific data (from NIST or a third-party) may enhance the usefulness of the App for other users. A submission requires (1) your App software provided to the Competition Sponsor at no cost; (2) a brief (less than 250 words) text description of your App; (3) at least one screenshot image of your App in use on a mobile phone or tablet device; (4) a brief (less than five minutes) video demonstrating the functionality of your App; and (5) confirmation that you have read and agree to the Competition Rules contained in this Notice. Participants may begin submitting Competition Entries at 9:00 a.m. EDT on July 27, 2015, to the Event Web site. Competition Entries must be submitted no later than 5:00 p.m. EDT on September 28, 2015, to the Event Web site.

Entries submitted before the start date and time, or after the end date and time, will not be evaluated or considered for award. Entries sent to NIST in any manner other than through the Event Web site will not be evaluated or considered for award. Entries that do not comply with the formatting requirements set forth in this Notice and the Event Web site will not be evaluated or considered for award. Changes or updates to the prize competition rules will be posted and can be viewed at the Event Web site, *http://nistdata.challengepost.com.*

Entries must be complete, non-confidential and in English.

In general, each Entry:

(a) Must affirmatively represent that the Participant (and each Participant if more than one) has read and consents to be governed by the Competition rules and meets the eligibility requirements;

(b) Must include an App (*i.e.,* a working software application that operates on a mobile device using one of three operating systems, *i.e.,* iOS, Android, or Windows, together with relevant documentation and code to install and run the application) that uses at least one of the eligible NIST datasets as described above in the Entry Process for Participants. The App should meet the minimum criteria described below in the Evaluation, Judging, and Selection of Winner(s). The Participant must provide a way for the Competition Sponsor to test the App at no cost, such as a weblink, installation file, or shared test build. Details are provided at the Event Web site. Namely, for Android or Windows applications, the Participant can upload an .apk file in the submission form or provide a link for the Competition Sponsor to download the Participant's App. For iOS applications, the Participant should provide a link if it is in the Apple Store (promo code must be provided if the Participant charges money for the app). If a Participant's iOS App is not yet publicly available, the Participant must send a test build following the instructions on the Event Web site.

(c) Must include a brief (less than 250 words) text description of the Participant's App; and

(d) Must include at least one photograph of the App running on a mobile phone or tablet device, and

(e) Must include a weblink (YouTube or Vimeo) to a short (less than five minutes) video that demonstrates the functionality of the application. Participant must have permission to use all content in the video, including footage, music and images.

Competition Award(s)

The Prize Purse is a total of $45,000. The Prize Purse may increase, but will not decrease. Any increases in the Prize Purse will be posted on the Event Web site and published in the **Federal Register**. The Prize Purse will be used to fund one or more awards.

NIST will announce via the Event Web site any Entry(ies) as to which the Judges have made a cash award (each, an ''Award''). The anticipated number and amount of the Awards that will be awarded for this Competition is set forth

in this Notice; however, the Judges are not obligated to make all or any Awards, and reserve the right to award fewer than the anticipated number of Awards in the event an insufficient number of eligible Entries meet any one or more of the Judging Criteria for this Competition, based on the Judges' evaluation of the quality of Entries and in their sole discretion. Awards will be made based on the Judges' evaluation of an Entry's compliance with the Judging Criteria for this Competition. All potential winners will be notified by the email address provided in the submission document and may be required to complete further documentation confirming their eligibility. Return of any notification as ''undeliverable'' will result in disqualification. After verification of eligibility, Awards will be distributed in the form of a check or electronic funds transfer addressed to the official representative specified in the winning entry. That official representative will have sole responsibility for further distribution of any Award among Participants in a group Entry or within a company or institution that has submitted an Entry through that representative. Each list of Entries receiving Awards for the Competition will be made public according to the timeline outlined on the Event Web site.

All Awards are a one-time offer and there is no offer of licensure, royalty, or other financial compensation implied beyond the Awards. Winners are responsible for all taxes and reporting related to any Award received as part of the Competition.

All costs incurred in the preparation of Competition Entries are to be borne by Participants.

Evaluation, Judging, and Selection of Winner(s)

Submission Evaluation Criteria

This section discusses how Participant submissions will be evaluated.

Entry Submission and Review

The requirements for submission of a complete entry are detailed in the above section ''Entry Process for Participants'' and at the Event Web site. Submissions will be reviewed by Subject Matter Experts (described below), who will determine whether the submission meets the following minimum criteria for consideration for a Prize:

1. General: App submission should include detailed instructions on how to install and operate the App, and system requirements to run the App.

2. NIST Acknowledgment: The following notice should be displayed prominently within the application: ''This product uses data provided by the National Institute of Standards and Technology (NIST) but is not endorsed or certified by NIST.'' The NIST SRD number must also be displayed prominently in the application. Use of the NIST or Department of Commerce logos is prohibited.

3. Functionality/Accuracy: A Submission may be disqualified if the software application fails to function as expressed in the description submitted by the Participant.

4. Privacy: Participants should keep in mind that NIST considers protection of personal information an essential element of App security. Apps must seek user permission to access and use personal information.

5. Security Vulnerabilities: Participants must agree that NIST may conduct testing on the App to determine whether malware or other security threats may be present. NIST may disqualify the App if, in NIST's sole judgment, the App may damage government or others' equipment or operating environment. For guidance about minimizing security vulnerabilities in mobile applications, Participants can consult NIST Special Publication 800–163, ''Vetting the Security of Mobile Applications'' (*http://dx.doi.org/10.6028/NIST.SP.800-163*).

6. Completeness: Other required components of the submission (as listed in the Entry Process for Participants section above) are complete.

Submissions that meet the minimum criteria specified above will be presented to the Judges for evaluation. Judges are not required to test the App and may choose to judge based solely on the text description, images, and video provided in the Submission. Judges will evaluate submissions using the following Judging Criteria (the weighting percentage for each criterion is given in parentheses):

1. Potential impact: How strong is the potential of the submission to help students and other technical experts use NIST Standard Reference Data? (25%)

2. Creativity and Innovation: To what degree is this submission innovative? Does it bring new thinking and creativity to improving access to NIST Standard Reference Data? (25%)

3. Implementation: Does the App work well? Does it provide an engaging user experience and have interactive capabilities? (25%)

4. Uses scientific reference data: Does the App use at least one of the eligible datasets? Preference will be given to applications that integrate more than one dataset. (25%)

Awards:

First, Second, and Third Place Prizes will be selected by the Judges.

- First Place Prize is $30,000
- Second Place Prize is $10,000
- Third Place Prize is $5,000

Subject Matter Experts and Judges

Subject Matter Experts, to be selected by NIST, will, as a body, represent a high degree of technical background in App development, software security, and scientific research data. Subject Matter Experts will consist of NIST employees or NIST associates and will provide initial assessments of App submissions using the criteria described herein to determine whether the submission meets the minimum criteria. Subject Matter Experts will not select winners of any Awards.

A panel of highly qualified Judges appointed by the NIST Director will select winners of Awards to be awarded to First, Second, and Third Place Submissions using the Judging Criteria described herein. The panel of Judges has a collective expertise that creates an overall balanced panel with broad representation of relevant areas to the challenge such as App design, NIST datasets, measurement science, standards, data security, user interfaces, Web sites, and/or mobile devices. Judges include individuals from both inside and outside NIST who are experts in areas relevant to the challenge. The Judges may not have personal or financial interests in, or be an employee, officer, director, or agent of any entity that is a registered Participant in this Competition, and may not have a familial or financial relationship with an individual who is a registered Participant. In the event of such a conflict, a Judge must recuse himself or herself. A Participant(s) should review the list of the Judges available at the Event Web site, and must identify, as part of their Entry submission, any Judge who has personal or financial interests in, or is an employee, officer, director, or agent of any entity that is a Participant in this Competition, or who has a familial or financial relationship with an individual who is a Participant. Thereafter, a Participant(s) must immediately inform the Competition Sponsor through the Event Web site of a change in status resulting in a conflict for any Judge as described above. Failure to do so may disqualify a Participant(s) from receiving an Award.

Intellectual Property Rights

Other than as set forth herein, NIST does not make any claim to ownership of your Entry or any of your intellectual

property or third party intellectual property that it may contain therein. By participating in the Competition, you are not granting any rights in any patents or pending patent applications related to your Entry; provided that by submitting an Entry, you are granting NIST certain limited rights as set forth herein.

By submitting an Entry, you grant to NIST the right to review your Entry as described above in the section ''Entry Submission and Review,'' to describe your Entry in connection with any materials created in connection with the Competition and to have the Subject Matter Experts, Judges, Competition administrators, and the designees of any of them, review your Entry.

By submitting an Entry, you grant a non-exclusive right and license to NIST to use your name, likeness, biographical information, image, any other personal data submitted with your Entry and the contents in your Entry (including any created works, such as YouTube® videos, but not including any App software submitted with or as part of your Entry), in connection with the Competition. You also agree that this license is perpetual and irrevocable.

You agree that nothing in this Notice grants you a right or license to use any names or logos of NIST or the Department of Commerce, or any other intellectual property or proprietary rights of NIST or the Department of Commerce. You grant to NIST the right to include your company or institution name and logo (if your Entry is from a company or institution) as a Participant on the Event Web site and in materials from NIST announcing winners of or Participants in the Competition. Other than these uses or as otherwise set forth herein, you are not granting NIST any rights to your trademarks.

Entries containing any matter which, in the sole discretion of NIST, is indecent, defamatory, in obvious bad taste, which demonstrates a lack of respect for public morals or conduct, which promotes discrimination in any form, which shows unlawful acts being performed, which is slanderous or libelous, or which adversely affects the reputation of NIST, will not be accepted. If NIST, in its sole discretion, finds any Entry to be unacceptable, then such Entry shall be deemed disqualified and will not be evaluated or considered for award. NIST shall have the right to remove any content from the Event Web site in its sole discretion at any time and for any reason, including, but not limited to, any online comment or posting related to the Competition.

Confidential Information

By making a submission to the Competition, you agree that no part of your submission includes any confidential or proprietary information, ideas or products, including but not limited to information, ideas or products within the scope of the Trade Secrets Act, 18 U.S.C. 1905. Since NIST does not wish to receive or hold any submitted materials ''in confidence,'' it is agreed that, with respect to your Entry, no confidential or fiduciary relationship or obligation of secrecy is established between NIST and you, your Entry team, the company or institution you represent when submitting an Entry, or any other person or entity associated with any part of your Entry.

Warranties

By submitting an Entry, you represent and warrant that all information you submit is true and complete to the best of your knowledge, that you have the right and authority to submit the Entry on your own behalf or on behalf of the persons and entities that you specify within the Entry, and that your Entry (both the information and software submitted in the Entry and the underlying technologies or concepts described in the Entry):

(a) Is your own original work, or is submitted by permission with full and proper credit given within your Entry;

(b) does not contain confidential information or trade secrets (yours or anyone else's);

(c) does not knowingly, after due inquiry (including, by way of example only and without limitation, reviewing the records of the United States Patent and Trademark Office and inquiring of any employees and other professionals retained with respect to such matters), violate or infringe upon the patent rights, industrial design rights, copyrights, trademarks, rights in technical data, rights of privacy, publicity or other intellectual property or other rights of any person or entity;

(d) does not contain malicious code, such as viruses, malware, timebombs, cancelbots, worms, Trojan horses or other potentially harmful programs or other material or information;

(e) does not and will not violate any applicable law, statute, ordinance, rule or regulation, including, without limitation, United States export laws and regulations, including, but not limited to, the International Traffic in Arms Regulations and the Department of Commerce Export Regulations; and

(f) does not trigger any reporting or royalty or other obligation to any third party.

Limitation of Liability

By participating in the Competition, you agree to assume any and all risks and to release, indemnify and hold harmless NIST, each of the Judges, and Subject Matter Experts, from and against any injuries, losses, damages, claims, actions and any liability of any kind (including attorneys' fees) resulting from or arising out of your participation in, association with or submission to the Competition (including any claims alleging that your Entry infringes, misappropriates or violates any third party's intellectual property rights). In addition, you agree to waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from your participation in this Competition, whether the injury, death, damage, or loss arises through negligence or otherwise.

NIST is not responsible for any miscommunications such as technical failures related to computer, telephone, cable, and unavailable network or server connections, related technical failures, or other failures related to hardware, software or virus, or incomplete or late Entries. Any compromise to the fair and proper conduct of the Competition may result in the disqualification of an Entry or Participant, termination of the Competition, or other remedial action, at the sole discretion of NIST. NIST reserves the right in its sole discretion to extend or modify the dates of the Competition, and to change the terms set forth herein governing any phases taking place after the effective date of any such change. By entering, you agree to the terms set forth herein and to all decisions of NIST, the Judges, the Subject Matter Experts, and/or all of their respective agents, which are final and binding in all respects.

NIST is not responsible for: (1) Any incorrect or inaccurate information, whether caused by a Participant, printing errors, or by any of the equipment or programming associated with or used in the Competition; (2) unauthorized human intervention in any part of the Entry process for the Competition; (3) technical or human error that may occur in the administration of the Competition or the processing of Entries; or (4) any injury or damage to persons or property that may be caused, directly or indirectly, in whole or in part, from a Participant's participation in the Competition or receipt or use or misuse of an Award. If for any reason an Entry is confirmed

to have been deleted erroneously, lost, or otherwise destroyed or corrupted, the Participant's sole remedy is to submit another Entry in the Competition.

Termination and Disqualification

NIST reserves the authority to cancel, suspend, and/or modify the Competition, or any part of it, if any fraud, technical failures, or any other factor beyond NIST's reasonable control impairs the integrity or proper functioning of the Competition, as determined by NIST in its sole discretion.

NIST reserves the right to disqualify any Participant or Participant team it believes to be tampering with the Entry process or the operation of the Competition or to be acting in violation of any applicable rule or condition. Any attempt by any person to undermine the legitimate operation of the Competition may be a violation of criminal or civil law.

Verification of Potential Winner(s)

All potential winners are subject to verification by NIST, whose decisions are final and binding in all matters related to the Competition.

Potential winner(s) must continue to comply with all terms and conditions of the Competition Rules described in this notice and posted on the Event Web site as Official Rules, and winning is contingent upon fulfilling all requirements. In the event that a potential winner, or an announced winner, is found to be ineligible or is disqualified for any reason, NIST may make award, instead, to another Participant, as may be determined by the Judges.

Privacy and Disclosure Under FOIA

Personal and contact information is not collected by NIST for commercial or marketing purposes. Except as provided herein, information submitted throughout the Competition will be used only to communicate with Participants regarding Entries and/or the Competition. Participant Entries and submissions to the Competition may be subject to disclosure under the Freedom of Information Act (''FOIA'').

Authority: 15 U.S.C. 3719.

Kevin Kimball,

Chief of Staff.

[FR Doc. 2015–17865 Filed 7–21–15; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board Quarterly Board Meeting

AGENCY: National Assessment Governing Board, U.S. Department of Education.

ACTION: Announcement of open and closed meetings.

SUMMARY: This notice sets forth the agenda for the August 6–8, 2015 Quarterly Meeting of the National Assessment Governing Board (hereafter referred to as Governing Board). This notice provides information to members of the public who may be interested in attending the meeting or providing written comments on the meeting. The notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act (FACA).

DATES: The Quarterly Board meeting will be held on the following dates:

- August 6, 2015 from 8:30 a.m. to 6:15 p.m.
- August 7, 2015 from 8:30 a.m. to 5:30 p.m.
- August 8, 2015 from 7:30 a.m. to 12:00 p.m.

ADDRESSES: Westin Arlington Gateway, 801 North Glebe Road, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Executive Officer, 800 North Capitol Street NW., Suite 825, Washington, DC 20002, telephone: (202) 357–6938, fax: (202) 357–6945.

SUPPLEMENTARY INFORMATION:

Statutory Authority and Function: The National Assessment Governing Board is established under Title III—National Assessment of Educational Progress Authorization Act, Public Law 107–279. Information on the Board and its work can be found at *www.nagb.gov.*

The Board is established to formulate policy for the National Assessment of Educational Progress (NAEP). The Board's responsibilities include the following: Selecting subject areas to be assessed, developing assessment frameworks and specifications, developing appropriate student achievement levels for each grade and subject tested, developing standards and procedures for interstate and national comparisons, improving the form and use of NAEP, developing guidelines for reporting and disseminating results, and releasing initial NAEP results to the public.

Detailed Meeting Agenda: August 6–8, 2015

August 6: Committee Meetings

Assessment Development Committee: Closed Session: 8:30 a.m.–4:00 p.m.

Executive Committee: Open Session: 4:30 p.m.–5:20 p.m.; Closed Session: 5:20 p.m.–6:15 p.m.

August 7: Full Board and Committee Meetings

Full Board: Open Session: 8:30 a.m.–10:15 a.m.; Closed Session: 12:45 p.m. to 2:45 p.m.; Open Session 2:45 p.m.–5:30 p.m.

Committee Meetings

Assessment Development Committee (ADC): Open Session: 10:15 a.m.–11:10 a.m.; Closed Session: 11:10 a.m.–12:30 p.m.

Reporting and Dissemination Committee (R&D): Open Session: 10:15 a.m.–12:30 p.m.

Committee on Standards, Design and Methodology (COSDAM): Open Session: 10:15 a.m.–11:45 a.m.; Closed Session: 11:45 a.m.–12:30 p.m.

August 8: Full Board and Committee Meetings

Nominations Committee: Closed Session: 7:30 a.m.–8:15 a.m.

Full Board: Closed Session: 8:30 a.m.–10:00 a.m. Open Session 10:00 a.m.–12:00 p.m.

On August 6, 2015, from 8:30 a.m. to 4:00 p.m., the Assessment Development Committee will meet in closed session to review assessment items for the NAEP transition to digital-based assessments (DBA). The review will include secure items in mathematics at grades 4 and 8 for the 2016 pilot, in preparation for the 2017 operational assessment. The Committee's reviews and discussions on secure test items cannot be discussed in an open meeting to protect the confidentiality of the secure assessment materials. Premature disclosure of these results would significantly impede implementation of the NAEP assessment program, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 United States Code.

The Board's standing committees will meet to conduct regularly scheduled work, based on agenda items planned for this quarterly Board meeting, and follow up items as reported in the Board's committee meeting minutes available at *http://nagb.gov/what-we-do/board-committee-reports-and-agendas.html.*

The Executive Committee will convene in open session on August 6, 2015 from 4:30 p.m. to 5:20 p.m. and

thereafter in closed session from 5:20 p.m. to 6:15 p.m. During the closed session, the Executive Committee will receive and discuss cost estimates for implementing NAEP's Assessment Schedule for 2014–2024, and the implications of the cost and funding estimates for the NAEP Assessment Schedule and future NAEP activities will also be discussed. This meeting must be conducted in closed session because public disclosure of this information would likely have an adverse financial effect on the NAEP program by providing confidential cost details and proprietary contract costs of current contractors to the public. Discussion of this information would be likely to significantly impede implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of section 552b of Title 5 U.S.C.

On August 7, 2015, the full Board will meet in open session from 8:30 a.m. to 10:15 a.m. The Board will review and approve the August 6–7, 2015 Board meeting agenda and meeting minutes from the May 2015 Quarterly Board meeting. This session will be followed by the Chairman's remarks and welcome remarks from the Governing Board's new Executive Director, Bill Bushaw. Thereafter, the full Board will receive a briefing on the Trial Urban District Assessments (TUDA) and implications for education reforms from Michael Casserly, Executive Director of the Council of the Great City Schools. The briefing will be followed by update reports from the Acting Director of the Institute of Education Sciences, Sue Betka, and the Acting Commissioner of the National Center for Education Statistics, Peggy Carr. The Board will recess for Committee meetings from 10:15 a.m. to 12:30 p.m.

The Reporting and Dissemination Committee will meet in open session from 10:15 a.m. to 12:30 p.m.

The Committee on Standards, Design and Methodology (COSDAM) will meet in open session from 10:15 a.m. to 11:45 a.m. and thereafter in closed session from 11:45 a.m. to 12:30 p.m. During the closed session COSDAM will discuss information regarding analyses of the 2014 grade 8 Technology and Engineering Literacy (TEL) assessment, and discuss secure NAEP TEL data. This part of the meeting must be conducted in closed session because the analysis involves the use of secure data for the NAEP TEL assessment. Public disclosure of secure data would significantly impede implementation of the NAEP assessment program if conducted in open session. Such matters are protected by exemption 9(B) of section 552b of Title 5 U.S.C.

The Assessment Development Committee will meet in open session from 10:15 a.m. to 11:10 a.m. and thereafter in closed session from 11:10 a.m. to 12:30 p.m. During the closed session, the Committee will receive a briefing on transitioning NAEP to Digital-Based Assessments (DBA). The briefing will be in-depth, with discussion of secure NAEP reading and mathematics test questions for the 2017 operational assessments at grades 4 and 8, and secure items at grades 8 and 12 in U.S. history, civics, and geography for the 2018 operational assessments. This part of the meeting must be conducted in closed session because the items are to be used in NAEP assessments; public disclosure of secure test items would significantly impede implementation of the NAEP assessment program if conducted in open session. Such matters are protected by exemption 9(B) of section 552b of Title 5 U.S.C.

Following the Committee meetings, the Board will convene in closed session from 12:45 p.m. to 2:45 p.m. The closed session will for the Board to receive a briefing and discuss the NAEP 2015 Report Cards in Reading and Mathematics for grades 4 and 8 national and state data. This part of the meeting must be conducted in closed session because results of these NAEP assessments have been embargoed and are not ready for public release. Public disclosure of this information would likely have an adverse technical and financial impact on the NAEP program. Discussion of this information would be likely to significantly impede implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of section 552b of Title 5 U.S.C.

Thereafter, the Board will meet in open session from 2:45 p.m. to 5:00 p.m. From 3:15–4:15 p.m., the Board will meet in breakout sessions by groups comprised of NAGB members established by the Chairman to discuss the Governing Board's Strategic Planning Initiative. The Board will then convene from 4:30 p.m. to 5:30 p.m. to receive reports from the group breakouts and engage in discussions prior to taking action on the Governing Board's Strategic Planning Framework.

The August 7, 2015 session of the Board meeting will adjourn at 5:30 p.m.

On August 8, 2015, the Nominations Committee will meet in closed session from 7:30 a.m. to 8:15 a.m. to discuss candidates for six Board vacancies for terms beginning on October 1, 2016. The Committee's discussions pertain solely to internal personnel rules and practices of an agency and information of a personal nature where disclosure would constitute an unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of section 552b(c) of Title 5 of the United States Code.

On Saturday, August 8, the full Board will meet in closed session from 8:30 a.m. to 10:00 a.m. to discuss preliminary information regarding the 2014 grade 8 Technology and Engineering Literacy (TEL) assessment and achievement levels setting process. This part of the meeting must be conducted in closed session because it involves secure items and data for the NAEP TEL assessment. Public disclosure of secure items and data would significantly impede implementation of the NAEP assessment program if conducted in open session. Such matters are protected by exemption 9(B) of section 552b of Title 5 U.S.C.

From 10:15 a.m. to 11:15 a.m. the Board will discuss and take action on the Assessment Literacy Communications Plan. Outgoing Board members whose terms expire in September 2015 will provide remarks from 11:15 a.m. to 11:30 a.m.

The Board will receive reports from the standing committees and take action proposed by the Executive and Reporting Committees from 11:30 a.m. to 12:00 p.m. as follows:

1. Executive Committee: Election of Board Vice Chair for 2015–2016
2. Executive Committee: Budget Resolution on NAEP Funding
3. Reporting and Dissemination Committee: Release Plan for 2015 Reading and Mathematics Report Cards.

The August 8, 2015 meeting is scheduled to adjourn at 12:00 p.m.

Access to Records of the Meeting: Pursuant to FACA requirements, the public may also inspect the meeting materials at *www.nagb.gov* on Friday, August 7, 2015 by 7:00 a.m. ET. The official verbatim transcripts of the public meeting sessions will be available for public inspection no later than 30 calendar days following the meeting.

Reasonable Accommodations: The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the

requested auxiliary aid or service because of insufficient time to arrange it.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: Pub. L. 107–279, Title III—National Assessment of Educational Progress section 301.

Dated: July 16, 2015.

Mary Crovo,

Deputy Executive Director, National Assessment Governing Board (NAGB), U.S. Department of Education.

[FR Doc. 2015–17832 Filed 7–21–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF EDUCATION

Applications for New Awards; American Indian Vocational Rehabilitation Services—Training and Technical Assistance

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

*Overview Information:*American Indian Vocational Rehabilitation Services—Training and Technical Assistance Notice inviting applications for new awards for fiscal year (FY) 2015.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.250Z.

DATES: *Applications Available:* July 22, 2015.

Date of Pre-Application Webinar: July 30, 2015.

Deadline for Transmittal of Applications: August 21, 2015.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to provide training and technical assistance (TA) to governing bodies of Indian tribes that have received an American Indian Vocational Rehabilitation Services (AIVRS) grant under section 121(a) of the Rehabilitation Act of 1973, as amended (the Act). Under section 121(c)(3) of the Act, the Commissioner of the Rehabilitation Services Administration (RSA) makes grants to, or enters into contracts or other cooperative agreements with, entities that have experience in the operation of AIVRS programs to provide such training and TA on developing, conducting, administering, and evaluating these programs.

Priority: We are establishing this priority for the FY 2015 grant competition only in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1).

Absolute Priority: This priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

Background: The Workforce Innovation and Opportunity Act (WIOA) (Pub. L. 113–128), enacted in July of 2014, made significant changes to the Act, including adding provisions to the AIVRS program that require the reservation of funds to support training and TA. In particular, the new section 121(c) of the Act requires the Commissioner of RSA to reserve not less than 1.8 percent and not more than 2 percent of the funds set aside from the State vocational rehabilitation (VR) program (section 110(d) of the Act) for the AIVRS program to provide training and TA to governing bodies of Indian tribes that have received AIVRS grants under section 121(a) of the Act.

Under section 121(a) the Department currently supports 83 projects that provide VR services to American Indians with disabilities, consistent with each individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, so that they may prepare for, and engage in, high-quality competitive integrated employment that will increase opportunities for economic self-sufficiency.

To help determine funding priorities, section 121(c)(3) of the Act requires RSA to survey the governing bodies of Indian tribes operating AIVRS projects to identify their training and TA needs. RSA's survey of the AIVRS grantees conducted in January 2015 resulted in a 50 percent response rate and indicated training and TA needs in five primary areas: (1) Knowledge of applicable laws and regulations governing the AIVRS program; (2) staff development and service provision (*e.g.,* best practices for serving individuals with physical and mental disabilities, case management and case record documentation, eligibility determinations, and developing individualized plans for employment); (3) financial management (*e.g.,* budget management and compliance with applicable Federal grant administrative regulations and cost principles); (4) data collection, reporting, and performance measures; and (5) assistive technology (AT) (*e.g.,* knowledge of what AT is, evaluating the need for AT, use of AT, access to AT). Beginning in FY 2016, this survey will be conducted each year as part of the AIVRS grantees' annual reporting to the Department. We will consider the results of the survey in determining specific training and TA topics to be included each year in the training and TA cooperative agreement.

The priority is:

American Indian Vocational Rehabilitation Services—Training and Technical Assistance Program.

This priority supports a five-year cooperative agreement to establish an American Indian Vocational Rehabilitation Services (AIVRS) Training and Technical Assistance Center (Center) to provide three different types of training and technical assistance (TA) for AIVRS projects: (1) Intensive, sustained training and TA; [1] (2) targeted, specialized training and TA; [2] and (3) universal, general training and TA.[3] The Center will develop and

[1] For the purposes of this priority, ''intensive, sustained training and technical assistance'' means TA services often provided on-site and requiring a stable, ongoing relationship between the AIVRS—Training and Technical Assistance program staff and the training and TA recipient. ''Technical assistance services'' are defined as negotiated series of activities designed to reach a valued outcome. This category of training and TA should result in changes to policy, program, practice, or operations that support increased recipient capacity of improved outcomes at one or more systems levels.

[2] For the purposes of this priority, ''targeted, specialized training and technical assistance'' means TA based on needs common to multiple recipients and not extensively individualized. A relationship is established between the training and TA recipient and one or more training and TA center staff. This category of training and TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized training and TA.

[3] For the purposes of this priority, ''universal, general training and technical assistance'' means training and TA and information provided to independent users through their own initiative, resulting in minimal interaction with training and TA center staff and including one-time, invited or offered conference presentations by training and TA

provide these types of training and TA for AIVRS projects in the following priority areas:

(a) Applicable laws and regulations governing the AIVRS program;

(b) Promising practices for providing services to American Indians with disabilities;

(c) The delivery of services to American Indians with disabilities, including the determination of eligibility, case management, case record documentation, assessment, development of the individualized plan for employment, and placement into competitive integrated employment;

(d) Knowledge of assistive technology (AT), including what AT is, how to evaluate the need for AT, use of AT, and access to AT;

(e) Implementing professional development practices to ensure effective project coordination, administration, and management;

(f) Implementing appropriate financial and grant management practices to ensure compliance with OMB's Uniform Guidance (2 CFR 200) and the Education Department General Administrative Regulations (EDGAR); and

(g) Evaluating program performance, including data collection, data analysis, and reporting.

Specific topics for training and TA in each of these priority areas will be identified on an annual basis and in coordination with the Rehabilitation Services Administration (RSA).

Project Activities

To be considered for funding under this priority, the Center must, at a minimum, conduct the following activities in a culturally appropriate manner:

(a) Develop and provide intensive, sustained training and TA to a minimum of three AIVRS projects in the first year. For future years, the minimum number of AIVRS projects to receive intensive, sustained training and TA will be negotiated through the Cooperative Agreement. The Center must—

(1) Develop and implement training and TA consistent with AIVRS project activities and tailored to the specific needs and challenges of the AIVRS project receiving the intensive training and TA;

(2) Provide training and TA under an agreement with each AIVRS project receiving intensive training and TA that, at a minimum, details the purpose of the training and TA, intended outcomes, and requirements for the subsequent evaluation of the training and TA; and

(3) Assess the results of the training and TA 90 days after its completion to ensure that the recipient is able to apply effectively the training and TA, identify any issues or challenges in its implementation, and provide additional training and TA, either virtually or on-site, as needed;

(b) Provide a range of targeted, specialized training and TA in the topic areas described in this priority based on needs common to multiple AIVRS projects. The Center must follow-up with recipients of targeted, specialized training and TA in order to determine the effectiveness of the training and TA;

(c) Provide universal, general training and TA in the topic areas in this priority;

(d) Provide a minimum of two Webinars or video conferences in each of the topic areas in this priority to describe and disseminate up-to-date information, guides, examples, and emerging and promising practices in each area; and

(e) Develop new information technology (IT) platforms and systems, or modify existing platforms and systems, as follows:

(i) Develop and maintain a state-of-the-art IT platform sufficient to support Webinars, teleconferences, video conferences, and other virtual methods of dissemination of information and TA;

(ii) Develop and maintain a state-of-the-art archiving and dissemination system that is open and available to all AIVRS projects and that provides a central location for training and TA products for later use, including course curricula, audiovisual materials, Webinars, examples of promising practices related to the topic areas in this priority, the primary areas identified through the annual surveys completed by AIVRS projects, other topics identified by RSA, and other relevant TA products;

Note: All products produced by the Center must meet government and industry-recognized standards for accessibility; and

(iii) Ensure that all products, resources, and materials developed by the Center are widely disseminated across the AIVRS projects and reflect the AIVRS population and diversity among its communities to the maximum extent possible;

(f) Establish a community of practice [4] that will act as a vehicle for communication, an exchange of information among AIVRS projects, and a forum for sharing the results of training and TA projects that are in progress or have been completed;

(g) Conduct outreach to AIVRS projects so that they are aware of, and can participate in, training and TA activities; and

(h) Conduct an evaluation to determine the quality, relevance, and usefulness of the Center's training and TA, including the impact of the Center's activities on the ability of AIVRS grantees to manage effectively their projects and improve the delivery of VR services to American Indians with disabilities.

Application Requirements

To be funded under this priority, applicants must meet the application and administrative requirements in this priority. RSA encourages innovative approaches to meet these requirements, which are:

(a) Demonstrate in the narrative section of the application under ''Significance of the Proposed Project'' how the proposed project will—

(1) Use the applicant's knowledge and experience in the operation of AIVRS projects in order to provide training and TA for these projects;

(2) Address the AIVRS grantees' capacity to implement effectively an AIVRS project. To meet this requirement, the applicant must:

(i) Demonstrate knowledge of emerging and promising practices in the topic areas in this priority;

(ii) Demonstrate knowledge of current RSA guidance and Federal initiatives designed to improve the functioning of grant programs in general and grant programs for American Indian tribes in particular; and

(iii) Present information about the difficulties that AIVRS grantees have encountered in implementing effective AIVRS projects;

(b) Demonstrate in the narrative section of the application under ''Quality of Project Design'' how the proposed project will—

(1) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes;

(ii) A plan for how the proposed project will achieve its intended outcomes;

center staff. This category of training and TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the training and TA center's Web site by independent users. Brief communications by training and TA center staff with recipients, either by telephone or email, are also considered universal, general training and TA.

[4] For more information on communities of practice, see: *www.tadnet.org/pages/510.*

(iii) A plan for communicating and coordinating with RSA and key staff in AIVRS projects; and

(iv) A draft training module for one of the topic areas in this priority to demonstrate how participants would be trained in that area. The module is a required attachment in the application and must include, at a minimum, the following:

(A) The goals and objectives of this training module;

(B) A specific list of what participants should know and be able to do as a result of successfully completing the module;

(C) Up-to-date resources, publications, applicable laws and regulations, and other materials that may be used to develop the module;

(D) Exercises that will provide an opportunity for application of the subject matter; and

(E) A description of how participant knowledge, skills, and abilities will be measured;

(2) Use a logic model [5] to develop project plans and activities that includes, at a minimum, the goals, activities, outputs, and outcomes of the proposed project;

(3) Be based on current research and make use of emerging and promising practices, and evidence-based practices, where available. To meet this requirement the applicant must describe—

(i) The current research on the emerging and promising practices in the topic areas in this priority; and

(ii) How the Center will incorporate current research and promising and evidence-based practices, including research about adult learning principles and implementation science, in the development and delivery of its products and services;

(4) Develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement the applicant must describe—

(i) Its proposed approach to universal, general training and TA;

(ii) Its proposed approach to targeted, specialized training and TA, which must identify—

(A) The intended recipients of the products and services under this approach, including the categories of personnel that would be receiving the training and TA;

(B) Its proposed medium for providing targeted, specialized training and TA; and

(C) Its proposed methodology for determining topics for the targeted, specialized training and TA;

(iii) Its proposed approach to intensive, sustained training and TA, which must identify—

(A) Its proposed approach to identifying recipients for intensive, sustained training and TA;

(B) Its proposed methodology for providing intensive, sustained training and TA to recipients; and

(C) Its proposed approach to assessing the training and TA needs of recipients, including their ability to respond effectively to the training and TA;

(5) Develop products and implement services to maximize the proposed project's efficiency. To address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the intended project outcomes; and

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration;

(c) Demonstrate in the narrative section of the application under ''Adequacy of Project Resources'' how—

(1) The applicant and any key partners possess adequate resources to carry out the proposed activities; and

(2) The proposed costs are reasonable in relation to the anticipated results and benefits;

(d) Demonstrate in the narrative section of the application under ''Quality of Project Personnel'' how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have historically been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate; and

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to provide training and TA to AIVRS projects in each of the topic areas in this priority and to achieve the project's intended outcomes;

(e) Demonstrate in the narrative section of the application under ''Quality of the Management Plan'' how the proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(1) Clearly defined roles and responsibilities for two full-time key project personnel designated to the Center through the entire project period and for consultants and subcontractors, as applicable;

(2) Timelines and milestones for accomplishing the project tasks;

(3) By using a personnel loading chart, detail project activities through the entire project period, key personnel and any consultants or subcontractors that will be allocated to each activity, and the designated level of effort for each of those activities;

(4) How the personnel allocations in the personnel loading chart are appropriate and adequate to achieve the project's intended outcomes, including an assurance that all personnel will communicate with stakeholders and RSA in a timely fashion;

(5) How the proposed management plan will ensure that the training and TA products developed through this cooperative agreement are complete, accurate, and of high quality; and

(6) How the proposed project will benefit from a diversity of perspectives, including AIVRS projects and consumers, State VR agencies, TA providers, and policy makers, in its development and operation;

(f) Demonstrate in the narrative section of the application under ''Quality of the Evaluation Plan'' how the applicant proposes to collect and analyze data on specific and measurable goals, objectives, and intended outcomes of the project, including the effectiveness of the training and TA provided. To address this requirement, the applicant must describe—

(i) Its proposed evaluation methodologies, including instruments, data collection methods, and analyses;

(ii) Its proposed standards or targets for determining effectiveness;

(iii) How it will use the evaluation results to examine the effectiveness of its implementation and its progress toward achieving the intended outcomes; and

(iv) How the methods of evaluation will produce quantitative and qualitative data that demonstrate whether the project and individual training and TA activities achieved their intended outcomes.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities. Section 437(d)(1) of GEPA, however, allows the Secretary to exempt from rulemaking requirements regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for this program under the revised authority in section 121(c) of the

[5] For purposes of this priority, a ''logic model'' is as defined in 34 CFR 77.1(c). The following Web sites provide more information on logic models: *www.researchutilization.org/matrix/logicmodel_resource3c.html* and *www.tadnet.org/pages/589.*

Rehabilitation Act and therefore qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forego public comment on the priority under section 437(d)(1) of GEPA. This priority will apply to the FY 2015 grant competition only.

Program Authority: 29 U.S.C. 741.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 81, 82, 84, and 86. (b) The OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended in 2 CFR part 3474.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: $704,880.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Continuing the Fourth and Fifth Years of the Program:

In deciding whether to continue funding the Center for the fourth and fifth years, the Department, as part of the review of the cooperative agreement, the application narrative, and the annual performance reports will consider the degree to which the Center demonstrates substantial progress in providing intensive, sustained training and TA to AIVRS projects; targeted, specialized training and TA to AIVRS projects; and universal, general training and TA to AIVRS projects, and the extent to which the training and TA provided has had an impact on the ability of AIVRS projects to implement appropriate practices in the seven areas outlined in the priority.

III. Eligibility Information

1. *Eligible Applicants:* State, local, or tribal governments, non-profit organizations, or institutions of higher education that have experience in the operation of AIVRS programs.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.250Z.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Content and Form of Application Submission: Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. Because of the limited time available to review applications and make a recommendation for funding, we strongly encourage applicants to limit the application narrative to no more than 45 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

In addition to the page-limit guidance on the application narrative section, we recommend that you adhere to the following page limits, using the standards listed above: (1) The abstract should be no more than one page, (2) the resumes of key personnel should be no more than two pages per person, and (3) the bibliography should be no more than three pages. A personnel loading chart and a draft training model are required attachments in the application. There are no page limits or standards for these attachments. The only optional materials that will be accepted are letters of support. Please note that our reviewers are not required to read optional materials.

Please note that any funded applicant's application abstract will be made available to the public.

3. *Submission Dates and Times:*

Applications Available: July 22, 2015.

Date of Pre-Application Webinar: Interested parties are invited to participate in a pre-application Webinar. The pre-application Webinar with staff from the Department will be held on July 30, 2015, at 2:00 p.m., Washington, DC time. The Webinar will be recorded. For further information about the pre-application Webinar, contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Deadline for Transmittal of Applications: August 21, 2015.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34

CFR part 79. However, under 34 CFR 79.8(a), we waive intergovernmental review in order to make an award by the end of FY 2015.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry (CCR)), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data entered into the SAM database by an entity. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, you will need to allow 24 to 48 hours for the information to be available in Grants.gov and before you can submit an application through Grants.gov.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/web/grants/register.html.*

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the AIVRS—Training and Technical Assistance program, CFDA number 84.250Z, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the AIVRS—Training and Technical Assistance program at *www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.250, not 84.250Z).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a

password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that the problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system;

and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Thomas Finch, U.S. Department of Education, 400 Maryland Avenue SW., Room 5147, Washington, DC 20202–2800. FAX: (202) 245–7592.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.250Z) LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.250Z) 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the

Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Government Performance and Results Act of 1993 (GPRA) directs Federal departments and agencies to improve the effectiveness of their programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals.

The goal of this grant is to provide training and TA to governing bodies of Indian tribes located on Federal and State reservations (and consortia of such governing bodies) that receive grants under section 121(a) of the Act.

Pursuant to GPRA, the Department is in the process of developing performance measures for this program to assess the success of the grantee in meeting the training and TA goals of this program. In general, these measures will assess the quality, relevance, and usefulness of the training and TA provided by the Center, as well as the performance of the Center in achieving the project's intended outcomes with respect to the specific topics in each of the priority areas specified annually by RSA in the cooperative agreement. The grantee will be required to collect and annually report qualitative and quantitative data related to its performance on these measures in the Center's annual and final performance reports to the Department. The data used must be valid and verifiable.

5. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Thomas Finch, U.S. Department of Education, 400 Maryland Avenue SW., Room 5147, Potomac Center Plaza (PCP), Washington, DC 20202–2800. Telephone: (202) 245–7343 or by email: *tom.finch@ed.gov.*

If you use a TDD or a TTY, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting Wendell Bell, U.S. Department of Education, 400 Maryland Avenue SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: July 17, 2015.

Michael K. Yudin,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2015–17995 Filed 7–21–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Independent Living Services for Older Individuals Who Are Blind—Independent Living Services for Older Individuals Who Are Blind Training and Technical Assistance Program

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Overview Information: Independent Living Services for Older Individuals Who Are Blind—Independent Living Services for Older Individuals Who Are Blind Training and Technical Assistance Program Notice inviting applications for new awards for fiscal year (FY) 2015.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.177Z.

DATES:

Applications Available: July 22, 2015.

Deadline for Transmittal of Applications: August 21, 2015.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to provide training and technical assistance (TA) to designated State agencies (DSAs) (the State agencies that provide vocational rehabilitation services to individuals who are blind) that receive grant funding under the Independent Living Services for Older Individuals who are Blind (OIB) program and to other service providers that receive OIB program funding from DSAs to provide services to consumers. Such training and TA is designed to improve the administration, operation, and performance of the OIB program.

Priority: We are establishing this priority for the FY 2015 grant competition only, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1).

Absolute Priority: This priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Independent Living Services for Older Individuals Who Are Blind (OIB) Training and Technical Assistance.

Background:

The Workforce Innovation and Opportunity Act (WIOA), enacted in July of 2014, made significant changes to the Rehabilitation Act of 1973 (the Act), including adding provisions to the OIB program that require the reservation of funds to support training and technical assistance. In particular, section 751A of the Act requires the Commissioner of the Rehabilitation Services Administration (RSA) to reserve not less than 1.8 percent and not more than 2 percent of the funds appropriated to the OIB program to provide training and technical assistance to DSAs or other providers of OIB services that receive OIB program funds.

The purpose of the OIB program is to: (1) Provide independent living (IL) services to older individuals who are blind; (2) conduct activities that will improve or expand services for these individuals; and (3) conduct activities to help improve public understanding of these individuals' challenges. An ''older individual who is blind'' is an individual age 55 or older whose significant visual impairment makes competitive employment extremely difficult to attain but for whom independent living goals are feasible. Through these services and activities, the program seeks to improve independent living options for older individuals who are blind and increase their independence and self-sufficiency.

To help determine funding priorities, section 751A of the Act requires RSA to conduct a survey of DSAs that receive OIB program grants to determine their training and TA needs. In response to this requirement, RSA added a new section to the annual report submitted by DSAs (Section VII Training and Technical Assistance) to obtain this information.

Survey results from the most recent annual report submitted by each of the OIB program grantees identified the need for training and TA in the following areas: Fiscal and management practices, annual report (Form RSA 7–OB) reporting requirements, data analysis and program performance, service provision and service delivery, promising practices, resources and information, and outreach.

Priority:

This priority supports a cooperative agreement to establish an OIB Training and Technical Assistance Center (Center) to provide sustained training and TA—generalized, targeted, and intensive—to DSAs funded under the OIB program and to any service providers the DSAs fund to provide services directly to consumers. The Center will develop and provide training and TA to DSAs and other service providers funded under the OIB program in the following general topic areas:

(a) Community outreach;

(b) Best practices in the provision and delivery of services;

(c) Program performance, including data reporting and analysis; and

(d) Financial and management practices, including practices to ensure compliance with grant administration requirements.

Project Activities

To meet the requirements of this priority, the Center must, at a minimum, conduct the following activities:

(a) Annually provide intensive training and TA to a minimum of three DSAs and other service providers on the topic areas in this priority. The TA must be:

(1) Consistent with the project activities and tailored to the specific needs and challenges of the DSA or other service provider receiving the intensive training and TA;

(2) Provided under an agreement with each DSA or other service provider that, at a minimum, details the purpose, intended outcomes, and requirements for subsequent evaluation of the training and TA; and

(3) Assessed 90 days after completion to ensure that DSAs and other service providers receiving intensive training and TA are applying it effectively and to address any issues or challenges in its implementation.

(b) Provide a range of targeted and general training and TA products and services on the general topic areas in this priority. The training and TA should include, at a minimum, the following activities:

(1) Provide a minimum of two Webinars or video conferences on each of the topic areas in this priority to describe and disseminate information about emerging and best practices in each area.

(2) Develop new information technology (IT) platforms or systems, or modify existing platforms and systems, as follows:

(i) Develop and maintain a state-of-the-art IT platform sufficient to support Webinars, teleconferences, video conferences, and other virtual methods of dissemination of information and training and TA;

(ii) Develop and maintain a state-of-the-art archiving and dissemination system that is open and available to the public and that provides a central location for later use of training and TA products, including course curricula, audiovisual materials, Webinars, examples of emerging and best practices related to the topic areas in this priority, and any other training and TA products.

Note: All products produced by the Center must meet government and industry-recognized standards for accessibility.

(c) Conduct outreach to DSAs so that they are aware of and can participate in training and TA activities.

(d) Establish a community of practice [1] that will act as a vehicle for communication, an exchange of information among DSAs and other service providers, and a forum for sharing the results of training and TA projects that are in progress or have been completed.

(e) Communicate and coordinate, on an ongoing basis, with other federally funded training and TA projects, particularly Department-funded projects and the Training and Technical Assistance grant for Centers for Independent Living supported by the Department of Health and Human Services, to ensure that training and TA activities are complementary and non-duplicative;

(f) Conduct an evaluation to determine the impact of the Center's training and TA on the DSAs and other service providers that received the Center's services.

Application Requirements

To be funded under this priority, applicants must meet the application and administrative requirements in this priority. RSA encourages innovative approaches to meet these requirements, which are:

(a) Demonstrate, in the narrative section of the application under ''Significance of the Project,'' how the proposed project will—

(1) Address DSAs' capacity to implement effectively an OIB program. To meet this requirement, the applicant must:

(i) Demonstrate knowledge of emerging and best practices in the topic areas in this priority;

(ii) Demonstrate knowledge of current RSA guidance and State and Federal initiatives designed to improve the functioning of grant programs in general, the OIB program in particular, and independent living outcomes for older individuals who are blind; and

(iii) Present information about the difficulties that DSAs and service providers have encountered in implementing effective OIB programs.

(2) Increase both the efficiency and effectiveness of the OIB program.

(b) Demonstrate, in the narrative section of the application under ''Quality of Project Services,'' how the proposed project will—

(1) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes;

(ii) A plan for how the proposed project will achieve its intended outcomes;

(iii) A plan for communicating and coordinating with key staff in DSAs and other service providers; and

(iv) A draft training module for one of the topic areas in this priority to serve as an example of how participants would be trained in that area. The module is a required attachment in the application and must include, at a minimum, the following:

(A) The goals and objectives of this training module;

(B) A specific list of what participants should know and be able to do as a result of successfully completing the module;

(C) Up-to-date resources, publications, applicable laws and regulations, and other materials that may be used to supplement the module;

(D) Exercises that will provide an opportunity for application of the module's subject matter; and

(E) A description of how participant knowledge, skills, and abilities will be measured.

(2) Use a logic model to develop project plans and activities that includes, at a minimum, the goals, activities, outputs, and outcomes of the proposed project.

Note: For purposes of this priority, a ''logic model'' is defined in 34 CFR 77.1(c). The following Web sites provide more information on logic models: *www.researchutilization.org/matrix/logicmodel_resource3c.html* and *www.tadnet.org/pages/589.*

(3) Be based on current research and make use of emerging and promising practices, and evidence-based practices, where available. To meet this requirement, the applicant must describe—

(i) The current research on the emerging and promising practices in the topic areas in this priority; and

(ii) How the Center will incorporate current research and promising and evidence-based practices, including research about adult learning principles and implementation science, in the development and delivery of its products and services.

(4) Develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe—

(i) Its proposed approach to universal, general training and TA; [2]

(ii) Its proposed approach to targeted, specialized training and TA,[3] which must identify—

(A) The intended recipients of the products and services under this approach, including the categories of personnel that would be receiving the training and TA;

(B) Its proposed medium for providing targeted, specialized training and TA; and

(C) Its proposed methodology for determining topics for the targeted, specialized training and TA.

(iii) Its proposed approach to intensive, sustained training and TA,[4] which must identify—

(A) Its proposed approach to identifying recipients for intensive, sustained training and TA products and services;

(B) Its proposed approach to assessing the training and TA needs of recipients, including their ability to respond effectively to the training and TA; and

(C) Its proposed methodology for providing intensive, sustained training and TA.

[1] For more information on communities of practice, see *www.tadnet.org/pages/510.*

[2] For the purposes of this priority, ''universal, general training and technical assistance'' means technical assistance and information provided to independent users through their own initiative, resulting in minimal interaction with technical assistance center staff and including one-time, invited or offered conference presentations by technical assistance center staff. This category of technical assistance also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the technical assistance center's Web site by independent users. Brief communications by technical assistance center staff with recipients, either by telephone or email, are also considered universal, general technical assistance.

[3] For the purposes of this priority, ''targeted, specialized training and technical assistance'' means technical assistance based on needs common to multiple recipients and not extensively individualized. A relationship is established between the technical assistance recipient and one or more technical assistance center staff. This category of technical assistance includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized technical assistance.

[4] For the purposes of this priority, ''intensive, sustained training and TA'' means training and TA services often provided on-site and requiring a stable, ongoing relationship between the TA center staff and the TA recipient. ''TA services'' are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

(5) Develop products and implement services to maximize the project's efficiency. To address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the intended project outcomes; and

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration.

(c) Demonstrate, in the narrative section of the application under ''Quality of Evaluation Plan,'' how the proposed project will—

(1) Measure and track the effectiveness of the training and TA provided. To meet this requirement, the applicant must describe its proposed approach to—

(i) Collecting data on the effectiveness of each training and TA activity from DSAs and other service providers, or other sources, as appropriate; and

(ii) Analyzing the collection of data to determine the effectiveness of each training and TA activity using any proposed standards or targets for determining effectiveness.

(2) Collect and analyze data on specific and measurable goals, objectives, and progress on intended outcomes of the project to measure and track the effectiveness of the training and TA provided. To address this requirement, the applicant must describe—

(i) Its proposed evaluation methodologies, including instruments, data collection methods, and analyses;

(ii) Its proposed standards or targets for determining effectiveness;

(iii) How it will use the evaluation results to examine the effectiveness of its implementation and its progress toward achieving the intended outcomes; and

(iv) How the methods of evaluation will produce quantitative and qualitative data that demonstrate whether the project and individual training and TA activities achieved their intended outcomes.

(d) Demonstrate, in the narrative section of the application under ''Quality of Project Personnel,'' how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate; and

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to provide training and TA to DSAs and other service providers in each of the topic areas in this priority and to achieve the project's intended outcomes.

(e) Demonstrate, in the narrative section of the application under ''Adequacy of Project Resources,'' how—

(1) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(2) The proposed costs are reasonable in relation to the anticipated results and benefits.

(f) Demonstrate, in the narrative section of the application under ''Quality of the Management Plan,'' how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks.

(2) Key project personnel and any consultants and subcontractors will be allocated to the project and how these allocations are appropriate and adequate to achieve the project's intended outcomes, including an assurance that such personnel will have adequate availability to ensure timely communications with stakeholders and RSA;

(3) The proposed management plan will ensure that the products and services provided are of high quality; and

(4) The proposed project will benefit from a diversity of perspectives, including those of State and local personnel, training and TA providers, policy makers, OIB program consumers, and intended beneficiaries of the training, among others, in its development and operation.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities. Section 437(d)(1) of GEPA, however, allows the Secretary to exempt from rulemaking requirements, regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for this program under section 751A of the Act, as amended by WIOA (29 U.S.C. 796j–1), and therefore qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forego public comment on the priority under section 437(d)(1) of GEPA. This priority will apply to the FY 2015 grant competition only.

Program Authority: 29 U.S.C. 796j–1.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 81, 82, 84, and 86. (b) The Office of Management and Budget (OMB) Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended in 2 CFR part 3474.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: $596,373.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* State and public or non-profit agencies and organizations and institutions of higher education that have the capacity to provide training and TA in the provision of IL services for older individuals who are blind and have demonstrated through their application a capacity to provide the level of training and TA as indicated in the priority section of this notice.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program as follows: CFDA number 84.177Z.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. a. *Content and Form of Application Submission:*

Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

b. *Submission of Proprietary Information:*

Given the types of projects that may be proposed in applications for the Independent Living Services for Older Individuals Who Are Blind Training and Technical Assistance program, an application may include business information that the applicant considers proprietary. The Department's regulations define ''business information'' in 34 CFR 5.11.

Because the funded applicant's abstract will be made available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you feel is exempt from disclosure under Exemption 4 of the Freedom of Information Act. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Submission Dates and Times:*

Applications Available: July 22, 2015.

Deadline for Transmittal of Applications: August 21, 2015.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. However, under 34 CFR 79.8(a), we waive intergovernmental review in order to make an award by the end of FY 2015.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry (CCR)), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data entered into the SAM database by an entity. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, you will need to allow 24 to 48 hours for the information to be available in Grants.gov and before you can submit an application through Grants.gov.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *http://www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/web/grants/register.html.*

7. *Other Submission Requirements:*

Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Independent Living Services for Older Individuals Who Are Blind Training and Technical Assistance program, CFDA number 84.177Z, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is

provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Independent Living Services for Older Individuals Who Are Blind Training and Technical Assistance program at *www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.177, not 84.177Z).

Please note the following:

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov.*

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material. Additional, detailed information on how to attach files is in the application instructions.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system;

and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Mary Williams, U.S. Department of Education, 400 Maryland Avenue SW., Room 5144, PCP, Washington, DC 20202–2800. FAX: (202) 245–7593

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.177Z), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.177Z), 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the program under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from the selection criteria found in EDGAR at 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this program, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the program. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www2.ed.gov/print/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Government Performance and Results Act of 1993 directs Federal departments and agencies to improve the effectiveness of their programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals.

The goal of this grant is to provide training and TA designed to improve the operation and performance of OIB programs to eligible DSAs and other service providers that receive funding under chapter 2 of title VII of the Act, as amended by WIOA.

To assess the success of the grantee in meeting the training and TA goals of this program, the Department is in the process of developing performance measures. In general, these measures will assess the quality, relevance, and usefulness of the training and TA provided by the Center, as well as the performance of the Center in achieving the project's intended outcomes in the specific topics in each priority area established annually by RSA in the cooperative agreement.

The grantee will be required to collect and annually report data showing its performance on these measures in the

Center's annual and final performance reports to the Department.

The annual performance report must include both quantitative and qualitative information sufficient to assess the quality, relevance, and usefulness of the training and TA provided by the Center and the progress toward training and TA objectives for that year. The data used must be valid and verifiable.

The annual performance reports must provide, at a minimum, specific information on the number of training and TA activities conducted by the Center, the topics of these activities, the type of training and TA provided (*i.e.,* intensive, targeted, general), the number and types of participants served (*i.e.,* DSAs or other providers of services under the OIB program), and summary data from participant evaluations.

5. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Mary Williams, U.S. Department of Education, 400 Maryland Avenue SW., Room 5144, PCP, Washington, DC 20202–2800. Telephone: (202) 245–7586 or by email: *mary.williams@ed.gov*.

If you use a TDD or a TTY, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting Wendell Bell, U.S. Department of Education, 400 Maryland Avenue SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: July 17, 2015.

Michael K. Yudin,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2015–17996 Filed 7–21–15; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meetings

AGENCY: Election Assistance Commission

DATE AND TIME: Tuesday, July 28, 2015 at 1:00 p.m.

PLACE: The Grand Hyatt Hotel, 1000 H St NW., Washington, DC 20001, Phone: (202) 582–1234.

STATUS: This meeting will be open to the public.

ITEMS FOR DISCUSSION:

- EAC Transition Report Regarding Accessibility Awareness
- Disability Research
- Disability Access and Study of Online Voter Registration
- Disability Rights—Technical Assistance to Election Officials and Poll Worker Training Materials
- Voting and the Visually Impaired
- 2014 Election Administration and Voting Survey (EAVS)
- Advisory Opinions
- EAC Future VVSG Working Group White Paper: The Goals for Future Federal Voting System Standards Development Efforts

AGENDA: The Commission will receive a presentation on an EAC Transition Report regarding accessibility awareness. The Commission will receive presentations on the following topics: Disability Research; Disability Access and Study of Online Voter Registration; Disability Rights and Technical Assistance to Election Officials and Poll Worker Training Materials; and Voting and the Visually Impaired. The Commission will receive a presentation on the 2014 Election Administration and Voting Survey (EAVS). The Commission may consider future development goals of the voluntary voting system guidelines (VVSG) presented in a Future VVSG Working Group White Paper. The Commission will consider advisory opinions. The Commission may consider other administrative matters.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, Telephone: (301) 563–3961.

Submitted: July 20, 2015.

Bryan Whitener,

Director of Communications & Clearinghouse.

[FR Doc. 2015–18099 Filed 7–20–15; 4:15 pm]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

[FE Docket No. 15–103–LNG]

Freeport LNG Development, L.P.; Application for Blanket Authorization To Export Previously Imported Liquefied Natural Gas on a Short-Term Basis

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application (Application), filed on June 25, 2015, by Freeport LNG Development, L.P. (Freeport LNG), requesting blanket authorization to export liquefied natural gas (LNG) previously imported into the United States from foreign sources in an amount up to the equivalent of 24 billion cubic feet (Bcf) of natural gas on a short-term or spot market basis for a two-year period commencing on July 19, 2015.[1] Freeport LNG seeks authorization to export the LNG from the Freeport LNG Terminal located on Quintana Island, Texas, to any country with the capacity to import LNG via ocean-going carrier and with which trade is not prohibited by U.S. law or policy. Freeport LNG states that it does not seek authorization to export any domestically produced natural gas or LNG. DOE/FE

[1] Freeport LNG's current blanket authorization to export previously imported LNG, granted in DOE/FE Order No. 3317 on July 19, 2013, extends through July 18, 2015 (FE Docket No. 13–51–LNG).

notes that Freeport LNG currently holds a blanket authorization to import LNG from various international sources by vessel in an amount up to the equivalent of 30 Bcf of natural gas.[2] Freeport LNG is requesting this authorization both on its own behalf and as agent for other parties who hold title to the LNG at the time of export. The Application was filed under section 3 of the Natural Gas Act (NGA). Additional details can be found in Freeport LNG's Application, posted on the DOE/FE Web site at: *http://energy.gov/fe/downloads/freeport-lng-development-lp-fe-dkt-no-15–103-lng.* Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, August 20, 2015.

ADDRESSES:

Electronic Filing by Email fergas@hq.doe.gov.

Regular Mail

U.S. Department of Energy (FE–34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.)

U.S. Department of Energy (FE–34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Beverly Howard, or Larine Moore, U.S. Department of Energy (FE–34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9387; (202) 586–9478.

Cassandra Bernstein, U.S. Department of Energy, Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586–9793.

SUPPLEMENTARY INFORMATION:

DOE/FE Evaluation

The Application will be reviewed pursuant to section 3 of the NGA, as amended, and the authority contained in DOE Delegation Order No. 00–002.00N (July 11, 2013) and DOE Redelegation Order No. 00–006.02 (Nov. 17, 2014). In reviewing this LNG export application, DOE will consider domestic need for the gas, as well as any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this application should comment in their responses on these issues.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Emailing the filing to *fergas@hq.doe.gov,* with FE Docket No. 15–103–LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office of Oil and Gas Global Security and Supply at the address listed in **ADDRESSES;** or (3) hand delivering an original and three paper copies of the filing to the Office of Oil and Gas Global Supply at the address listed in **ADDRESSES**. All filings must include a reference to FE Docket No. 15–103–LNG. **PLEASE NOTE:** If submitting a filing via email, please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

A decisional record on the Application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The Application is available for inspection and copying in the Division of Natural Gas Regulatory Activities docket room, Room 3E–042, 1000 Independence Avenue, SW., Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Issued in Washington, DC, on July 13, 2015.

John A. Anderson,

Director, Office of Oil and Gas Global Security and Supply, Office of Oil and Natural Gas.

[FR Doc. 2015–17980 Filed 7–21–15; 8:45 am]

BILLING CODE 6450–01–P

[2] *Freeport LNG Development, L.P.,* DOE/FE Order No. 3379, FE Docket No. 13–148–LNG, Order Granting Blanket Authorization to Import Liquefied Natural Gas from Various International Sources by Vessel (Jan. 9, 2014).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL15–1–001]

Cost Recovery Mechanisms for Modernization of Natural Gas Facilities; Order Denying Request For Clarification

Before Commissioners: Norman C. Bay, Chairman; Philip D. Moeller, Cheryl A. LaFleur, Tony Clark, and Colette D. Honorable.

1. On April 16, 2015, the Commission issued a policy statement in the referenced proceeding to provide greater certainty regarding the ability of interstate natural gas pipelines to recover the costs of modernizing their facilities and infrastructure to enhance the efficient and safe operation of their systems.[1] The *Policy Statement* explains the standards the Commission will require interstate natural gas pipelines to satisfy in order to establish simplified mechanisms, such as trackers or surcharges, to recover certain costs associated with replacing old and inefficient compressors and leak-prone pipes and performing other infrastructure improvements and upgrades to enhance the efficient and safe operation of their pipelines. On May 15, 2015, Process Gas Consumers Group (PGC) and the American Forest and Paper Association (AF&PA)(jointly Requesters) filed, pursuant to 18 CFR 385.212 (2014), a joint ''Request for Clarification'' of the *Policy Statement*.[2] As discussed more fully below, the Commission denies the requested clarifications of the *Policy Statement.*

I. Background

A. Policy Statement

2. The *Policy Statement* established a process to allow interstate natural gas pipelines to seek to recover certain capital expenditures made to modernize system infrastructure through a surcharge mechanism, subject to conditions intended to ensure that the resulting rates are just and reasonable and protect natural gas consumers from excessive costs. Recognizing that historically the Commission has required interstate natural gas pipelines to design their transportation rates based on projected units of service, the Commission found in the *Policy Statement* that recent governmental safety and environmental initiatives have raised the probability that interstate natural gas pipelines will soon face increased costs to enhance the safety and reliability of their systems. The Commission issued the *Policy Statement* in an effort to address these potential costs and to ensure that existing Commission ratemaking policies do not unnecessarily inhibit interstate natural gas pipelines' ability to expedite needed or required upgrades and improvements, such as replacing old and inefficient compressors and leak-prone pipelines. The *Policy Statement* adopted five guiding standards a pipeline would have to satisfy for the Commission to approve a proposed modernization cost tracker or surcharge. Those criteria are (1) Review of Existing Base Rates; (2) Defined Eligible Costs; (3) Avoidance of Cost Shifting; (4) Periodic Review of the Surcharge and Base Rates; and (5) Shipper Support.

3. The *Policy Statement* addressed how the Commission would apply those standards, and noted that ''the Policy Statement will be most effective and efficient if designed according to flexible parameters that will allow for accommodation of the particular circumstances of each pipeline's circumstances. Maintaining a transparent policy with flexible standards will best allow pipelines and their customers to negotiate just and reasonable, and potentially mutually agreeable, cost recovery mechanisms to address the individual safety, reliability, regulatory compliance and other infrastructure issues facing that pipeline.'' [3] The Commission also stated that ''while we are imposing specific conditions on the approval of any proposed modernization cost tracker, leaving the parameters of those conditions reasonably flexible will be more productive in addressing needed and required system upgrades in a timely manner. Further, consistent with this approach, the Commission will be able to evaluate any proposals in the context of the specific facts relevant to the particular pipeline system at issue.'' [4]

B. Request for Clarification

4. In the Request for Clarification, the Requesters seek what they assert is ''clarification'' of six points related to the *Policy Statement.* Specifically they request the Commission clarify (1) that pipelines must provide actual cost and revenue information, based on twelve months of operation, including the type of data required in section 154.312 of the Commission's regulations, to justify its existing rates under standard 1; (2) the party responsible for paying modernization surcharges in existing capacity release arrangements; (3) the formal procedures for conducting the collaborative process to ensure all stakeholders are invited and included in meetings; (4) that the Commission intends the pipeline to work with each shipper sector in the collaborative process; (5) that if a pipeline has over-collected through a surcharge or tracker such that its rates are later found unjust and unreasonable the pipeline must pay refunds calculated from the date a protest or complaint was filed; and (6) that pipelines may not seek to implement a modernization tracker or surcharge until the October 1, 2015 effective date of the *Policy Statement.*

5. On June 1, INGAA and Tenaska filed answers to the request for clarification. INGAA asserts the clarification request raises issues that were addressed by the *Policy Statement* and attempts to impose added burdens and restrictions not required by the *Policy Statement,* and as such should be rejected as an impermissible request for rehearing.[5] INGAA further states that even if the requests can be considered requests for clarification, they are unnecessary because contrary to the assertion of Requesters, the *Policy Statement's* resolution of the issues raised is clear. Tenaska urges the Commission to reject the request for clarification of the cost responsibility for modernization charges in the capacity release context, stating that to do so would preemptively resolve a bilateral contract issue against replacement shippers. NGSA makes similar comments, stating that the issue of cost responsibility for modernization surcharges is one for the parties to the contracts, and that a generic determination by the Commission will inhibit contract negotiations.

6. As discussed more fully below, the Commission denies the requests for clarification and declines to adopt the suggested formal procedures.

II. Discussion

7. The Commission issued the *Policy Statement* in order to provide guidance to the industry as to how the Commission will evaluate proposals by interstate natural gas pipelines for the recovery of infrastructure modernization costs. As we stated in the *Policy Statement,* the Commission intends the standards a pipeline must satisfy to implement a modernization cost tracker ''to be sufficiently flexible so as not to require any specific form of compliance but to allow pipelines and their customers to reach reasonable accommodations based on the specific

[1] *Cost Recovery Mechanisms for Modernization of Natural Gas Facilities,* 151 FERC ¶ 61,047 (2015) (*Policy Statement).*

[2] On June 1, 2015, the Interstate Natural Gas Association of America (INGAA) and Tenaska Marketing Ventures (Tenaska) filed answers to the request for clarification, and on June 2, 2015, the Kansas Corporation Commission filed in support of the clarification request. On June 9, AF&PA and PGC separately filed replies to INGAA and Tenaska. On June 11, 2015, the Natural Gas Supply Association (NGSA) filed an answer to the request for clarification and comments on INGAA's answer. On June 24, 2015, Tenaska filed an answer to AF&PA and PGC.

[3] *Policy Statement,* 151 FERC ¶ 61,047 at P 40.

[4] *Id.*

[5] INGAA Answer at 2 (citing *Natural Gas Supply Ass'n, et al.,* 137 FERC ¶ 61,051, at P 30 (2011)).

circumstances of their systems.'' [6] The Commission will evaluate any proposal for such a surcharge on an individual, case-by-case basis, at which time interested parties will have the opportunity to raise any issues or concerns. The requested clarifications are antithetical to that approach, and accordingly, as discussed below, the Commission denies the requested clarifications.

A. *Collaborative Process*

8. The *Policy Statement* requires pipelines to work collaboratively with shippers and other interested parties to seek support for any proposed cost modernization surcharge. As part of this collaborative process, the Commission stated that, before submitting a modernization cost recovery proposal to the Commission, a pipeline should meet with its customers and other interested parties to seek resolution of as many issues as possible.

9. The Requesters ask the Commission to ''clarify'' the ''formal procedures'' for conducting the collaborative process required by the *Policy Statement* before the pipeline files its proposal with the Commission, asserting that because the *Policy Statement* does not require a filing to commence such a process, there is no clear way for all shippers to know when a pipeline is initiating the process, or to ensure that the process is fair and transparent. Requesters state that the Commission should require the involvement of Commission settlement judges, mediators or technical staff to ensure shippers' rights are protected during the collaborative process.[7] Requesters also request clarification that the Commission intends the pipeline to work with ''each shipper sector'' during the collaborative process. Requesters assert that while the Commission stated it was not requiring a specific percentage of shipper support to approve a potential modernization cost tracker, it did not address ''whether the pipeline is required to seek shipper support from a broad spectrum of shipper sectors . . . or whether it can just strike a deal with a subset of its customers.'' [8]

10. The Commission denies clarification and declines to adopt formal procedures or specified rules for the pre-filing collaborative process required for a modernization cost tracker. The *Policy Statement* makes clear the Commission's expectation that a pipeline work with all of its customers during the collaborative process [9] that would precede a Natural Gas Act (NGA) section 4 filing. [10] We decline to adopt formal procedures for this collaboration, however, as it is the Commission's intention that the process be an informal process for parties to share information and negotiate absent Commission involvement. The *Policy Statement* clearly states that during this process, a pipeline should share with its customers the results of its review of its systems to determine what system upgrades and improvements are necessary, be responsive to requests for specific cost and revenue data to determine whether existing rates are just and reasonable, and provide parties the opportunity to comment on draft tariff language for the proposed modernization cost mechanism. [11]

11. With respect to concerns that customers may not be aware of, or be made aware of, the initiation of the collaborative process to implement a modernization cost tracker, a pipeline will have to make an NGA section 4 filing to implement any cost modernization surcharge. That filing will be noticed the same as any other NGA section 4 filing at the Commission, and will provide all interested persons the opportunity to intervene in the proceeding and to protest. Consistent with NGA section 4, the burden in that instance will be on the pipeline to demonstrate that its proposal is just and reasonable, and as we stated, the Commission will decide upon appropriate procedures to address protests based upon the specific circumstances of each proposal. Thus, in order to implement a proposed modernization cost tracker in an efficient manner and without unnecessary delay, it is in the proposing pipeline's best interest to resolve as many outstanding issues as possible through the collaborative process prior to filing a modernization cost recovery mechanism proposal.[12] As noted in the *Policy Statement,* the intent is to ''provide pipelines and their customers wide latitude to reach agreements incorporating remedies for a variety of system safety, reliability and/or efficiency issues.'' [13] Adoption of formal procedures as suggested by the Requesters would thwart rather than facilitate this intent and the collaborative process.

B. Existing Rate Justification

12. The *Policy Statement* states that ''any pipeline seeking a modernization cost recovery tracker must demonstrate that its current base rates to which the surcharge would be added are just and reasonable. This is necessary to ensure that the overall rate produced by the addition of the surcharge to the base rate is just and reasonable, and does not reflect any cost over-recoveries that may have been occurring under the preexisting base rates.'' [14]

13. Requesters assert that the *Policy Statement* does not identify the data that pipelines must provide under the Commission's regulations to show that the rates are just and reasonable, and whether a cost and revenue study would need to include the information in the form required by section 154.312 or 154.313 of the Commission's regulations. Requesters state the Commission should clarify that the pipeline must provide its most recent 12-months of actual costs and revenues, and the information required under the more inclusive section 154.312, prior to engaging in any collaborative process with its shippers.[15]

14. The Commission denies clarification. In the *Policy Statement,* we declined to adopt suggestions that we require an NGA general section 4 rate proceeding as the only means to satisfy the standard that existing rates are just and reasonable. As we noted, the ''type of rate review necessary to determine whether a pipeline's existing rates are just and reasonable is likely to vary from pipeline to pipeline . . . therefore, we remain open to considering alternative approaches for a pipeline to justify its existing rates.'' [16] As that statement implies, the Commission determined neither to require a specific method by which the pipeline must show its existing rates are just and reasonable, nor to proscribe the specific data or form that the data must take if a pipeline chooses to justify its existing rates by a method other than a general NGA section 4 rate case.

15. As we made clear in the *Policy Statement,* a pipeline seeking a

[6] *Policy Statement,* 151 FERC ¶ 61,047 at P 3.

[7] Request for Clarification at 6–8.

[8] Request for Clarification at 9 & n.25 (citing Requester's February 26, 2015 Joint Reply Comments).

[9] *Policy Statement,* 151 FERC ¶ 61,047 at P 93 (''As part of this collaborative process, pipelines should meet with their customers and other interested parties to seek resolution of as many issues as possible before submitting a modernization cost recovery proposal to the Commission.'')

[10] 15 U.S.C. 717c (2006).

[11] *Id.*

[12] In fact, INGAA recognizes in its answer (at 5) that ''excluding specific shippers or shipper sectors from the collaborative process . . . would not be in pipelines' best interests because any shippers or shipper groups that were excluded from the process would surely contest any agreement reached by the other parties.''

[13] *Policy Statement,* 151 FERC ¶ 61,047 at P 94.

[14] *Id.* P 51.

[15] Request for Clarification at 1–5.

[16] *Policy Statement,* 151 FERC ¶ 61,047 at P 52.

modernization cost surcharge must demonstrate to the Commission that its existing base rates are no higher than a just and reasonable level. Absent such a showing, the Commission would be unable to find that the overall rate produced by the addition of the surcharge to the base rate is just and reasonable. In order to facilitate the review of the pipeline's existing rates, we encouraged pipelines to engage in a full exchange of information with their customers.[17] If that process fails to satisfy interested parties that existing base rates are no higher than a just and reasonable level, then the Commission will establish procedures to resolve any disputed issues of fact raised in the parties' protests to the filing based upon substantial evidence on the record. Such procedures may include, if necessary, a hearing before an Administrative Law Judge.[18] Thus, to the extent a pipeline seeks expedient approval of a modernization cost tracker, the Commission expects that the pipeline will freely share data and the results of its system testing to attempt to resolve as many issues as possible prior to filing for the tracker.

C. Retroactive Refunds

16. Requesters also state that the Commission should clarify that if a pipeline has over-collected through a surcharge or tracker, such that its rates are later found to be unjust and unreasonable after a protest or complaint proceeding, the pipeline must pay refunds calculated from the date a protest or complaint was filed. They request a requirement that a pipeline seeking a modernization cost surcharge or tracker must agree that, if during the period that the surcharge is in effect, a protest or an NGA section 5 complaint is filed against the pipeline, the pipeline must make refunds retroactive to the date of the protest or complaint.[19] Requesters assert the condition is justified in return for obtaining an exception to the standard NGA section 4 ratemaking principles.

17. The Commission denies the requested clarification.[20] If the Commission is unable to determine the justness and reasonableness of a proposed modernization cost tracker mechanism within 30 days after its filing pursuant to NGA section 4, the Commission will suspend the filing and it will remain subject to refund until the Commission determines whether it is just and reasonable. Further, once a modernization cost tracker mechanism has been approved, the requirement that such mechanisms include a provision for trueing up cost over and under-recoveries will ensure that the pipeline only recovers eligible costs approved for recovery in the tracker mechanism. Each of the pipeline's periodic filings pursuant to its modernization cost tracker mechanism would include a comparison of the costs approved for recovery during the prior period with the amounts the pipeline actually collected from its shippers during that period.[21] To the extent the pipeline over-recovered or under-recovered those costs during the relevant period, it would adjust the surcharge for the next period up or down so as to either return the over-recovery to its shippers or collect any under-recovery from them. Accordingly, the Commission finds no reason to condition the right to implement a modernization cost tracker mechanism on the pipeline's agreement to forego its NGA section 5 rights against retroactive refunds for amounts recovered pursuant to a modernization cost tracker mechanism that the Commission has approved as just and reasonable under NGA section 4.

D. Cost Responsibility in Capacity Release Agreements

18. With respect to capacity releases, Requesters state that the *Policy Statement* did not respond to concerns raised by AF&PA that parties to existing capacity release agreements did not contemplate cost responsibility for modernization costs in existing capacity release agreements, and thus the Commission should clarify that such costs should be placed on replacement shippers.[22]

19. In their answers, INGAA and the NGSA oppose Requesters' proposal that cost responsibility for any modernization surcharge be placed on replacement shippers. INGAA states that under Commission policy, the releasing shipper remains ultimately liable for any surcharge amount that a replacement shipper does not pay. NGSA asserts that given the myriad of current day contracting options, the resolution of contractual matters, particularly where the contract is silent as to surcharge cost responsibility, is best left to the contracting parties. NGSA also argues that the Commission should not make a generic determination as to the responsibility for modernization cost surcharges within existing capacity release agreements because doing so would unnecessarily impede the parties' attempts to negotiate and resolve the issue.

20. The Commission denies clarification. Section 284.8(f) of the Commission's regulations [23] provides that, unless otherwise agreed by the pipeline, the contract of the releasing shipper will remain in full force and effect during the release, with the net proceeds from any release to a replacement shipper credited to the releasing shipper's reservation charge. Therefore, to the extent the releasing shipper's service agreement permits the pipeline to recover the surcharge from the releasing shipper, the releasing shipper would remain liable for the surcharge during the term of any temporary release. The replacement shipper's liability for the surcharge would turn on the terms of its release. If the release requires the replacement shipper to pay any portion of the surcharge, those payments would be credited to the releasing shipper. In short, the issue of cost responsibility for modernization costs during the term of a capacity release is a contractual issue between the relevant parties,[24] and that issue cannot be resolved on a generic basis.

E. Effective Date

21. Finally, Requesters seek clarification that pipelines may not seek to implement a modernization cost tracker through a filing, or even commence the collaborative process, until the October 1, 2015 effective date of the *Policy Statement.*[25] Requesters state that this effective date enforcement would provide the Commission time to proscribe the formal procedures that it requests.

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[17] *Policy Statement,* 151 FERC ¶ 61,047 at P 53.

[18] If the pipeline files a settlement supported by many of its shippers but some contesting parties raise issues that cannot be resolved on the existing record, the Commission may approve the settlement as uncontested for the consenting parties and sever the contesting parties to litigate their issues. This preserves the benefit of the settlement for the consenting parties, while allowing the contesting parties to obtain a litigated result on the merits. *Trailblazer Pipeline Co.,* 85 FERC ¶ 61,345, at 62,344–5 (1998), *reh'g,* 87 FERC ¶ 61,110, at 61,446–7 (1999).

[19] Request for Clarification at 10–11.

[20] The Commission notes further that this request is effectively a request for rehearing of the Commission's decision not to adopt a virtually identical condition requested by APGA in its comments on the Proposed Policy Statement. *See* APGA Initial Comments at 20, *Policy Statement,* 151 FERC ¶ 61,047 at P 86.

[21] The pipeline's customers would have a chance to challenge any of the projected costs included in the periodic filings.

[22] Request for Clarification at 5–6.

[23] 18 CFR 284.8(f) (2014).

[24] *See Policy Statement,* 151 FERC ¶ 61,047 at P 82, stating that the pipeline's ability to impose a modernization cost surcharge on discounted or negotiated rate shippers is a contractual issue between the pipeline and its discounted or negotiated rate shippers.

[25] Request for Clarification at 11–12.

22. The Commission declines to provide the requested clarification. The Commission has no authority to regulate a pipeline's discussions with its customers or the content of such discussions. Moreover, even if it had the authority, the Commission advocates active discussions between pipelines and their customers, and as we stated in the *Policy Statement,* ''[t]he Commission sees no reason for pipelines to wait to make needed improvements to their systems until a regulation is adopted requiring them to do so.'' [26]

23. Additionally, the Commission lacks the authority to prevent a pipeline from making an NGA section 4 filing to request approval for a modernization cost tracker. As INGAA notes, the *Policy Statement* did not permit pipelines to file for tracker mechanisms for the first time; it announced the Commission's policy for addressing such filings. There is nothing to prevent a pipeline from making a proposal consistent with the Commission's existing policy as set forth in *Columbia Gas Transmission, LLC,*[27] prior to October 1, 2015.[28]

24. Finally, we note that, as with any policy statement, the *Policy Statement* is not a final action of the Commission but an expression of our intent as to how we will evaluate proposals by interstate natural gas pipelines for the recovery of infrastructure modernization costs. As the U.S. Court of Appeals for the District of Columbia Circuit has held, a statement of policy ''is not finally determinative of the issues or rights to which it is addressed;'' rather, it only ''announces the agency's tentative intentions for the future.'' [29] We will consider each pipeline proposal to implement a modernization cost tracker based on the facts relevant to that particular pipeline and will address any further concerns regarding the *Policy Statement* on a case-by-case basis.

F. Information Collection Statement

25. The collection of information discussed in the Policy Statement is being submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995 [30] and OMB's implementing regulations.[31] OMB must approve information collection requirements imposed by agency rules.

26. In the Policy Statement, the Commission solicited comments from the public on the Commission's need for this information, whether the information will have practical utility, the accuracy of the burden estimates, recommendations to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The Commission received no comments on those issues.

27. The burden estimates are for implementing the information collection requirements of the Policy Statement. The collection of information related to the Policy Statement falls under FERC–545 (Gas Pipeline Rates: Rate Change (Non-Formal).[32] The following estimate of reporting burden is related only to the Policy Statement.

28. *Public Reporting Burden:* The estimated annualburdenand cost follow.

FERC–545, MODIFICATIONS FROM POLICY STATEMENT IN PL15–1–000

	Number of respondents [33]	Number of responses per respondent	Average burden hours per response	Total annual burden hours	Total annual cost ($) [34] [rounded]
	(1)	(2)	(3)	(1) × (2) × (3)	
Provide information to shippers for any surcharge proposal, and prepare modernization cost tracker filing [35]	3	1	750	2,250	$147,578
Perform periodic review and provide information to show that both base rates and the surcharge amount remain just and reasonable	3	[36] 0.60	350	630	$42,235

[26] *Policy Statement,* 151 FERC ¶ 61,047 at P 68.

[27] *Columbia Gas Transmission, LLC,* 142 FERC ¶ 61,062 (2013).

[28] Further, because the Commission declines to adopt the requested formal procedures for the collaborative process there is no need for the suggested delay to allow time for the Commission to develop those procedures.

[29] *Pacific Gas & Electric Co.* v. *FPC,* 506 F.2d 33, 38 (D.C. Cir. 1974). *See Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines,* 75 FERC ¶ 61,024, at 61,076 (citing, *American Gas Ass'n* v. *FERC,* 888 F.2d 136 (1989); *Interstate Natural Gas Pipeline Rate Design,* 47 FERC ¶ 61,295 (1985), *order on reh'g,* 48 FERC ¶ 61,122, at 61,442 (1989)).

[30] 44 U.S.C. 3507(d) (2012).

[31] 5 CFR 1320.

[32] The information collection requirements in the Policy Statement were included in FERC–545A (OMB Control No.: TBD). The Commission used FERC–545A (a temporary collection number) because another item was pending OMB review under FERC–545, and only one item per OMB Control Number can be pending review at OMB at a time. The submittal to OMB will now be made under FERC–545 (OMB Control No. 1902–0154).

[33] An estimated 165 natural gas pipelines (Part 284 program) may be affected by the Policy Statement. Of the 165 pipelines, Commission staff estimates that 3 pipelines may choose to submit an application for a modernization cost tracker per year.

[34] The hourly wage figures are published by the Bureau of Labor Statistics, U.S. Department of Labor, *National Occupational Employment and Wage Estimates, United States,* Occupation Profiles, May 2014 (available 4/1/2015) at *http://www.bls.gov/oes/home.htm,* and the benefits are calculated using BLS information, at *http://www.bls.gov/news.release/ecec.nr0.htm.*

The average hourly cost (salary plus benefits) to prepare the modernization cost tracker filing is $65.59. It is the average of the following hourly costs (salary plus benefits): manager ($77.93, NAICS 11–0000), Computer and mathematical ($58.17, NAICS 15–0000), Legal ($129.68, NAICS 23–0000), Office and administrative support ($39.12, NAICS 43–0000), Accountant and auditor ($51.04, NAICS 13–2011), Information and record clerk ($37.45, NAICS 43–4199), Engineer ($66.74, NAICS 17–2199), Transportation, Storage, and Distribution Manager ($64.55, NAICS 11–3071).

The average hourly cost (salary plus benefits) to perform the periodic review is $67.04. It is the average of the following hourly costs (salary plus benefits): manager ($77.93, NAICS 11–0000), Legal ($129.68, NAICS 23–0000), Office and administrative support ($39.12, NAICS 43–0000), Accountant and auditor ($51.04, NAICS 13–2011), Information and record clerk ($37.45, NAICS 43–4199).

[35] The pipeline's modernization cost tracker filing is expected to include information to:

Demonstrate that its current rates are just and reasonable and that proposal includes the types of benefits that the Commission found maintained the pipeline's incentives for innovation and efficiency;

Identify each capital investment to be recovered by the surcharge, the facilities to be upgraded or installed by those projects, and an upper limit on the capital costs related to each project to be included in the surcharge, and schedule for completing the projects;

Establish accounting controls and procedures that it will utilize to ensure that only identified eligible costs are included in the tracker;

Include method for periodic review of whether the surcharge and the pipeline's base rates remain just and reasonable; and

State the extent to which any particular project will disrupt primary firm service, explain why it expects it will not be able to continue to provide firm service, and describe what arrangements the pipeline intends to make to mitigate the disruption or provide alternative methods of providing service.

[36] Based on the Columbia case, we estimate that a review may be required every 5 years, triggering the first pipeline reviews to be done in Year 6 (for the pipelines which applied and received approval in Year 1).

29. *Title:* FERC–545, Gas Pipeline Rates: Rate Change (Non-formal).

30. *Action:* Revisions to an information collection.

31. *OMB Control No.:* 1902–0154.

32. *Respondents:* Business or other for profit enterprise (Natural Gas Pipelines).

33. *Frequency of Responses:* Ongoing.

34. *Necessity of Information:* The Commission is establishing a policy to allow interstate natural gas pipelines to seek to recover certain capital expenditures made to modernize system infrastructure through a surcharge mechanism, subject to certain conditions. The information that the pipeline should share with its shippers and submit to the Commission is intended to ensure that the resulting rates are just and reasonable and protect natural gas consumers from excessive costs

35. *Internal Review:* The Commission has reviewed the guidance in the Policy Statement and has determined that the information is necessary. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the natural gas pipeline industry. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

36. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, email: *DataClearance@ferc.gov,* phone: (202) 502–8663, fax: (202) 273–0873].

37. Comments filed with OMB, identified by the OMB Control No. 1902–0154 should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov,* Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202–395–0710. A copy of the comments should also be sent to the Commission, in Docket No. PL15–1–000. Comments concerning the collection of information and the associated burden estimate should be submitted by August 21, 2015.

The Commission orders:

The requests for clarification are denied as discussed above.

By the Commission.

Issued: July 16, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–17949 Filed 7–21–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–504–000]

Dominion South Carolina Gas, Inc; Notice of Intent To Prepare an Environmental Assessment for the Proposed Columbia to Eastover Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Columbia to Eastover Project involving construction and operation of facilities by Dominion South Carolina Gas, Inc (DCG) in Calhoun, Richland, and Lexington Counties, South Carolina. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before August 17, 2015.

If you sent comments on this project to the Commission before the opening of this docket on May 29, 2015, you will need to file those comments in Docket No. CP15–504–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

DCG provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*www.ferc.gov*).

Public Participation

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP15–504–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Summary of the Proposed Project

DCG proposes the Columbia to Eastover Project to construct and operate 28 miles of new 8-inch-diameter

pipeline in Calhoun and Richland Counties, South Carolina, with sections of access roads in Lexington County, South Carolina. The Project would deliver 18,000 dekatherms per day of firm transmission natural gas service to International Paper Company to replace the current use of coal and fuel oil, as well as trucked-delivered natural gas, as a means of complying with maximum achievable control technology environmental air quality standards mandated by the U.S. Environmental Protection Agency.

The pipeline would originate from DCG's existing 20-inch-diameter Salley to Eastman pipeline at the DAK Americas industrial facility. In addition to the pipeline, DCG proposes to install the following ancillary facilities:

- a tap and pig launcher; [1]
- a metering and regulation station and pig receiver; and
- eight mainline valves.

The general location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would disturb about 423 acres of land for the aboveground facilities and the pipeline. Following construction, DCG would maintain about 121 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses. About 75 percent of the proposed pipeline route parallels existing pipeline or utility rights-of-way.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [3] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- vegetation and wildlife;
- endangered and threatened species;
- cultural resources;
- air quality and noise;
- public safety; and
- cumulative impacts

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA.[4] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for Section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[5] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, aboveground facilities, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under Section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to

[1] A ''pig'' is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

[2] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[4] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[5] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

intervene. Instructions for becoming an intervenor are in the User's Guide under the ''e-filing'' link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* CP15–504). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: July 16, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–17944 Filed 7–21–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP15–1116–000.

Applicants: Questar Overthrust Pipeline Company.

Description: Annual Fuel Gas Reimbursement Percentage Report for 2015 of Questar Overthrust Pipeline Company under RP15–1116.

Filed Date: 7/9/15.

Accession Number: 20150709–5228.

Comments Due: 5 p.m. ET 7/21/15.

Docket Numbers: RP15–1117–000.

Applicants: Kern River Gas Transmission Company.

Description: Section 4(d) Rate Filing: 2015 Converted Contracts to be effective 8/1/2015.

Filed Date: 7/14/15.

Accession Number: 20150714–5047.

Comments Due: 5 p.m. ET 7/27/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 15, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–17916 Filed 7–21–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD15–11–000]

Electronic Filing Protocols for Commission Forms; Notice of Meeting of North American Energy Standards Board

Take notice that the North American Energy Standards Board (NAESB) has announced that it will hold its first conference call on August 13, 2015, from 2:00 p.m. to 4:00 p.m. Eastern Time, to initiate its process for developing standards for the submission of Commission forms in XML format. In the Commission's April 16, 2015, Order in this proceeding, the Commission announced it was beginning a process to develop a revised method for natural gas pipelines, public utilities, and oil pipelines to file forms, and asked NAESB and the electric, natural gas, and oil industries to establish a collaborative process with Commission staff to develop standards for filing forms.[1] On June 10, 2015, Commission staff held a technical conference to explore a transition to XML format, as well as NAESB's assistance in that transition process.

After the staff technical conference, the Commission received five comments generally supportive of moving forward with the NAESB process. NAESB has agreed to sponsor this project and the August 13, 2015 conference call is to establish procedures for moving forward. The comments also posed certain questions that should be addressed during the NAESB meetings.

NAESB has posted details regarding the conference at *https://www.naesb.org/pdf4/naesb_weq-wgq_ffs_081315ma.pdf.* Further information regarding participation can be obtained by contacting NAESB by phone (713–356–0060) or email (*naesb@naesb.org*).

Commission notices for future meetings will not be issued. The Commission will post the time and dates for future meetings on its Web site at *http://www.ferc.gov/docs-filing/forms/eforms-refresh.asp,* Information also may be found on the NAESB Web site at *https://www.naesb.org/ferc_forms.asp* (NAESB Members) or *https://www.naesb.org/committee_activities.asp* (non-Members).

For more information about this conference call or the proceeding, please contact Robert Hudson, Office of Enforcement, at (202) 502–6620 or *Robert.Hudson@ferc.gov* or Nicholas Gladd, Office of General Counsel, at (202) 502–8836 or *Nicholas.Gladd@ferc.gov.*

Dated: July 16, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–17947 Filed 7–21–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER14–694–004.

Applicants: Entergy Services, Inc.

Description: Tariff Amendment: EAI–ESI_Response_7–16–2015 to be effective 12/31/9998.

Filed Date: 7/16/15.

Accession Number: 20150716–5154.

[1] *Electronic Filing Protocols for Commission Forms,* 151 FERC ¶ 61,025 (2015).

Comments Due: 5 p.m. ET 8/6/15.

Docket Numbers: ER14–702–004.

Applicants: Entergy Arkansas, Inc.

Description: Tariff Amendment: EAI–ESI_Response_7–16–2015 to be effective 12/31/9998.

Filed Date: 7/16/15.

Accession Number: 20150716–5152.

Comments Due: 5 p.m. ET 8/6/15.

Docket Numbers: ER14–1332–001.

Applicants: DATC Path 15, LLC.

Description: Compliance filing: Compliance to 2181401 to be effective 5/17/2014.

Filed Date: 7/16/15.

Accession Number: 20150716–5134.

Comments Due: 5 p.m. ET 8/6/15.

Docket Numbers: ER15–1799–001.

Applicants: PJM Interconnection, L.L.C., Virginia Electric and Power Company.

Description: Tariff Amendment: Virginia Electric and Power submits revisions to Service Agreement No. 3453 to be effective 5/4/2015.

Filed Date: 7/16/15.

Accession Number: 20150716–5142.

Comments Due: 5 p.m. ET 8/6/15.

Docket Numbers: ER15–2214–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original SA Nos. 4205 and 4206 (Z2–043/AA1–072 and Z2–044 ISAs) to be effective 6/16/2015.

Filed Date: 7/16/15.

Accession Number: 20150716–5096.

Comments Due: 5 p.m. ET 8/6/15.

Docket Numbers: ER15–2215–000.

Applicants: San Diego Gas & Electric Company.

Description: § 205(d) Rate Filing: SDG&E TO4 Formula Depreciation Rate Change 2015 to be effective 1/1/2016.

Filed Date: 7/16/15.

Accession Number: 20150716–5135.

Comments Due: 5 p.m. ET 8/6/15.

Docket Numbers: ER15–2216–000.

Applicants: EONY Generation Limited.

Description: Compliance filing: MBR—EONY Generation Limited to be effective 7/17/2105.

Filed Date: 7/16/15.

Accession Number: 20150716–5138.

Comments Due: 5 p.m. ET 8/6/15.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA15–2–000.

Applicants: Indigo Generation LLC, Larkspur Energy LLC, Wildflower Energy LP, Mariposa Energy, LLC.

Description: Quarterly Land Acquisition Report of the DGC Companies under LA15–2.

Filed Date: 7/16/15.

Accession Number: 20150716–5104.

Comments Due: 5 p.m. ET 8/6/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 16, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–17918 Filed 7–21–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission's staff may attend the following meeting related to the transmission planning activities of the Midcontinent Independent System Operator, Inc. (MISO):

MISO Planning Advisory Committee
July 29, 2015, 9 a.m.–4:00 p.m. (EST)

The above-referenced meeting will be held at: MISO Headquarters, 720 City Center Drive, Carmel, IN 46032.

Further information may be found at *www.misoenergy.org.*

The discussions at the meeting described above may address matters at issue in the following proceedings:

Docket Nos. ER13–1944, et al., *PJM Interconnection, LLC*
Docket No. ER14–1174, *Southwest Power Pool, Inc.*
Docket No. ER14–1736, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–2445, *Midcontinent Independent System Operator, Inc.*
Docket No. ER13–1864, *Southwest Power Pool, Inc.*
Docket No. EL14–21, *Southwest Power Pool, Inc.* v. *Midcontinent Independent System Operator, Inc.*
Docket No. EL14–30, *Midcontinent Independent System Operator, Inc.* v. *Southwest Power Pool, Inc.*
Docket No. EL11–34, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–1844, *Midwest Independent Transmission System Operator, Inc.*
Docket No. EL13–88, *Northern Indiana Public Service Company* v. *Midcontinent Independent System Operator, Inc. and PJM Interconnection, L.L.C.*
Docket Nos. ER13–1923, et al., *Midcontinent Independent System Operator, Inc.*
Docket Nos. ER13–1937, et al., *Southwest Power Pool, Inc.*

For more information, contact Chris Miller, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (317) 249–5936 or *christopher.miller@ferc.gov;* or Jason Strong, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–6124 or *jason.strong@ferc.gov.*

Dated: July 16, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–17948 Filed 7–21–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER15–2135–000]

Alexander Wind Farm, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Alexander Wind Farm, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to

intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 5, 2015.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 16, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–17945 Filed 7–21–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2331–033; ER14–630–010; ER10–2319–025; ER10–2317–025; ER10–2326–031; ER14–1468–009; ER13–1351–007; ER10–2330–032.

Applicants: J.P. Morgan Ventures Energy Corporation, AlphaGen Power LLC, BE Alabama LLC, BE CA LLC, Cedar Brakes I, L.L.C., KMC Thermo, LLC, Florida Power Development LLC, Utility Contract Funding, L.L.C.

Description: Notice of Non-Material Change in Status of J.P. Morgan Sellers.

Filed Date: 7/15/15.

Accession Number: 20150715–5179.

Comments Due: 5 p.m. ET 8/5/15.

Docket Numbers: ER10–3297–006.

Applicants: Powerex Corp.

Description: Notice of Non-Material Change in Status of Powerex Corp.

Filed Date: 7/15/15.

Accession Number: 20150715–5183.

Comments Due: 5 p.m. ET 8/5/15.

Docket Numbers: ER13–1489–005; *ER13–1488–003*.

Applicants: Quantum Choctaw Power, LLC, Quantum Lake Power, LP, Quantum Pasco Power, LP.

Description: Supplement to December 23, 2014 Updated Market Power Analysis of the Quantum Entities.

Filed Date: 7/15/15.

Accession Number: 20150715–5181.

Comments Due: 5 p.m. ET 8/5/15.

Docket Numbers: ER15–518–003.

Applicants: Duke Energy Florida, Inc., Duke Energy Progress, Inc., Duke Energy Carolinas, LLC.

Description: Compliance filing: Order 676–H Compliance Filing to be effective 7/15/2015.

Filed Date: 7/15/15.

Accession Number: 20150715–5089.

Comments Due: 5 p.m. ET 8/5/15.

Docket Numbers: ER15–1407–002.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Tariff Amendment: 2015–07–16_SA 2767 2nd Amendment to ATC-Manitowoc CFA to be effective 5/31/2015.

Filed Date: 7/16/15.

Accession Number: 20150716–5048.

Comments Due: 5 p.m. ET 8/6/15.

Docket Numbers: ER15–1411–002.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Tariff Amendment: 2015–07–16_SA 2770 2nd Amendment to ATC-Sun Prairie CFA to be effective 5/31/2015.

Filed Date: 7/16/15.

Accession Number: 20150716–5045.

Comments Due: 5 p.m. ET 8/6/15.

Docket Numbers: ER15–1481–002.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Tariff Amendment: 2015–07–16_SA 2776 2nd Amendment to ATC-Village of Prairie du Sac CFA to be effective 6/9/2015.

Filed Date: 7/16/15.

Accession Number: 20150716–5053.

Comments Due: 5 p.m. ET 8/6/15.

Docket Numbers: ER15–1482–002.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Tariff Amendment: 2015–07–16_SA 2777 2nd Amendment to ATC-Wisconsin Rapids CFA to be effective 6/9/2015.

Filed Date: 7/16/15.

Accession Number: 20150716–5056.

Comments Due: 5 p.m. ET 8/6/15.

Docket Numbers: ER15–1483–002.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Tariff Amendment: 2015–07–16_SA 2775 2nd Amendment to ATC-Marshfield CFA to be effective 6/9/2015.

Filed Date: 7/16/15.

Accession Number: 20150716–5051.

Comments Due: 5 p.m. ET 8/6/15.

Docket Numbers: ER15–1618–001.

Applicants: Duke Energy Florida, Inc.

Description: Compliance filing: DEF IA Annual Cost Factor Update Amendment to RS 91 to be effective 5/1/2015.

Filed Date: 7/16/15.

Accession Number: 20150716–5037.

Comments Due: 5 p.m. ET 8/6/15.

Docket Numbers: ER15–2212–000.

Applicants: Southwest Power Pool, Inc.

Description: Section 205(d) Rate Filing: Rate Schedule 13—Western Area Power Administration JOA Cancellation to be effective 12/31/9998.

Filed Date: 7/15/15.

Accession Number: 20150715–5151.

Comments Due: 5 p.m. ET 8/5/15.

Docket Numbers: ER15–2213–000.

Applicants: Portland General Electric Company.

Description: Compliance filing: 2nd NAESB V3 Standards Compliance Filing to be effective 5/15/2015.

Filed Date: 7/16/15.

Accession Number: 20150716–5055.

Comments Due: 5 p.m. ET 8/6/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 16, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–17917 Filed 7–21–15; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2015–0389; FRL–9930–60]

Pesticides; Risk Management Approach To Identifying Options for Protecting the Monarch Butterfly; Notice of Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: EPA issued a notice in the **Federal Register** of June 24, 2015, concerning the document ''Risk Management Approach to Identifying Options for Protecting the Monarch Butterfly.'' This notice extends the comment period for 30 days, from July 24, 2015 to August 24, 2015. Crop Life America, Responsible Industry for a Sound Environment, and the California Crops Council requested an extension of the comment period to allow sufficient time to analyze the subject document and assemble relevant information.

DATES: Comments, identified by docket identification (ID) number EPA–HQ–OPP–2015–0389, must be received on or before August 24, 2015.

ADDRESSES: Follow the detailed instructions provided under **ADDRESSES** in the **Federal Register** document of June 24, 2015 (80 FR 36338) (FRL–9929–01).

FOR FURTHER INFORMATION CONTACT: Khue Nguyen, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–0248; email address: *nguyen.khue@epa.gov*.

SUPPLEMENTARY INFORMATION: This notice extends the public comment period established in the **Federal Register** document of June 24, 2015. EPA is hereby extending the comment period, which was set to end on July 24, 2015, to August 24, 2015.

To submit comments, or access the docket, please follow the detailed instructions provided under **ADDRESSES** in the **Federal Register** document of June 24, 2015. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 7 U.S.C. 136 *et seq.*

Dated: July 16, 2015.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-Evaluation, Office of Pesticide Programs.

[FR Doc. 2015–17993 Filed 7–21–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2013–0677; FRL–9930–52]

Receipt of Test Data Under the Toxic Substances Control Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing its receipt of test data submitted pursuant to a test rule issued by EPA under the Toxic Substances Control Act (TSCA). As required by TSCA, this document identifies each chemical substance and/or mixture for which test data have been received; the uses or intended uses of such chemical substance and/or mixture; and describes the nature of the test data received. Each chemical substance and/or mixture related to this announcement is identified in Unit I. under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Kathy Calvo, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8089; email address: *calvo.kathy@epa.gov*.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Chemical Substances and/or Mixtures

Information about the following chemical substances and/or mixtures is provided in Unit IV.:

Phosphorochloridothioic acid, O,O-diethyl (*CAS RN 2524–04–1*)

II. Federal Register Publication Requirement

Section 4(d) of TSCA (15 U.S.C. 2603(d)) requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under TSCA section 4 (15 U.S.C. 2603).

III. Docket Information

A docket, identified by the docket identification (ID) number EPA–HQ–OPPT–2013–0677, has been established for this **Federal Register** document that announces the receipt of data. Upon EPA's completion of its quality assurance review, the test data received will be added to the docket for the TSCA section 4 test rule that required the test data. Use the docket ID number provided in Unit IV. to access the test data in the docket for the related TSCA section 4 test rule.

The docket for this **Federal Register** document and the docket for each related TSCA section 4 test rule is available electronically at *http://www.regulations.gov* or in person at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

IV. Test Data Received

This unit contains the information required by TSCA section 4(d) for the test data received by EPA.

Phosphorochloridothioic acid, O,O-diethyl (CAS RN 2524–04–1)

1. *Chemical Uses:* An intermediate for pesticides, an oil and gasoline additive, in flame-retardents, and in flotation agents.

2. *Applicable Test Rule:* Chemical testing requirements for second group of high production volume chemicals (HPV2), 40 CFR 799.5087.

3. *Test Data Received:* The following listing describes the nature of the test data received. The test data will be added to the docket for the applicable TSCA section 4 test rule and can be found by referencing the docket ID number provided. EPA reviews of test data will be added to the same docket upon completion.

Aquatic Toxicity Studies (Fish) (Daphnid) (Algal) (C1). The docket ID number assigned to this data is EPA–HQ–OPPT–2007–0531.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: July 15, 2015.

Maria J. Doa,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2015–18008 Filed 7–21–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1054]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information burden for small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before September 21, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1054.

Title: Application for Renewal of an International Broadcast Station License.

Form No.: FCC Form 422–IB.

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

Respondents: Business or other for-profit entities.

Number of Respondents: 10 respondents; 50 responses.

Estimated Time per Response: 1–8 hours per response.

Frequency of Response: On occasion reporting requirement; Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 154, 303, 334, 336 and 339.

Total Annual Burden: 160 hours.

Annual Cost Burden: $36,000.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: This collection will be submitted to the Office of Management and Budget (OMB) as an extension following the 60-day comment period in order to obtain the full three-year clearance from OMB.

The Federal Communications Commission (''Commission'') plans to implement and release to the public an ''Application for Renewal of an International Broadcast Station License (FCC Form 422–IB).'' The form has not been implemented yet due to a lack of budget resources and technical staff. After the FCC Form 422–IB has been implemented and the Commission receives final approval from OMB, applicants will complete the FCC Form 422–IB in lieu of the ''Application for Renewal of an International or Experimental Broadcast Station License,'' (FCC Form 311). In the interim, applicants will continue to file the FCC Form 311 with the Commission. (Note: The OMB approved the FCC Form 311 under OMB Control No. 3060–1035).

The Commission stated previously that the FCC Form 422–IB will be available to applicants in the International Bureau Filing System (''IBFS'') after it is implemented. However, the Commission plans to develop a new licensing system within the next five years that will replace IBFS. Therefore, the FCC Form 422–IB will be made available to the public in CLS instead of IBFS.

The information collected pursuant to the rules set forth in 47 CFR part 73, subpart F, is used by the Commission to assign frequencies for use by international broadcast stations, to grant authority to operate such stations and to determine if interference or adverse propagation conditions exist that may impact the operation of such stations. If the Commission did not collect this information, it would not be in a position to effectively coordinate spectrum for international broadcasters or to act for entities in times of frequency interference or adverse propagation conditions. The orderly nature of the provision of international broadcast service would be in jeopardy without the Commission's involvement.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2015–17913 Filed 7–21–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0854]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated

collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before August 21, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov*. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <*http://www.reginfo.gov/public/do/PRAMain*>, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0854.

Title: Section 64.2401, Truth-in-Billing Format, CC Docket No. 98–170 and CG Docket No. 04–208.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 4,447 respondents; 36,699 responses.

Estimated Time per Response: 2 to 230 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is found at section 201(b) of the Communications Act of 1934, as amended, 47 U.S.C. 201(b), and section 258, 47 U.S.C. 258, Public Law 104–104, 110 Stat. 56. The Commission's implementing rules are codified at 47 CFR 64.2400–01.

Total Annual Burden: 2,129,905 hours.

Total Annual Cost: $15,918,200.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information from individuals.

Privacy Impact Assessment: No impact(s).

Needs and Uses: In 1999, the Commission released the Truth-in-Billing and Billing Format, CC Docket No. 98–170, First Report and Order and Further Notice of Proposed Rulemaking, (1999 TIB Order); published at 64 FR 34488, June 25, 1999, which adopted principles and guidelines designed to reduce telecommunications fraud, such as slamming and cramming, by making bills easier for consumers to read and understand, and thereby, making such fraud easier to detect and report. In 2000, Truth-in-Billing and Billing Format, CC Docket No. 98–170, Order on Reconsideration, (2000 Reconsideration Order); published at 65 FR 43251, July 13, 2000, the Commission, granted in part petitions for reconsideration of the requirements that bills highlight new service providers and prominently display inquiry contact numbers. On March 18, 2005, the Commission released Truth-in-Billing and Billing Format; National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, CC Docket No. 98–170, CG Docket No. 04–208, (2005 Second Report and Order and Second Further Notice); published at 70 FR 29979 and 70 FR 30044, May 25, 2005, which determined, *inter alia,* that Commercial Mobile Radio Service providers no longer should be exempted from 47 CFR 64.2401(b), which requires billing descriptions to be brief, clear, non-misleading and in plain language. The 2005 Second Further Notice proposed and sought comment on measures to enhance the ability of consumers to make informed choices among competitive telecommunications service providers.

On April 27, 2012, the Commission released the Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges (''Cramming''), Report and Order and Further Notice of Proposed Rulemaking, CG Docket No. 11–116, CG Docket No. 09–158, CC Docket No. 98–170, FCC 12–42 (Cramming Report and Order and Further Notice of Proposed Rulemaking); published at 77 FR 30972, May 24, 2012, which determined that additional rules are needed to help consumers prevent and detect the placement of unauthorized charges on their telephone bills, an unlawful and fraudulent practice commonly referred to as ''cramming.''

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2015–17915 Filed 7–21–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–xxxx]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information

collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before September 21, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–xxxx.

Title: Direct Access to Numbers Order FCC 15–70 Conditions.

Form Number: N/A.

Type of Review: New Collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 13 respondents; 13 responses.

Estimated Time per Response: 120 hours.

Frequency of Response: One-time application, on-going and bi-annual reporting requirements.

Obligation To Respond: Voluntary. Statutory Authority: 47 U.S.C. 251(e)(1).

Total Annual Burden: 1,560 hours.

Total Annual Costs: No Cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: If respondents submit information which respondents believe is confidential, respondents may request confidential treatment of such information pursuant to section 0.459 of the Commission's rules, 47 CFR 0.459.

Needs and Uses: On June 18, 2015, the Commission adopted a Report and Order establishing the Numbering Authorization Application process, which allows interconnected VoIP providers to apply for a blanket authorization from the FCC that, once granted, will allow them to demonstrate that they have the authority to provide service in specific areas, thus enabling them to request numbers directly from the Numbering Administrators. This collection covers the information and certifications that applicants must submit in order to comply with the Numbering Authorization Application process. The data, information, and documents acquired through this collection will allow interconnected VoIP providers to obtain numbers with minimal burden or delay while also preventing providers from obtaining numbers without first demonstrating that they can deploy and properly utilize such resources. This information will also help the Federal Communications Commission (FCC) protect against number exhaust while promoting competitive neutrality among traditional telecommunications carriers and interconnected VoIP providers by allowing both entities to obtain numbers directly from the Numbering Administrators. It will further help the FCC to maintain efficient utilization of numbering resources and ensure that telephone numbers are not being stranded.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2015–17914 Filed 7–21–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Controlled Carriers Under the Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: The Federal Maritime Commission is publishing an updated list of controlled carriers, *i.e.,* ocean common carriers operating in U.S.-foreign trades that are owned or controlled by foreign governments. Such carriers are subject to special regulatory oversight by the Commission under the Shipping Act of 1984.

FOR FURTHER INFORMATION CONTACT: Tyler J. Wood, General Counsel, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission is publishing an updated list of controlled carriers. Section 3(8) of the Shipping Act of 1984 (46 U.S.C. 40102(8)), defines a ''controlled carrier'' as an ocean common carrier that is, or whose operating assets are, directly or indirectly, owned or controlled by a government, with ownership or control by a government being described in the statute.

As required by the Shipping Act, controlled carriers are subject to special oversight by the Commission. Section 9(a) of the Shipping Act (46 U.S.C. 40701(b)), states that the Commission, at any time after notice and opportunity for a hearing, may prohibit the publication or use of a rate, charge, classification, rule, or regulation that a controlled carrier has failed to demonstrate is just and reasonable.

Congress enacted these protections to ensure that controlled carries, whose marketplace decision-making can be influenced by foreign governmental priorities or by their access to non-market sources of capital, do not engage in unreasonable below-market pricing practices which could disrupt trade or harm privately-owned shipping companies.

The controlled carrier list is not a comprehensive list of foreign-owned or -controlled ships or ship owners; rather, it is only a list of ocean common carriers that are controlled by governments. *See* 46 U.S.C. 40102(8). Thus, tramp operators and other non-common carriers are not included, nor are non-vessel-operating common carriers, regardless of their ownership or control.

Since the last publication of this list on August 22, 2012 (77 FR 51801), the Commission has newly classified two ocean common carriers as controlled carriers, CNAN Nord SPA (''CNAN'') and United Arab Shipping Company (S.A.G.) (''UASC'').

Pursuant to 46 CFR 501.23, CNAN was classified as a controlled carrier on September 23, 2014.

Pursuant to 46 CFR 501.23 and 565.4, UASC notified the Commission of its change in majority ownership by the State of Qatar on June 18, 2014, and after review, the Commission classified UASC as a controlled carrier on July 6, 2015.

It is requested that any other information regarding possible omissions or inaccuracies in this list be provided to the Commission's Office of General Counsel. *See* 46 CFR 501.23. The amended list of currently classified controlled carriers and their corresponding Commission-issued Registered Persons Index numbers is set forth below:

(1) American President Lines, Ltd. and APL Co. Pte. Ltd. (RPI No. 000240)—Republic of Singapore;

(2) COSCO Container Lines Company, Limited (RPI No. 015614)—People's Republic of China;

(3) China Shipping Container Lines Co., Ltd and China Shipping Container Lines (Hong Kong) Co., Limited (RPI No. 019270)—People's Republic of China;

(4) Hainan P O Shipping Co., Ltd. (RPI No. 022860)—People's Republic of China;

(5) CNAN Nord SPA (RPI No. 021980)—People's Democratic Republic of Algeria;

(6) United Arab Shipping Company (S.A.G.) (RPI No. 006256)—State of Qatar.

Karen V. Gregory,

Secretary.

[FR Doc. 2015–17643 Filed 7–21–15; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 011426–058.

Title: West Coast of South America Discussion Agreement.

Parties: CMA CGM S.A.; Frontier Liner Services, Inc.; Hamburg-Süd; Hapag-Lloyd AG; King Ocean Services Limited, Inc.; Mediterranean Shipping Company, SA; Seaboard Marine Ltd.; and Trinity Shipping Line.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Conner; 1627 I Street NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The amendment deletes Compania Chilena de Navegacion, S.A. and Norasia Container Lines Limited as parties to the agreement.

Agreement No.: 201217–002.

Title: Port of Long Beach Data Services Agreement.

Parties: Port of Long Beach; PierPass LLC.; Long Beach Container Terminal, Inc.; SSA Terminals, LLC; SSA Terminal (Long Beach), LLC; International Transportation Service, Inc.; Pacific Maritime Services, L.L.C.; and Total Terminals, LLC.

Filing Party: Charles Parkin, Esq.; City of Long Beach; 333 W. Ocean Boulevard, 11th Floor; Long Beach, CA; 90802.

Synopsis: The amendment would extend the agreement term and adjust the compensation provided for in the agreement. The parties have requested expedited review.

By Order of the Federal Maritime Commission.

Dated: July 17, 2015.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2015–17998 Filed 7–21–15; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL MARITIME COMMISSION

Notice of Request for Additional Information; Correction

AGENCY: Federal Maritime Commission.

ACTION: Notice; correction.

DATES: The date for submission of comments by interested parties is extended to fifteen (15) days after publication of this correction in the **Federal Register**.

SUMMARY: The Federal Maritime Commission published a document in the **Federal Register** on July 17, 2015, indicating it has formally requested that the parties to the Pacific Ports Operational Improvements Agreement (FMC Agreement Nos. 201227–002 and 201227–003) provide additional information pursuant to 46 U.S.C. 40304(d). This action prevents the Agreement amendment from becoming effective as originally scheduled. The notice erroneously did not list each of the parties to the Agreement.

FOR FURTHER INFORMATION CONTACT: Karen V. Gregory, 202–523–5725.

Correction

In the **Federal Register** of July 17, 2015, in FR Doc. 2015–17521, on page 42496, in the third column, correct the ''Parties'' caption to read:

Parties: Ocean Carrier Equipment Management Association, Inc.; West Coast MTO Agreement; Maersk Line A/S; APL Co. Pte Ltd.; American President Lines, Ltd.; CMA CGM S.A.; Cosco Container Lines Company Limited; Evergreen Line Joint Service Agreement FMC Agreement No. 011982; Hamburg-Sud; Alianca Navegacao e Logistica Ltda.; Hanjin Shipping Co., Ltd.; Hapag-Lloyd AG; Hapag-Lloyd USA; Companhia Libra de Navegacao; Compania Libra de Navegacion Uruguay S.A.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha Line; Kawasaki Kisen Kaisha, Ltd.; APM Terminals Pacific, Ltd.; California United Terminals, Inc.; Eagle Marine Services, Ltd.; International Transportation Service, Inc.; Long Beach Container Terminal, Inc.; Seaside Transportation Service LLC; Trapac, Inc.; Total Terminals LLC; West Basin Container Terminal LLC; Yusen Terminals, Inc.; Pacific Maritime Services, L.L.C.; SSA Terminals, LLC; SSA Terminal (Long Beach), LLC.; Hyundai Merchant Marine Co., Ltd.; Zim Integrated Shipping Services; Matson Navigation Company, Inc.; SSA Terminals (Oakland), LLC; SSA Terminals (Seattle), LLC; Sea Star Stevedoring Company, Inc.; Washington United Terminals, Inc.

Dated: July 17, 2015.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2015–17997 Filed 7–21–15; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Privacy Act of 1974; Systems of Records

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Notice of retirement of systems of records, revision of routine uses, revision of purpose and routine uses, technical revisions to systems of records, and establishment of new systems of records.

SUMMARY: Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, the Federal Retirement Thrift Investment Board (FRTIB) is proposing to: (1) Retire five systems of records; (2) create new general routine uses; (3) revise the purpose and routine uses of four existing systems of records; and (4) establish two new systems of records. The revisions implemented under this republication are corrective and administrative changes that refine and streamline previously published system of records notices.

DATES: Comments must be received on or before August 21, 2015 unless comments received on or before that date result in a contrary determination.

ADDRESSES: You may submit written comments to FRTIB by any one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the Web site instructions for submitting comments.
- *Fax:* 202–942–1676.
- *Mail or Hand Delivery:* Office of General Counsel, Federal Retirement Thrift Investment Board, 77 K Street NE., Suite 1000, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Marla Greenberg, Chief Privacy Officer, Federal Retirement Thrift Investment Board, Office of General Counsel, 77 K Street NE., Suite 1000, Washington, DC 20002, 202–864–8612. For access to any of the FRTIB's systems of records, contact Amanda Haas, FOIA Officer, Office of General Counsel, at the above address or by calling (202) 637–1250.

SUPPLEMENTARY INFORMATION:

(1) FRTIB Is Proposing To Retire Five Systems of Records

Pursuant the Privacy Act of 1974, 5 U.S.C. 552a, and as part of its ongoing integration efforts, the Federal Retirement Thrift Investment Board is retiring the following five systems of records notices: FRTIB–3, Equal Employment Opportunities Records (last published at 77 FR 11534 (February 27, 2012)); FRTIB–4, Adverse Information and Action Records: Disciplinary Records (last published 77 FR 11534 (February 27, 2012)); FRTIB–6, Leave Records (last published at FR (DATE)); FRTIB–10, Identity Management System (IDMS) (last published 77 FR 11534 (February 27, 2012)); and FRTIB–11, Financial Disclosure Reports and Outside Business Interest Records (last published at 77 FR 11534 (February 27, 2012)).

With regard to FRTIB–3, FRTIB will continue to collect and maintain records compiled during the pre-complaint counseling and the investigation of complaints under the Equal Employment Opportunity Act and will rely upon the existing Federal Government-wide system of records titled EEOC/GOVT–1 (Equal Employment Opportunity in the Federal Government Complaint and Appeal Records (67 FR 49338, July 30, 2002), which is written to cover all federal government EEO complaint and appeals records.

With regard to FRTIB–4, FRTIB will continue to collect and maintain personnel records and will rely upon the existing federal government-wide systems of records titled OPM/GOVT–1, General Personnel Records (71 FR 35342 June 19, 2006); OPM/GOVT–2, Employee Performance File System of Records (71 FR 35347 June 19, 2006); and OPM/GOVT–3, Records of Adverse Actions, Performance Based Reduction in Grade and Removal Actions and Termination of Probationers (71 FR 35350 June 19, 2006) which are written to cover all general federal government personnel records.

With regard to FRTIB–6, FRTIB will continue to collect and maintain employee leave records and will rely on FRTIB–5, Employee Payroll, Leave, and Attendance Records, as revised herein.

With regard to FRTIB–10, FRTIB will continue to collect and maintain records pertaining to the Personal Identity Verification (PIV) and Identity Management System (IDMS) and will rely upon the existing government-wide system of records titled GSA/GOVT–7 Personal Identity Verification Identity Management System (73 FR 22377 April 25, 2008) which is written to cover all PIV/IDMS records of participating agencies.

With regard to FRTIB–11, FRTIB will continue to collect and maintain Public and Confidential Financial Disclosure Reports and other ethics program records and will rely upon the existing government-wide systems of records entitled OGE/GOVT–1, Executive Branch Personnel Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records (68 FR 24722 May 8, 2003) and OGE/GOVT–2, Executive Branch Confidential Financial Disclosure Reports (68 FR 24722 May 8, 2003) which are written to cover all federal government financial disclosure reports and other ethics program records.

Eliminating these notices will have no adverse impacts on individuals, but will promote the overall streamlining and management of FRTIB's Privacy Act record systems.

(2) FRTIB Is Proposing To Create General Routine Uses for All of Its Systems of Records

The following routine uses are incorporated by reference into various systems of records, as set forth below.

G1. Routine Use—Audit: A record from this system of records may be disclosed to an agency, organization, or individual for the purpose of performing an audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to FRTIB officers and employees.

G2. Routine Use—Breach Mitigation and Notification: A record from this system of records may be disclosed to appropriate agencies, entities, and persons when: (1) FRTIB suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) FRTIB 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 FRTIB 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 FRTIB's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

G3. Routine Use—Clearance Processing: A record from this system of records may be disclosed to an appropriate federal, state, local, tribal, foreign, or international agency, if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual, or issuance of a security clearance, background investigation, license, contract, grant, or other benefit, or if the information is relevant and necessary to a FRTIB decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit and when disclosure is appropriate to the proper performance of the official duties of the person making the request.

G4. Routine Use—Congressional Inquiries: A record from this system of records may be disclosed to a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the request of the individual to whom the record pertains.

G5. Routine Use—Contractors, *et al.*: A record from this system of records may be disclosed to contractors, grantees, experts, consultants, the agents thereof, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for FRTIB, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to FRTIB officers and employees.

G6. Routine Use—Debt Collection: A record from this system of records may be disclosed to the Department of Justice, the Department of Treasury, or to a consumer reporting agency for collection action on any delinquent debt, pursuant to 5 U.S.C. 552a(b)(12).

G7. Routine Use—Former Employees: A record from this system of records may be disclosed to a former employee of the FRTIB, in accordance with applicable regulations, for purposes of responding to an official inquiry by a federal, state, or local government entity or professional licensing authority; or facilitating communications with a former employee that may be necessary for personnel-related or other official

purposes where the FRTIB requires information or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

G8. Routine Use—Investigations, Third Parties: A record from this system of records may be disclosed to third parties during the course of a law enforcement investigation to the extent necessary to obtain information pertinent to the investigation, provided disclosure is appropriate to the proper performance of the official duties of the third party officer making the disclosure.

G9. Routine Use—Investigations, Other Agencies: A record from this system of records may be disclosed to appropriate federal, state, local, tribal, or foreign government agencies or multilateral governmental organizations for the purpose of investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, license, or treaty where FRTIB determines that the information would assist in the enforcement of civil or criminal laws.

G10. Routine Use—Law Enforcement Intelligence: A record from this system of records may be disclosed to a federal, state, tribal, local, or foreign government agency or organization, or international organization, lawfully engaged in collecting law enforcement intelligence information, whether civil or criminal, or charged with investigating, prosecuting, enforcing or implementing civil or criminal laws, related rules, regulations or orders, to enable these entities to carry out their law enforcement responsibilities, including the collection of law enforcement intelligence.

G11. Routine Use—Law Enforcement Referrals: A record from this system of records may be disclosed to an appropriate federal, state, tribal, local, international, or foreign agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

G12. Routine Use—Litigation, DOJ or Outside Counsel: A record from this system of records may be disclosed to the Department of Justice, FRTIB's outside counsel, other federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when: (1) FRTIB, or (b) any employee of FRTIB in his or her official capacity, or (c) any employee of FRTIB in his or her individual capacity where DOJ or FRTIB has agreed to represent the employee, or (d) the United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and FRTIB determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which FRTIB collected the records.

G13. Routine Use—Litigation, Opposing Counsel: A record from this system of records may be disclosed to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena.

G14. Routine Use—NARA/Records Management: A record from this system of records may be disclosed to the National Archives and Records Administration (NARA) or other federal government agencies pursuant to the Federal Records Act.

G15. Routine Use—Redress: A record from this system of records may be disclosed to a federal, state, tribal, local, international, or foreign government agency or entity for the purpose of consulting with that agency or entity: (1) To assist in making a determination regarding redress for an individual in connection with the operations of a FRTIB program; (2) for the purpose of verifying the identity of an individual seeking redress in connection with the operations of a FRTIB program; or (3) for the purpose of verifying the accuracy of information submitted by an individual who has requested such redress on behalf of another individual.

G16. Routine Use—Security Threat: A record from this system of records may be disclosed to federal and foreign government intelligence or counterterrorism agencies when FRTIB reasonably believes there to be a threat or potential threat to national or international security for which the information may be useful in countering the threat or potential threat, when FRTIB reasonably believes such use is to assist in anti-terrorism efforts, and disclosure is appropriate to the proper performance of the official duties of the person making the disclosure.

G17. Routine Use—Testing: A record from this system of records may be disclosed to appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations where FRTIB is aware of a need to utilize relevant data for purposes of testing new technology and systems designed to enhance security or identify other violations of law.

(3) FRTIB Is Proposing To Revise the Purpose of and Routine Uses to Four Systems of Records, and To Make Technical and Clarifying Changes to These Systems of Records

(a) FRTIB–2, Personnel Security Investigation Files

FRTIB is proposing to revise the purpose of and routine uses to FRTIB–2, Personnel Security Investigation Files (last published at 77 FR 11534 (February 27, 2012)). The existing purpose focuses on documenting and supporting decisions regarding access to FRTIB information and using it to process suitability, eligibility, and fitness for duty determinations. FRTIB is proposing to add the following sentence to the purpose: ''The records may also be used to help streamline and make more efficient the investigations and adjudications process generally.'' FRTIB is also proposing minor technical amendments to the purpose of the system to reflect the fact that the system of records deals with sensitive FRTIB information.

FRTIB is also proposing to reorder the routine uses for FRTIB–2, Personnel Security Investigation Files (this change is being made to all existing systems of records to the extent necessary to make all of FRTIB's notices uniform and to reflect the addition of FRTIB's proposed general routine uses). FRTIB is proposing to add fifteen general routine uses to apply to FRTIB–2, including G1 through G5; G7 through G9; and G11 through G17.

FRTIB is proposing to correct and update the system name; security classification; system location; categories of individuals covered by the system; categories of records in the system; authority for maintenance of the system; purpose; routine uses; disclosure to consumer reporting agencies; storage; retrievability; safeguards; retention and disposal; system manager and address; notification procedure; record access procedures; contesting records procedures; record source categories; and exemptions claimed for the system. Although FRTIB is proposing changes to the exemptions claimed for FRTIB–2, Personnel Security Investigation Files, the exemption itself will not change; rather, these changes are clarifying in nature.

(b) FRTIB–5, Employee Payroll, Leave, and Attendance Records

FRTIB is proposing to revise the purpose of and routine uses to FRTIB–5, Employee Payroll, Leave, and Attendance Records (last published at 77 FR 11534 (February 27, 2012)). The existing purpose focuses on FRTIB's payroll records. FRTIB is proposing to expand the purpose to include records concerning ''leave, attendance, and payments, including determinations relating the amounts to be paid to employees, the distribution of pay according to employee direction (for allotments, to financial institutions, and for other authorized purposes), and for tax withholdings and other authorized deductions.''

FRTIB is also proposing to reorder the routine uses for FRTIB–5, Employee Attendance, Payroll, and Leave Records (this change is being made to all existing systems of records to the extent necessary to make all of FRTIB's notices uniform and to reflect the addition of FRTIB's proposed general routine uses). FRTIB is proposing to add two system-specific routine uses and sixteen general routine uses to apply to FRTIB–5, including G1 through G16.

FRTIB is proposing to correct and update the system name; security classification; system location; categories of individuals covered by the system; categories of records in the system; authority for maintenance of the system; purpose; routine uses; disclosure to consumer reporting agencies; storage; retrievability; safeguards; retention and disposal; system manager and address; notification procedure; record access procedures; contesting records procedures; record source categories; and exemptions claimed for the system.

(d) FRTIB–9, Emergency Notification Files

FRTIB is proposing to revise the purpose of and routine uses to FRTIB–9, Emergency Notification Records (last published at 77 FR 11534 (February 27, 2012)). The existing purpose focused on the location and notification of individuals during emergencies, as well as the creation of social rosters. FRTIB is proposing to remove reference to social rosters and to enable the Agency to use this information for business continuity purposes.

FRTIB is proposing to reorder the routine uses for FRTIB–9, Emergency Notification Records (this change is being made to all existing systems of records to the extent necessary to make all of FRTIB's notices uniform and to reflect the addition of FRTIB's proposed general routine uses). FRTIB is also proposing to add fourteen general routine uses to apply to FRTIB–9, including G1 through G2; G4 through G5; G7 through G9; and G11 through G17.

FRTIB is proposing to correct and update the system name; security classification; system location; categories of individuals covered by the system; categories of records in the system; authority for maintenance of the system; purpose; routine uses; storage; retrievability; safeguards; system manager and address; notification procedure; record access procedures; and contesting records procedures. Although FRTIB is proposing changes to the exemptions claimed for FRTIB–9, Emergency Notification Records, the exemption itself will not change; rather, these changes are clarifying in nature.

(e) FRTIB–13, Fraud and Forgery Records

FRTIB is proposing to revise the purpose of and routine uses to FRTIB–13, Fraud and Forgery Records (last published at 77 FR 11534 (February 27, 2012)). The existing purpose narrowly applied to records pertaining to fraud and forgery participants committed or alleged to have committed against their own accounts. FRTIB is proposing to broaden the scope of this system of records to include records pertaining to fraud or forgery committed by participants, beneficiaries, and third parties affecting a participant account. Moreover, FRTIB is proposing to expand the scope of this system to include records relating to third parties alleged to have misappropriated or to have attempted to misappropriate the Agency's name, brand, or logo.

FRTIB is also proposing to reorder the routine uses for FRTIB–13, Fraud and Forgery Records (this change is being made to all existing systems of records to the extent necessary to make all of FRTIB's notices uniform and to reflect the addition of FRTIB's proposed general routine uses). FRTIB is proposing to add twelve general routine uses to apply to FRTIB–13, including G1 through G2; G4 through G5; G8 through G14; and G16.

FRTIB is proposing to correct and update the security classification; system location; categories of individuals covered by the system; categories of records in the system; purpose; routine uses; disclosure to consumer reporting agencies; storage; retrievability; safeguards; system manager and address; notification procedure; record access procedures; contesting records procedures; record source categories; and exemptions claimed for the system. Although FRTIB is proposing changes to the exemptions claimed for FRTIB–13, Fraud and Forgery Records, the exemption itself will not change; rather, these changes are clarifying in nature.

(4) FRTIB Is Proposing To Create Two New Systems of Records

(a) FRTIB–14—FRTIB Legal Case Files

FRTIB is proposing to establish a new system of records entitled, FRTIB–14, Legal Case Files.'' The proposed system of records is necessary to assist FRTIB attorneys in providing legal advice to FRTIB personnel on a wide variety of legal issues; to collect and maintain information of any individual who is or will be in litigation with the Agency; to represent FRTIB during litigation; and to catalogue, investigate, litigate, or otherwise resolve any case or matter handled by the Office of General Counsel.

These files may include: Notes, reports, legal opinions and memoranda; settlements; agreements; documentary evidence; claims and records regarding discrimination; correspondence; contracts; contract proposals and other procurement documents; TSP documents; participant, beneficiary, and alternate payee files; initial and final FRTIB determinations of FERSA matters; Freedom of Information Act and Privacy Act requests and appeals, and decisions of those requests and appeals; drafts and legal reviews of proposed personnel actions; personnel records; litigation files; employee relations files; witness statements; summonses and subpoenas; affidavits; court transcripts; discovery requests and responses; and breach reports and supporting documents. FRTIB is proposing to add four system-specific routine uses and sixteen general routine uses to apply to FRTIB–14, including G1 through G16.

(b) FRTIB–15—Internal Investigations of Harassment and Hostile Work Environment Allegations

FRTIB is proposing to establish a new system of record entitled, ''FRTIB–15, Internal Investigations of Harassment and Hostile Work Environment Allegations.'' The proposed system of records is necessary for the purpose of upholding FRTIB's policy to provide for a work environment free from all forms of harassment and will cover files that identify by name, or other personal identifier, individuals who have asserted that they have been subjected to harassment or hostile work environment at FRTIB, as well as

individuals about whom such complaints have been made.

These files may include: The name, position, grade, and supervisor(s) of the complainant and the accused; the complaint; witness statements; interview notes; legal memoranda; reports of investigation; final decisions and corrective actions taken; and related correspondence and exhibits. FRTIB is proposing to add one system-specific routine use and sixteen general routine uses to apply to FRTIB–15, including G1 through G16.

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written comments on the proposal of these two systems of records. A report on the proposed systems has been sent to Congress and the Office of Management and Budget for their awareness.

Greg Long,

Executive Director, Federal Retirement Thrift Investment Board.

FRTIB–2

SYSTEM NAME:

Personnel Security Investigation Files.

SECURITY CLASSIFICATION:

Most personnel identity verification records are not classified. However, in some cases, records of certain individuals, or portions of some records may be classified in the interest of national security.

SYSTEM LOCATION(S):

Federal Retirement Thrift Investment Board, 77 K Street NE., Suite 1000, Washington, DC 20002. Records may also be kept at an additional location as backup for Business Continuity purposes. For background investigations adjudicated by the Office of Personnel Management (OPM), OPM may retain copies of those files pursuant to OPM/Central–9, Personnel Investigations Records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who require regular, ongoing access to FRTIB facilities, information technology systems, or sensitive information, including current and former applicants for employment or contracts, federal employees, government contractors, students, interns, volunteers, affiliates, experts, instructors, and consultants to federal programs who undergo a background investigation for the purposes of determining suitability for employment, contractor fitness, credentialing for HSPD–12, and/or access to FRTIB facilities or information technology systems. This system also includes individuals accused of security violations or found in violation of FRTIB's security policies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; former names; date and place of birth; Social Security number; home address; email address(es); phone numbers; employment history; residential history; education and degrees earned; citizenship; passport information; names, date and place of birth, Social Security number, and citizenship information for spouse or cohabitant; the name and marriage information for current and former spouse(s); names of associates and references and their contact information; names, dates and places of birth, citizenship, and address of relatives; names of relatives who work for the federal government; information on foreign contacts and activities; association records; information on loyalty to the United States; criminal history; mental health history; information pertaining to drug use; financial information; fingerprints; information from the Internal Revenue Service pertaining to income tax returns; credit reports; information pertaining to security clearances; other agency reports furnished to FRTIB in connection with the background investigation process; summaries of personal and third party interviews conducted during the background investigation; results of suitability decisions; level of security clearance; date of issuance of security clearance; including, but not limited to forms such as SF–85, SF–85P, SF–86, SF–87, SF–306; FD–258; and other information generated from above, where applicable.

Records pertaining to security violations may contain information pertaining to circumstances of the violation; witness statements, investigator's notes, security violations; agency action taken; requests for appeal; and documentation of agency action taken in response to security violations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3301; 44 U.S.C. 3101; Executive Order 10450; Executive Order 13488; 5 CFR 731 and 736; 61 FR 6428; and Homeland Security Presidential Directive 12.

PURPOSE(S):

The records in this system of records are used to document and support decisions regarding clearance for access to sensitive FRTIB information, the ability to receive and the suitability, eligibility, and fitness for service of applicants for federal employment and contract positions, including students, interns, or volunteers to the extent their duties require access to federal facilities, information systems, or applications. The records may also be used to help streamline and make more efficient the investigations and adjudications process generally. The records may *also* be used to document security violations and supervisory actions taken in response to such violations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, as amended, 5 U.S.C. 552a(b); and:

1. General Routine Uses G1 through G5; G7 through G9; G7 through G9; and G11 through G16 apply to this system of records (see Prefatory Statement of General Routine Uses).

2. A record from this system of records may be disclosed to any authorized source or potential source from which information is requested in the course of an investigation concerning the retention of an employee or other personnel action (other than hiring), or the retention of a security clearance, contact, grant, license, or other benefit, to the extent necessary to identify the individual, *to* inform the source of the nature and purpose of the investigation, *or* to identify the type of information requested.

3. A record from this system of records may be disclosed to OPM, the Merit Systems Protection Board, the Federal Labor Relations Authority, the Office of Special Counsel, or the Equal Employment Opportunity Commission to carry out its respective authorized functions (under 5 U.S.C. 1103, 1204, and 7105 and 42 U.S.C. 2000e–4, in that order).

4. To the Office of Management and Budget when necessary to the review of private relief legislation pursuant to OMB Circular No. A–19.

5. A record from this system of records may be disclosed to a Federal, State, local, foreign, or tribal or other public authority the fact that this system of records contains information relevant to the retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit. The other agency or licensing organization may then make a request supported by the written consent of the individual for the entire record if it so chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to

support a referral to another office within the agency or to another Federal agency for criminal, civil, administrative personnel or regulatory action.

6. A record from this system of records may be disclosed to the news media or the general public, factual information the disclosure of which would be in the public interest and which would not constitute an unwarranted invasion of personal privacy, consistent with Freedom of Information Act standards.

7. A record from this system of records may be disclosed to a Federal, State, or local agency, or other appropriate entities or individuals, or through established liaison channels to selected foreign governments, in order to enable an intelligence agency to carry out its responsibilities under the National Security Act of 1947 as amended, the CIA Act of 1949 as amended, Executive Order 12333 or any successor order, applicable national security directives, or classified implementing procedures approved by the Attorney General and promulgated pursuant to such statutes, orders or directives.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper and electronic form, including on computer databases, all of which are stored in a secure location.

RETRIEVABILITY:

Background investigation files are retrieved by any one or more of the following identifiers: Name; Social Security number; or other unique identifier of the individual about whom they are maintained.

SAFEGUARDS:

FRTIB has adopted appropriate administrative, technical, and physical controls in accordance with FRTIB's security program to protect the security, confidentiality, availability, and integrity of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Paper records are stored in locked file cabinets in areas of restricted access that are locked after office hours. Electronic records are stored on computer networks and protected by assigning usernames to individuals needing access to the records and by passwords set by unauthorized users that must be changed periodically.

RETENTION AND DISPOSAL:

These records are retained and disposed of in accordance with General Records Schedule 18, item 22a, approved by the National Archives and Records Administration (NARA). The records are disposed in accordance with FRTIB disposal policies which call for burning or shredding or deleting from the Agency's electronic record keeping systems. Records are destroyed upon notification of death or not later than five years after separation or transfer of employee to another agency or department, whichever is applicable.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Personnel Security Specialist, 77 K Street NE., Suite 1000, Washington, DC 20002.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should submit a written request to the appropriate entity below, and include the following information:

a. Full name;

b. Any available information regarding the type of record involved;

c. The address to which the record information should be sent; and

d. You must sign your request.

1. For records maintained by FRTIB, submit a written request to the FOIA Officer, FRTIB, 77 K Street NE., Washington, DC 20002; or

2. For records maintained by the Office of Personnel Management, submit a written request to the FOI/PA, Office of Personnel Management, Federal Investigative Services, P.O. Box 618, 1137 Branchton Road, Boyers, PA 16018–0618.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual, such as a Power of Attorney, in order for the representative to act on their behalf. Individuals requesting access must also comply with FRTIB's Privacy Act regulations regarding verification of identity and access to such records, available at 5 CFR part 1630.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures.

RECORD SOURCE CATEGORIES:

Information is obtained from a variety of sources including the employee, contractor, or applicant via use of the SF–85, SF–85P, SF–86 SF–306, or SF–87, personal interviews with various individuals, including, but not limited to the subject of the investigation, witnesses, present and former employers, references, neighbors, friends, co-workers, business associates, teachers, landlords, family members, or other associates who may have information about the subject of the investigation; investigative records and notices of personnel actions furnished by other federal agencies; records from employers and former employers; public records, such as court filings; publications such as newspapers, magazines, and periodicals; FBI criminal history records and other databases; police departments; probation officials; prison officials financial institutions and credit reports; tax records; medical records and health care providers; and educational institutions. Security violation information is obtained from a variety of sources, such as guard reports, security inspections, witnesses, supervisor's reports, audit reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(2), records in this system of records are exempt from the requirements of subsections (c)(3); (d); (e)(1); (e)(4)(G), (H), (I); and (f) of 5 U.S.C. 552a. provided, however, that if any individual is denied any right, privilege, or benefit that he or she would otherwise be entitled to by federal law, or for which he or she would otherwise be eligible, as a result of the maintenance of these records, such material shall be provided to the individual, except to the extent that the disclosure of the material would reveal the identity of a source who furnished information to the Government with an express promise that the identity of the source would be held in confidence.

Pursuant to 5 U.S.C. 552a(k)(5), records in this system of records are exempt from the requirements of subsections (c)(3); (d); (e)(1); (e)(4)(G), (H), (I); and (f) of 5 U.S.C. 552a, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence.

FRTIB–5

SYSTEM NAME:

Employee Payroll, Leave, and Attendance Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records are located at the Federal Retirement Thrift Investment Board, 77 K Street NE., Suite 1000, Washington, DC 20002. Records may also be maintained at additional locations for Business Continuity purposes.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former FRTIB employees, including Special Government Employees

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records includes personnel information including, names, addresses, Social Security numbers, employee numbers, gender, race or national origin, and disability data; duty location; position data; awards and bonus information; employment verification information; notifications of personnel actions; and military and veterans data.

This system of records also includes payroll information, including: Marital status and number of dependents; child support enforcement court orders; information about taxes and other deductions; debts owed to the FRTIB and garnishment information; salary data; retirement data; Thrift Savings Plan contribution and loan amount; and direct deposit information, including financial institution.

This system of records also includes time and attendance records including, the number and type of hours worked; overtime information, including compensatory or credit time earned and used; compensatory travel earned; investigative case title and tracking number (used to track time worked associated with a specific case); Fair Labor Standards Act (FLSA) compensation; leave requests, balances, and credits; leave charge codes; military leave; and medical records as they pertain to employee medical leave.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 8474; and 44 U.S.C. 3101.

PURPOSE(S):

This system of records is maintained to perform agency functions involving employee leave, attendance, and payments, including determinations relating to the amounts to be paid to employees, the distribution of pay according to employee directions (for allotments, to financial institutions, and for other authorized purposes), and for tax withholdings and other authorized deductions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

a. General Routine Uses G1 through G16 apply to this system of records (see Prefatory Statement of General Routine Uses).

b. A record from this system may be disclosed to the United States Department of the Interior, the United States Department of Labor, and the United States Department of the Treasury to effect payments to employees.

c. Payments owed to FRTIB through current and former employees may be shared with the Department of the Interior for the purposes of offsetting the employee's salary. Payments owed to FRTIB through current and former employees who become delinquent in repaying the necessary funds may be shared with the Department of Treasury for the purpose of offsetting the employee's salary.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper and electronic form, including on computer databases, all of which are stored in a secure location.

RETRIEVABILITY:

Records are retrieved by name; or Social Security number.

SAFEGUARDS:

FRTIB has adopted appropriate administrative, technical, and physical controls in accordance with FRTIB's security program to protect the security, confidentiality, availability, and integrity of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Paper records are stored in locked file cabinets in areas of restricted access that are locked after office hours. Electronic records are stored on computer networks and protected by assigning usernames to individuals needing access to the records and by passwords set by unauthorized users that must be changed periodically.

RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Schedules issued by the National Archives and Records Administration (NARA) or an FRTIB records disposition schedule.

SYSTEM MANAGER(S) AND ADDRESS:

For payroll records, FRTIB's Human Resources Officer, 77 K Street NE., Suite 1000, Washington, DC 20002.

For leave and attendance records, FRTIB's Administrative Officer, 77 K Street NE., Suite 1000, Washington, DC 20002.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves must submit a written request to the FOIA Officer, FRTIB, 77 K Street NE., Washington, DC 20002, and provide the following information:

b. Full name;

c. Any available information regarding the type of record involved;

d. The address to which the record information should be sent; and

e. Your signature.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual, such as a Power of Attorney, in order for the representative to act on their behalf. Individuals requesting access must also comply with FRTIB's Privacy Act regulations regarding verification of identity and access to such records, available at 5 CFR part 1630.

RECORD ACCESS PROCEDURE:

Same as Notification Procedures.

CONTESTING RECORDS PROCEDURE:

Same as Notification Procedures.

RECORD SOURCE CATEGORIES:

Subject individuals; subject individuals' supervisor(s); subject individuals' timekeeper(s); and the Office of Personnel Management.

EXEMPTIONS CLAIMED FOR SYSTEM:

None.

FRTIB–9

SYSTEM NAME:

FRTIB Emergency Notification Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION(S):

Records are located at the Federal Retirement Thrift Investment Board, 77 K Street NE., Suite 1000, Washington, DC 20002. Records may also be located in additional locations in connection with cloud-based services and kept at an additional location as backup for Business Continuity purposes.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian and contractor personnel working at the FRTIB located at 77 K Street NE., Washington, DC 20002; former employees; and individuals designated as emergency points of contact.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information regarding the following emergency contact information for FRTIB employees, and contractor personnel: Name; organizational office, or organizational name of contractor; title; position and duty status; name of supervisor; any volunteered medical information; office telephone number; government or business e-mail address; home address; home and cell phone numbers; personal email address(es); the identification of essential and non-essential employees; and other personal contact information. This system also contains the following information for the FRTIB employee or contractor's emergency contact: name; relationship to FRTIB employee or contractor; work address; home address; office telephone number; home and cell phone numbers; and email address(es).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 8474; 44 U.S.C. 3101; Executive Order 12656; and Presidential Decision Directive 67.

PURPOSE(S):

This system of records is maintained for contacting FRTIB personnel, including FRTIB employees and contractors, and other individuals to respond to all emergencies, including technical, manmade or natural disaster, or other event affecting FRTIB operations, and to contact FRTIB personnel's emergency contacts in the event of an emergency.

Information from this system of records is also used to prepare organizational charts, recall and emergency notification rosters, and directories for business continuity planning purposes, locate individuals on routine and/or emergency matters; locate individuals during medical emergencies, facility evacuations and similar situations involving threats; and similar administrative uses requiring personnel data.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

d. General Routine Uses G1 through G2; G4 through G5; G7 through G9; and G11 through G17 apply to this system of records (see Prefatory Statement of General Routine Uses).

e. A record in this system of records may be disclosed to family members, emergency medical personnel, or to law enforcement officials in case of a medical or other emergency involving the subject individual (without the subsequent notification prescribed in 5 U.S.C. 552a(b)(8)).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained electronically in computer databases, including cloud-based services, and on paper in secure facilities in a locked drawer behind a secured-access door.

RETRIEVABILITY:

Records are retrieved by the name of the individual on whom they are maintained, and may also be retrieved by the individual's title or phone number.

SAFEGUARDS:

FRTIB has adopted appropriate administrative, technical, and physical controls in accordance with FRTIB's security program to protect the security, confidentiality, availability, and integrity of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Paper records are stored in file cabinets in areas of restricted access that are locked after office hours. Electronic records are stored on computer networks, including cloud-based services, and are protected by assigning usernames to individuals needing access to the records and by passwords set by unauthorized users that must be changed periodically.

RETENTION AND DISPOSAL:

Records are maintained as long as the individual is an employee or contractor for the Agency. Expired records are destroyed by shredding or purging from the Agency's electronic record keeping systems.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Physical Security Specialist, 77 K Street NE., Suite 1000, Washington, DC 20002.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves must submit a written request to the FOIA Officer, FRTIB, 77 K Street NE., Washington, DC 20002, and provide the following information:

f. Full name;

g. Any available information regarding the type of record involved;

h. The address to which the record information should be sent; and

i. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual, such as a Power of Attorney, in order for the representative to act on their behalf. Individuals requesting access must also comply with FRTIB's Privacy Act regulations regarding verification of identity and access to such records, available at 5 CFR part 1630.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures.

RECORD SOURCE CATEGORIES:

Information is provided by the individual who is the subject of the record.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FRTIB–13

SYSTEM NAME:

Fraud and Forgery Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records are located at the Federal Retirement Thrift Investment Board, 77 K Street NE., Suite 1000, Washington, DC 20002. Records may also be kept at an additional location for Business Continuity purposes.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system of records contains information on Thrift Savings Plan (TSP) participants, beneficiaries, alternate payees, and third party individuals alleged to have committed an act of fraud or forgery relating to participant and beneficiary accounts; and third parties alleged to have misappropriated, or attempted to misappropriate the FRTIB's (including the TSP's) name, brand, or logos.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain the following kinds of information: Name, date of birth, and Social Security number of TSP participants, beneficiaries, alternate payees, and third parties alleged to have committed an act of fraud or forgery relating to participant accounts; TSP account information related to the fraud or forgery allegation; information obtained from other agencies as it relates to allegations of fraud or forgery; documentation of complaints and allegations of fraud and forgery; exhibits, statements, affidavits, or records obtained during investigations of fraud, or forgery, court and administrative orders, transcripts, and documents; internal staff memoranda; staff working papers; and other documents and records related to the investigation of fraud or forgery, including the disposition of the allegations; and reports on the investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 8474; and 44 U.S.C. 3101.

PURPOSE(S):

These records are used to inquire into and investigate allegations that a TSP participant, beneficiary, alternate payee, or third party has committed or attempted to commit an act of fraud or forgery relating to a participant or beneficiary account; and to collect information to verify allegations that a third party has misappropriated the FRTIB's (or TSP's) name, brand, or logos.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, as amended, 5 U.S.C. 552a(b); and:

8. General Routine Uses G1 through G2; G4 through G5; G8 through G14; and G16 apply to this system of records (see Prefatory Statement of General Routine Uses);

9. Information used to verify allegations that a third party has misappropriated the FRTIB's (or TSP's) name, brand, or logos may be disclosed to the Federal Bureau of Investigation, Department of Justice, or Securities and Exchange Commission for further investigation, prosecution, or enforcement;

10. A record from this system may be disclosed to the Secret Service for the purpose of investigating forgery, and to the Department of Justice, when substantiated by the Secret Service;

11. A record pertaining to may be disclosed to the current or former employing agency of the participant, beneficiary, alternate payee, or third party alleged to have committed fraud or forgery against a participant account for the purpose of further investigation or administrative action; and

12. A record from this system may be disclosed to informants, complainants, or victims to the extent necessary to provide those persons with information and explanations concerning the progress or results of the investigation.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper and electronic form, including on computer databases, all of which are stored in a secure location.

RETRIEVABILITY:

Records are retrieved by name or file number.

SAFEGUARDS:

FRTIB has adopted appropriate administrative, technical, and physical controls in accordance with FRTIB's security program to protect the security, confidentiality, availability, and integrity of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Paper records are stored in locked file cabinets in areas of restricted access that are locked after office hours. Electronic records are stored on computer networks and protected by assigning usernames to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

RETENTION AND DISPOSAL:

Records in this system are destroyed seven years after the case is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Supervisory Fraud Specialist, Federal Retirement Thrift Investment Board, 77 K Street NE., Suite 1000, Washington, DC 20002.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should submit a written request to the FOIA Officer, 77 K Street NE., Washington, DC 20002, and include the following information:

a. Full name;

b. Any available information regarding the type of record involved;

c. The address to which the record information should be sent; and

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual, such as a Power of Attorney, in order for the representative to act on their behalf. Individuals requesting access must also comply with FRTIB's Privacy Act regulations regarding verification of identity and access to such records, available at 5 CFR part 1630.

RECORD ACCESS PROCEDURE:

Same as Notification Procedures.

CONTESTING RECORDS PROCEDURE:

Same as Notification Procedures.

RECORD SOURCE CATEGORIES:

Records in this system may be provided by or obtained from the following: Persons to whom the information relates when practicable, including TSP participants, beneficiaries, alternate payees, or other third parties; complainants; informants; witnesses; investigators; persons reviewing the allegations; Federal, state and local agencies; and investigative reports and records.

EXEMPTIONS CLAIMED FOR SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(2), records in this system of records are exempt from the requirements of subsections (c)(3); (d); (e)(1); (e)(4)(G), (H), (I); and (f) of 5 U.S.C. 552a, provided, however, that if any individual is denied any right, privilege, or benefit that he or she would otherwise be entitled to by federal law, or for which he or she would otherwise be eligible, as a result of the maintenance of these records, such material shall be provided to the individual, except to the extent that the disclosure of the material would reveal the identity of a source who furnished information to the Government with an express promise that the identity of the source would be held in confidence.

FRTIB–14

SYSTEM NAME:

FRTIB Legal Case Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records are located at the Federal Retirement Thrift Investment Board, 77 K Street NE., Suite 1000, Washington,

DC 20002. Records may also be located in additional locations for Business Continuity purposes.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are participants, beneficiaries, and alternate payees of the Thrift Savings Plan; other individuals who are identified in connection with investigations and/or litigation conducted with regard to FERSA; individuals (including FRTIB employees) who are parties to or witnesses in civil litigation or administrative proceedings involving or concerning FRTIB or its officers or employees (including Special Governmental Employees); individuals who are the subject of a breach of personally identifiable information; individuals who are contractors or potential contractors with FRTIB or are otherwise personally associated with a contract or procurement matter; individuals who receive legal advice from the Office of General Counsel; and other individuals (including current, former, and potential FRTIB employees (including Special Governmental Employees), contractors, interns, externs, and volunteers) who are the subject of or are otherwise connected to an inquiry, investigation, or other matter handled by the Office of General Counsel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Notes, reports, legal opinions and memoranda; settlements; agreements; documentary evidence; claims and records regarding discrimination; correspondence; contracts; contract proposals and other procurement documents; TSP documents; participant, beneficiary, and alternate payee files; initial and final FRTIB determinations of FERSA matters; Freedom of Information Act and Privacy Act requests and appeals, and decisions of those requests and appeals; drafts and legal reviews of proposed personnel actions; personnel records; litigation files; employee relations files; witness statements; summonses and subpoenas; affidavits; court transcripts; discovery requests and responses; and breach reports and supporting documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 8474; and 44 U.S.C. 3301.

PURPOSE(S):

The purpose of this system is to assist FRTIB attorneys in providing legal advice to FRTIB personnel on a wide variety of legal issues; to collect the information of any individual who is, or will be, in litigation with the Agency, as well as the attorneys representing the plaintiff(s) or defendant(s), response to claims by employees, former employees, and other individuals; to assist in the settlement of claims against the government; to represent FRTIB during litigation; and to catalogue, investigate, litigate, or otherwise resolve any case or matter handled by the Office of General Counsel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

1. General Routine Uses G1 through G16 apply to this system of records (see Prefatory Statement of General Routine Uses).

2. Names, addresses, telephone numbers, and email addresses of employees, former employees, participants, beneficiaries, alternate payees, and information pertaining to debts to the FRTIB may be disclosed to the Department of Treasury, Department of Justice, a credit agency, and a debt collection firm to collect the debt. Disclosure to a debt collection firm shall be made only under a contract that binds any such contractor or employee of such contractor to the criminal penalties of the Privacy Act.

3. Information may be provided to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

4. A record relating to a case or matter may be disseminated to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States or to an executive agreement.

5. A record may be disseminated to a foreign country, through the United States Department of State or directly to the representative of such country, to the extent necessary, to assist such country in civil or criminal proceedings in which the United States or one of its officers or agents has an interest.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Information from this system of records may be disclosed to a consumer reporting agency in accordance with 31 U.S.C. 3711(e).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained electronically in computer databases, including cloud-based services, and on paper in secure facilities in a locked drawer behind a secured-access door.

RETRIEVABILITY:

Records are retrieved by the name of the individual on whom they are maintained, and may also be retrieved by case number.

SAFEGUARDS:

FRTIB has adopted appropriate administrative, technical, and physical controls in accordance with FRTIB's security program to protect the security, confidentiality, availability, and integrity of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Paper records are stored in file cabinets in areas of restricted access that are locked after office hours. Electronic records are stored on computer networks, including cloud-based services, and are protected by assigning usernames to individuals needing access to the records and by passwords set by unauthorized users that must be changed periodically.

RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or an FRTIB records disposition schedule.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Federal Retirement Thrift Investment Board, 77 K Street NE., Suite 1000, Washington, DC 20002.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves must submit a written request to the FOIA Officer, FRTIB, 77 K Street NE., Washington, DC 20002, and provide the following information:

j. Full name;

k. Any available information regarding the type of record involved;

l. The address to which the record information should be sent; and

m. Your signature.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual, such as a Power of Attorney, in order for the representative to act on their behalf. Individuals requesting access must also comply with FRTIB's Privacy Act regulations regarding verification of identity and access to such records, available at 5 CFR part 1630.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures.

RECORD SOURCE CATEGORIES:

Subject individuals; TSP participants, beneficiaries, and alternate payees; federal government records; current, and former, and potential employees (including Special Government Employees); contractors; interns, externs, and volunteers; the Social Security Administration; court records; articles from publications; and other organizations or individuals with relevant knowledge or information.

EXEMPTIONS CLAIMED FOR SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(2), records from this system are exempt from the requirements of subsections (c)(3); (d); (e)(1); (e)(4)(G), (H), (I); and (f) of 5 U.S.C. 552a, provided, however, that if any individual is denied any right, privilege, or benefit that he or she would otherwise be entitled to by Federal law, or for which he or she would otherwise be eligible, as a result of the maintenance of these records, such material shall be provided to the individual, except to the extent that the disclosure of the material would reveal the identity of a source who furnished information to the Government with an express promise that the identity of the source would be held in confidence.

FRTIB–15

SYSTEM NAME:

Internal Investigations of Harassment and Hostile Work Environment Allegations.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records are located at the Federal Retirement Thrift Investment Board, 77 K Street NE., Suite 1000, Washington, DC 20002. Records may also be located in additional locations for Business Continuity purposes.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former FRTIB employees (including Special Government Employees), contractors, interns, externs, and volunteers who have filed a complaint or report of harassment or hostile work environment, or have been accused of harassing conduct; and witnesses or potential witnesses.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains all documents related to a complaint or report of harassment, which may include the name, position, grade, and supervisor(s) of the complainant and the accused; the complaint; witness statements; interview notes; legal memoranda; reports of investigation; final decisions and corrective actions taken; and related correspondence and exhibits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 8474; 42 U.S.C. 2000e *et seq.;* and 44 U.S.C. 3101.

PURPOSE(S):

This system of records is maintained for the purpose of upholding FRTIB's policy to provide for a work environment free from all forms of harassment, including sexual harassment, and harassment on the basis of race, color, gender, national origin, religion, sexual orientation, age, genetic information, reprisal, parental status, or disability.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

6. General Routine Uses G1 through G16 apply to this system of records (see Prefatory Statement of General Routine Uses).

7. Disclosure of information from this system of records about an investigation that may have been conducted may be made to the complaining party; the alleged harasser; and to a limited number of witnesses when the purpose of the disclosure is both relevant and necessary and is compatible with the purpose for which the information was collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained electronically in computer databases, including cloud-based services, and on paper in secure facilities in a locked drawer behind a secured-access door.

RETRIEVABILITY:

Records are retrieved by the name of the individual on whom they are maintained, and may also be retrieved by case number.

SAFEGUARDS:

FRTIB has adopted appropriate administrative, technical, and physical controls in accordance with FRTIB's security program to protect the security, confidentiality, availability, and integrity of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Paper records are stored in file cabinets in areas of restricted access that are locked after office hours. Electronic records are stored on computer networks, including cloud-based services, and are protected by assigning usernames to individuals needing access to the records and by passwords set by unauthorized users that must be changed periodically.

RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or an FRTIB records disposition schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Human Resources Officer, Federal Retirement Thrift Investment Board, 77 K Street NE., Suite 1000, Washington, DC 20002.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves must submit a written request to the FOIA Officer, FRTIB, 77 K Street NE., Washington, DC 20002, and provide the following information:

n. Full name;

o. Any available information regarding the type of record involved;

p. The address to which the record information should be sent; and

q. Your signature.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual, such as a Power of Attorney, in order for the representative to act on their behalf. Individuals requesting access must also comply with FRTIB's Privacy Act regulations regarding verification of identity and access to such records, available at 5 CFR part 1630.

RECORD ACCESS PROCEDURE:

Same as Notification Procedures.

CONTESTING RECORDS PROCEDURE:

Same as Notification Procedures.

RECORD SOURCE CATEGORIES:

Subject individuals; supervisors and other FRTIB employees with knowledge; agency EEO and human resources specialists; employee relations staff; FRTIB attorneys; outside counsel retained by subject individuals; and medical professionals.

EXEMPTIONS CLAIMED FOR SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(2), records in this system are exempt from the requirements of subsections (c)(3); (d); (e)(1); (e)(4)(G), (H), (I); and (f) of 5 U.S.C. 552a, provided, however, that if any individual is denied any right, privilege, or benefit that he or she would otherwise be entitled to by Federal law, or for which he or she would otherwise be eligible, as a result of the maintenance of these records, such material shall be provided to the individual, except to the extent that the disclosure of the material would reveal the identity of a source who furnished information to the Government with an express promise that the identity of the source would be held in confidence.

[FR Doc. 2015–17924 Filed 7–21–15; 8:45 am]

BILLING CODE 6760–01–P

GENERAL SERVICES ADMINISTRATION

[Notice-CECANF–2015–07; Docket No. 2015–0004; Sequence No. 7]

Commission To Eliminate Child Abuse and Neglect Fatalities; Announcement of Meetings

AGENCY: Commission to Eliminate Child Abuse and Neglect Fatalities.

ACTION: Meeting Notice.

SUMMARY: The Commission to Eliminate Child Abuse and Neglect Fatalities (CECANF), a Federal Advisory Committee established by the Protect Our Kids Act of 2012, Public Law 112–275, will hold a meeting open to the public on Thursday, August 6, 2015 and Friday, August 7, 2015 in New York, New York.

DATES: The meeting will be held on Thursday, August 6, 2015, from 8:00 a.m. to 5:30 p.m., Eastern Daylight Time, and Friday, August 7, 2015, from 8:00 a.m. to 12:30 p.m., Eastern Daylight Time.

ADDRESSES: CECANF will convene its meeting at the ACS Children's Center Auditorium, 492 First Avenue at 28th Street, New York, NY 10016. This site is accessible to individuals with disabilities. The meeting also will be made available via teleconference and/or webinar.

Submit comments identified by ''Notice-CECANF–2015–07,'' by either of the following methods:

• Regulations.gov: *http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by searching for ''Notice-CECANF–2015–07.'' Select the link ''Comment Now'' that corresponds with ''Notice-CECANF–2015–07.'' Follow the instructions provided on the screen. Please include your name, organization name (if any), and ''Notice-CECANF–2015–07'' on your attached document.

• *Mail:* U.S. General Services Administration, 1800 F Street NW., Room 7003D, Washington DC 20405, Attention: Tom Hodnett (CD) for CECANF.

Instructions: Please submit comments only and cite ''Notice-CECANF–2015–07'' in all correspondence related to this notice. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Visit the CECANF Web site at *https://eliminatechildabusefatalities.sites.usa.gov/* or contact Patricia Brincefield, Communications Director, at 202–818–9596, U.S. General Services Administration, 1800 F Street NW., Room 7003D, Washington DC 20405, Attention: Tom Hodnett (CD) for CECANF.

SUPPLEMENTARY INFORMATION:

Background: CECANF was established to develop a national strategy and recommendations for reducing fatalities resulting from child abuse and neglect.

Agenda: This meeting will explore key research, policy, and practice in New York City related to addressing and preventing child abuse and neglect fatalities. Commission members will then continue discussing the work plans of the Commission subcommittees, the information that they have obtained to date, and emerging recommendations.

Attendance at the Meeting: Individuals interested in attending the meeting in person or participating by webinar and teleconference must register in advance. To register to attend in person or by webinar/phone, please go to *http://meetingtomorrow.com/webcast/CECANFNY* and follow the prompts. Once you register, you will receive a confirmation email with the webinar login and teleconference number. Detailed meeting minutes will be posted within 90 days of the meeting. Members of the public will not have the opportunity to ask questions or otherwise participate in the meeting.

However, members of the public wishing to comment should follow the steps detailed under the heading **ADDRESSES** in this publication or contact us via the CECANF Web site at *https://eliminatechildabusefatalities.sites.usa.gov/contact-us/.*

Dated: July 15, 2015.

Karen White,

Executive Assistant.

[FR Doc. 2015–17954 Filed 7–21–15; 8:45 am]

BILLING CODE 6820–34–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0262; Docket 2015–0001; Sequence 9]

General Services Administration Acquisition Regulation; Submission for OMB Review; Identification of Products With Environmental Attributes

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Notice of request for comments regarding an extension of a previously existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding identification of products with environmental attributes. A notice was published in the **Federal Register** at 80 FR 22351 on April 28, 2015. No comments were received.

DATES: Submit comments on or before: August 21, 2015.

ADDRESSES: Submit comments identified by Information Collection 3090–0262, Identification of Products with Environmental Attributes, by any of the following methods:

• *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''Information Collection 3090–0262, Identification of Products with Environmental Attributes'', under the heading ''Enter Keyword or ID'' and selecting ''Search''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0262, Identification of Products with Environmental Attributes''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0262, Identification of Products with Environmental Attributes'' on your attached document.

• *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street, NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 3090–0262, Identification of

Products with Environmental Attributes.

Instructions: Please submit comments only and cite Information Collection 3090–0262, Identification of Products with Environmental Attributes, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Dana Munson, Procurement Analyst, General Services Acquisition Policy Division, GSA, at telephone 202–357–9652 or via email to *dana.munson@gsa.gov*.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration (GSA) requires contractors holding Multiple Award Schedule Contracts to identify in their GSA price lists those products that they market commercially that have environmental attributes in accordance with GSAR clause 552.238–72. The identification of these products will enable Federal agencies to maximize the use of these products and meet the responsibilities expressed in statutes and executive orders.

B. Annual Reporting Burden

Respondents: 9,000.
Responses per Respondent: 1.
Annual Responses: 9,000.
Hours per Response: 1.
Total Burden Hours: 9,000.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; and ways to enhance the quality, utility, and clarity of the information to be collected.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 3090–0262, Identification of Products with Environmental Attributes, in all correspondence.

Dated: July 16, 2015.

Jeffrey A. Koses,

Senior Procurement Executive, Director, Office of Acquisition Policy.

[FR Doc. 2015–17904 Filed 7–21–15; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0736]

Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 24, 2015, from 8 a.m. to 6 p.m.

ADDRESSES: FDA is opening a docket for interested persons to submit electronic or written comments regarding this meeting. The docket number is FDA–2014–N–0736. Please see the *Procedure* section of the notice for further information.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

Contact Person: Shanika Craig, Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–6639, *Shanika.Craig@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: On September 24, 2015, the committee will discuss the risks and benefits of Bayer HealthCare's Essure System for permanent female sterilization. The system, originally approved in November 2002, under P020014, consists of a delivery system and nickel-containing permanent implants. The implants are placed without a skin incision, through the vagina, within each fallopian tube; they elicit tissue ingrowth, which over time results in tubal occlusion.

FDA is convening this committee to seek expert scientific and clinical opinion on the risks and benefits of the Essure System. The committee will be asked to evaluate currently available scientific data pertaining to the safety and effectiveness of the Essure System, such as events related to implant perforation/migration, device removal, chronic pain, allergic reactions, and unintended pregnancy. The committee will be asked to provide recommendations regarding appropriate device use, product labeling, and potential need for additional postmarket clinical studies.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

CDRH plans to provide a live Webcast of the September 24, 2015, meeting of the Obstetrics and Gynecology Devices Panel. While CDRH is working to make Webcasts available to the public for all advisory committee meetings held at the White Oak campus, there are instances where the Webcast transmission is not successful; staff will work to re-establish the transmission as soon as possible. The link for the Webcast is available at: *https://collaboration.fda.gov/gudpm052015/.* Further information regarding the Webcast, including the Web address for the Webcast, will be made available at least 2 days in advance of the meeting at the following Web site: *https://collaboration.fda.gov/ogdp2015/.*

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending

before the committee. Written submissions may be made to the contact person on or before September 4, 2015. Oral presentations from the public will be scheduled between approximately 9 a.m. and 10 a.m. on September 24, 2015. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before August 24, 2015. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by August 28, 2015.

FDA is opening a docket for public comment on this document. The docket will close on October 24, 2015. Interested persons are encouraged to use the docket to submit electronic or written comments regarding this meeting. Comments received on or before August 31, 2015, will be provided to the committee. Comments received after that date will be taken into consideration by the Agency.

Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management, Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit a single copy of electronic comments or two paper copies of any mailed comments. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Divisions of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Ann Marie Williams, at *AnnMarie.Williams@fda.hhs.gov* or 301–796–5966 at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: *July 17, 2015.*

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2015–17985 Filed 7–21–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request

AGENCY: Health Resources and Services Administration, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995), the Health Resources and Services Administration (HRSA) announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this Information Collection Request must be received no later than August 21, 2015.

ADDRESSES: Submit your comments, including the Information Collection Request Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 594–4306.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: Providing Primary Care and Preventive Medical Services in Ryan White-funded Medical Care Settings: OMB No. 0915–XXXX—New.

Abstract: Since Congress passed the Ryan White Comprehensive AIDS Resource Emergency (CARE) Act in 1990, the Ryan White HIV/AIDS Program (Ryan White Program) has funded the provision of care eligible to persons living with HIV (PLWH). Many Ryan White-funded clinics have long promoted the medical home model, which involves the provision of comprehensive and coordinated care services, including prevention and other non-medical care services to promote access and adherence to HIV/AIDS treatment. As PLWH live longer and normal lives with effective antiretroviral treatment, this model has become more complex. In recent years, clinics providing care to PLWH are also seeing their patients develop other common chronic diseases such as diabetes, heart disease, and hypertension associated with normal and aging populations. Guidelines [1] on primary care for PLWH have recently been released to help providers navigate the integration of primary and preventative care into HIV care. With already limited budgets, staffing and other resources, Ryan White-funded clinics may struggle to provide primary and preventative care services in-house or have insufficient referral systems. However, under the Affordable Care Act (ACA), most PLWH can obtain more affordable health insurance which can alleviate some burden on clinics and improve accessibility to primary and preventative care services.

This study will examine how Ryan White-funded clinics are integrating the provision of primary and preventative care services to the overall HIV care model. Specifically, it will look at the protocols and strategies used by clinics to manage care for PLWH, specifically care coordination, referral systems, and patient-centered strategies to keep PLWH in care.

[1] JA Aberg, JE Gallant, KG Ghanem, P Emmanuel, BS Zingman and MA Horberg. *Primary Care Guidelines for the Management of Persons Infected with HIV: 2013 Update by the HIV Medicine Association of the Infectious Disease Society of America;* CID 201_58 (January 1, 2014).

New York State Department of Health AIDS Institute, Office of the Medical Director. *Primary Care Approach to the HIV-Infected Patient; http://www.hivguidelines.org/clinical-guidelines/adults/primary-care-approach-to-the-hiv-infected-patient/* (Updated November 2014).

Need and Proposed Use of the Information: The proposed study will provide HRSA HIV/AIDS Bureau (HAB) and policymakers with a better understanding of how the RWHAP currently provides primary and preventative care to PLWH. The first online survey will be targeted to clinic directors from a sample of about 160 Ryan White-funded clinics and will collect data on care models used; primary care services, including preventive services; and coordination of care. Data collected from this survey will provide a general overview of the various HIV care models used as well as insight to possible facilitators and barriers to providing primary and preventative care services. More in-depth data collection will be conducted with a smaller number of 30 clinics representing clinic type (publicly funded community health organization, other community-based organization, health department, and hospital or university-based) and size. There will be three data collection instruments used: (1) An online survey completed by three clinicians at each of the clinics (clinician survey); (2) a data extraction of select primary and preventative care services; and (3) a telephone interview with the medical director. The clinician survey will provide a more in-depth look at the clinic protocols and strategies and how they are being used and implemented by the clinicians. The data extraction will provide quantitative information on the provision of select primary and preventative care services within a certain time period. With these data, the study team can assess the accuracy of information provided in the online surveys on the provision of care as well as the frequency at which primary and preventative care screenings are provided. Lastly, the interviews with the medical director will allow the study team to follow-up on the results of the clinician survey and data extraction and collect qualitative data and more in-depth details on the provision of primary and preventative care services from a clinic wide perspective, specifically any facilitators and barriers.

These data will provide HAB the background to make informed policies and changes to the Ryan White Program in this new era when the well-being of PLWH demands a more complex and long-term HIV care model.

Likely Respondents: Clinics funded by the Ryan White HIV/AIDS Program.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this Information Collection Request are summarized in the table below.

Total Estimated Annualized burden hours:

Form name	Number of respondents	Number of responses	Total responses	Average burden per response	Total burden hours
Clinic Director	130	1	130	1	130
Clinician	30	1	30	1	30
Data Extraction	30	1	30	3	90
Medical Director	30	1	30	1	30
Total	220				280

HRSA specifically requests comments on (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.

Jackie Painter,

Director, Division of the Executive Secretariat.

[FR Doc. 2015–17883 Filed 7–21–15; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA) (60 FR 56605, as amended November 6, 1995; as last amended at 80 FR 37639–37640 dated July 1, 2015).

This notice reflects organizational changes in the Health Resources and Services Administration (HRSA), HIV/AIDS Bureau (RV). Specifically, this notice: (1) Establishes the Office of HIV/AIDS Training and Capacity Development (RVT); (2) transfers the Division of HIV/AIDS Training and Capacity Development (RV7) function to the newly established Office of HIV/AIDS Training and Capacity Development (RVT); (3) abolishes the Division of HIV/AIDS Training and Capacity Development (RV7); (4) establishes the Division of Domestic Programs (RVT1), and; (5) establishes the Division of Global Programs (RVT2).

Chapter RV—HIV/AIDS Bureau

Section RV–10, Organization

Delete the organization for the HIV/AIDS Bureau (RV) in its entirety and replace with the following:

The HIVAIDS Bureau (RV) is headed by the Associate Administrator, who reports directly to the Administrator, Health Resources and Services Administration. The HIV/AIDS Bureau includes the following components:

(1) Office of the Associate Administrator (RV);

(2) Office of Operations and Management (RV2);

(3) Division of Policy and Data (RVA);

(4) Division of Metropolitan HIV/AIDS Programs (RV5);

(5) Division of State HIV/AIDS Programs (RVD);

(6) Division of Community HIV/AIDS Programs (RV6);

(7) Office of HIV/AIDS Training and Capacity Development (RVT);

(a) Division of Domestic Programs (RVT1); and

(b) Division of Global Programs (RVT2).

Section RV–20, Functions

Delete the functions for the Division of HIV/AIDS Training and Capacity Development and, replace in its entirety.

Office of HIV/AIDS Training and Capacity Development (RVT)

The Office of HIV/AIDS Training and Capacity Development provides national leadership and manages the implementation of Part F under Title XXVI of the PHS Act as amended by the Ryan White HIV/AIDS Treatment Extension Act of 2009, Public Law 111–87 (the Ryan White HIV/AIDS Program), including the Special Projects of National Significance and the AIDS Education and Training Centers Programs. The Special Projects of National Significance Program develops innovative models of HIV care and the AIDS Education and Training Centers Program increases the number of health care providers who are educated and motivated to counsel, diagnose, treat, and medically manage people with HIV disease and to help prevent high-risk behaviors that lead to HIV transmission. The Office also implements the training and systems strengthening functions of the Global HIV/AIDS Program as part of the President's Emergency Plan for AIDS Relief (PEPFAR). This includes strengthening health systems for delivery of prevention, care and treatment services for people living with HIV/AIDS in PEPFAR funded countries and providing management and oversight of international programs aimed at improving quality and innovation in health professions education and training. The Office will translate lessons learned from both the Global HIV/AIDS Programs and Special Projects of National Significance projects to the Part A, B, C, D, and F grantee community. In collaboration with the Division of Policy and Data, the division assesses effectiveness of technical assistance efforts/initiatives, identifies new technical assistance needs and priority areas, and participates in the bureau-wide technical assistance workgroup.

Division of Domestic Programs (RVT1)

The Division of Domestic Programs is responsible for activities associated with the planning, development, implementation, evaluation, and coordination of the AIDS Education and Training Center Program. The Division is aimed at developing and sustaining HIV clinical expertise, increasing the number of direct care clinical providers who are competent and willing to clinically manage HIV infected patients through education, training, longitudinal information support, clinical consultation, and technical assistance, as well as, a variety of Minority AIDS Initiative and National HIV/AIDS Strategy related training projects, and other associated activities.

Division of Global Programs (RVT2)

The Division of Global Programs provides leadership in improving care and treatment and support services for People Living with HIV/AIDS outside of the United States and its territories. The division: (1) In coordination with the Department of State/Office of the Global AIDS Coordinator, plans, develops, implements, evaluates, and coordinates the activities of the clinical assessment system strengthening, Medical Education Partnership Initiative, Nursing Education Partnership Initiative, the International Training and Education Center for Health, quality improvement, and twinning center programs; (2) provides guidance and expertise to funded programs; (3) develops funding opportunity announcements and program guidance documents; (4) conducts on-site program reviews and reviews of pertinent and required reports, and activities to assess compliance with program policies and country priorities; (5) in conjunction with other division, bureau, and agency entities, assists in the planning and implementation of priority HIV activities such as workgroups, meetings, and evaluation projects; (6) collaborates with other federal agencies and in-country partners in the implementation of the PEPFAR program, and; (7) provides management and oversight of international programs aimed at improving quality and innovation in health professions education, retention, training, faculty development and applied research systems.

Delegations of Authority

All delegations of authority and re-delegations of authority made to HRSA officials that were in effect immediately prior to this reorganization, and that are consistent with this reorganization, shall continue in effect pending further re-delegation.

This reorganization is effective upon date of signature.

Dated: July 10, 2015.

James Macrae,

Acting Administrator.

[FR Doc. 2015–17902 Filed 7–21–15; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Service Administration

Advisory Committee on Training in Primary Care Medicine and Dentistry; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (92), notice is hereby given of the following meeting:

NAME: Advisory Committee on Training in Primary Care Medicine and Dentistry (ACTPCMD).

DATES AND TIMES:
August 13, 2015 (8:30 a.m.–5:00 p.m.)
August 14, 2015 (8:30 a.m.–3:00 p.m.)

PLACE: Parklawn Building, Room 18–67, 5600 Fishers Lane, Rockville, Maryland 08057 and, Webinar and Conference Call Format.

STATUS: The meeting will be open to the public.

PURPOSE: The ACTPCMD provides advice and recommendations on a broad range of issues relating to grant programs authorized by Title VII, part C, sections 747 and 748 of the Public Health Service Act. The ACTPCMD members will discuss the 13th report on the role of health professions education in addressing the social determinants of health. The ACTPCMD's reports are submitted to the Secretary of Health and Human Services; the Committee on Health, Education, Labor, and Pensions of the Senate; and the Committee on Energy and Commerce of the House of Representatives.

AGENDA: The ACTPCMD agenda includes an opportunity for members to discuss the 13th report on the role of health profession education in addressing the social determinants of health. The official agenda will be available 2 days prior to the meeting on the HRSA Web site (*http://www.hrsa.gov/advisorycommittees/bhpradvisory/actpcmd/index.html*). Agenda items are subject to change as priorities dictate.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or provide written comments to the ACTPCMD

should be sent to Dr. Joan Weiss, Designated Federal Official, using the address and phone number below. Individuals who plan to participate in-person or on the conference call or webinar should notify Dr. Weiss at least 3 days prior to the meeting, using the address and phone number below. Members of the public will have the opportunity to provide comments. Interested parties should refer to the meeting subject as the HRSA Advisory Committee on Training in Primary Care Medicine and Dentistry.

The conference call-in number is 800–619–2521. The passcode is: 9271697.

The webinar link is *https://hrsa.connectsolutions.com/actpcmd_aug2015/*.

CONTACT: Anyone requesting information regarding the ACTPCMD should contact Dr. Joan Weiss, Designated Federal Official within the Bureau of Health Workforce, Health Resources and Services Administration, in one of three ways: (1) Send a request to the following address: Dr. Joan Weiss, Designated Federal Official, Bureau of Health Workforce, Health Resources and Services Administration, Parklawn Building, Room 12C–05, 5600 Fishers Lane, Rockville, Maryland 20857; (2) call (301) 443–0430; or (3) send an email to *jweiss@hrsa.gov*.

Jackie Painter,

Director, Division of Executive Secretariat.

[FR Doc. 2015–17885 Filed 7–21–15; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Health Resources and Services Administration (HRSA) has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

DATES: Comments on this ICR should be received no later than August 21, 2015.

ADDRESSES: Submit your comments, including the Information Collection Request Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Faculty Loan Repayment Program. OMB No. 0915–0150—Revision

Abstract: Under the Health Resources and Services Administration (HRSA) Faculty Loan Repayment Program, degree-trained health professionals from disadvantaged health backgrounds may enter into a contract under which the Department of Health and Human Services will make payments on eligible educational loans in exchange for a minimum of 2 years of service as a full-time or part-time faculty member of an accredited health professions college or university.

Need and Proposed Use of the Information: The Faculty Loan Repayment Program needs to collect data to determine an applicant's eligibility for the program. Information is collected from the applicants and/or the educational institutions which includes general applicant data, applicant educational loan history, employment status, and information regarding the educational institution which employs the applicant.

Likely Respondents: Faculty Loan Repayment Program applicants and institutions providing employment to the applicants.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Eligible Applications	111	1	111	1	111
Institution/Loan Repayment Employment Form	*111	*1	111	1	111
Authorization to Release Information Form	111	1	111	.25	27.75
Total	222				249.75

*Respondent for this form is the institution for the applicant.

Jackie Painter,

Director, Division of the Executive Secretariat.

[FR Doc. 2015–17882 Filed 7–21–15; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects (Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995), the Health Resources and Services Administration (HRSA) announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate below, or any other aspect of the ICR.

DATES: Comments on this Information Collection Request must be received no later than September 21, 2015.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 10–29, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: Health Center Controlled Networks OMB No. 0915–0360–REVISION

Abstract: The Health Resources and Services Administration (HRSA) has a goal to ensure that all Health Center Program award recipients effectively implement health information technology (health IT) systems that enable all providers to become meaningful users of health IT, including Electronic Health Records (EHRs), and use those systems to increase access to care, improve quality of care, and reduce the cost of care. The Health Center Controlled Networks (HCCNs) program serves as a major component of HRSA's HIT initiative to support this goal. HCCNs provide ongoing support for achieving meaningful use of certified EHRs [1] and adopting technology-enabled quality improvement strategies, including health information exchange (HIE). HCCNs also support sharing of knowledge, resources, and data to improve Health Center Program award recipients' and look-alikes' (health centers) operations, care provision, and generate efficiencies and economies of scale. As a result, health centers working with HCCNs are better positioned to deliver care in a patient-centered medical home model and participate in value based payment. The HCCN program is authorized by Section 330(e) of the Public Health Service (PHS) Act, as amended (42 U.S.C. 254b).

Need and Proposed Use of the Information: The annual, non-competing continuation progress reports will describe each HCCNs' progress in achieving key activity goals, such as improving performance measures via data-driven quality improvement activities, enhanced utilization of data exchange, and the efficiency and effectiveness of HCCN services to health centers. Award recipients will also report emerging needs, implementation challenges, lessons learned, best practices, and plans to meet the goals set for the next budget period. HCCNs will update their work plan and submit their annual, non-competing continuation progress report annually.

The information collected from the progress report forms will serve multiple purposes. The information will be used to inform new technical assistance needs and evaluate the performance and outcome of the funding initiative. The progress reports will also enhance HRSA's ability to respond to departmental inquiries regarding the program in a timely and accurate manner. Information will also be used in the preparation of reports to Congress and other external agencies.

In addition to meeting the goal of accountability to Congress, patients, and the general public, information collected from the progress reports are critical for HRSA grantees and individual providers to assess the status of existing EHR systems and health outcomes for patients. The partnership between HRSA, grantees, providers, and patients provides a unique opportunity to ensure that all parties share in the benefits of accurate information, lessons learned, major accomplishments, barriers encountered, and technical assistance to promote improved care and efficiency.

Likely Respondents: Type of respondents expected are existing networks that are currently serving health centers and other safety net entities.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information.

The total annual burden hours estimated for this Information Collection Request are summarized in the table below.

Total Estimated Annualized hours: 1350.

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Work Plan Update	45	1	45	5	225
Annual Progress Report	45	1	45	25	1125
Total	90	.....	.....	.....	1350

[1] For the purposes of this funding opportunity announcement, ''certified EHR'' refers to HIT products certified by the Office of the National Coordinator (ONC) for HIT Authorized Testing and Certification Body. For further information about ONC certified HIT products, see *http://onc-chpl.force.com/ehrcert.*

HRSA specifically requests comments on (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.

Jackie Painter,

Director, Division of the Executive Secretariat.

[FR Doc. 2015–17884 Filed 7–21–15; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Health Resources and Services Administration (HRSA) has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

DATES: Comments on this ICR should be received no later than August 21, 2015.

ADDRESSES: Submit your comments, including the Information Collection Request Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 594–4306.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Maternal, Infant, and Childhood Home Visiting (Home Visiting) Program Non-Competing Continuation Progress Report for Competitive Grants OMB No. 0915–0356—Extension

Abstract: The Maternal, Infant, and Early Childhood Home Visiting (MIECHV) Program, administered by the Health Resources and Services Administration (HRSA) in close partnership with the Administration for Children and Families (ACF), supports voluntary, evidence-based home visiting services during pregnancy and to parents with young children up to kindergarten entry. Competitive grants support the efforts of eligible entities that have already made significant progress towards establishing a high quality home visiting program or embedding their home visiting program into a comprehensive, high-quality early childhood system. All fifty states, the District of Columbia, five territories, and nonprofit organizations that would provide services in jurisdictions that have not directly applied for or been approved for a grant are eligible for competitive grants; and if awarded, are required to submit non-competing continuation progress reports annually. There are currently 48 entities with competitive grant awards. Some eligible entities have been awarded more than one competitive grant.

Need and Proposed Use of the Information: This information collection is needed for eligible entities to report progress under the Home Visiting Program annually. On March 23, 2010, the President signed into law the Patient Protection and Affordable Care Act (ACA). Section 2951 of the ACA amended Title V of the Social Security Act by adding a new section, 511, which authorized the creation of the Home Visiting Program (*http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h3590enr.txt.pdf,* pages 216–225). A portion of funding under this program is awarded to participating states and eligible jurisdictions competitively. The purpose of the competitive funding is to provide additional support to entities that have already made significant progress towards establishing a high-quality home visiting program or embedding their home visiting program into a comprehensive, high-quality early childhood system and are ready to expand and maintain expanded programs.

The information collected will be used to review grantee progress on proposed project plans sufficient to permit project officers to assess whether the project is performing adequately to achieve the goals and objectives that were previously approved. This report will also provide implementation plans for the upcoming year, which project officers can assess to determine whether the plan is consistent with the grant as approved, and will result in implementation of a high-quality project that will complement the home visiting program as a whole. Progress Reports are submitted to project officers through the Electronic HandBooks (EHB). Failure to collect this information would result in the inability of the project officers to exercise due diligence in monitoring and overseeing the use of grant funds in keeping with legislative, policy, and programmatic requirements. Grantees are required to provide a performance narrative with the following sections: Project identifier information, accomplishments and barriers, state home visiting program goals and objectives, an update on the state home visiting program promising approach and evaluations conducted under the competitive grant, implementation of the state home visiting program in targeted at-risk communities, progress toward meeting legislatively-mandated reporting on benchmark areas, state home visiting quality improvement efforts, and updates on the administration of state home visiting program.

Since federal fiscal year 2011, 48 eligible entities have received competitive grant awards. Grantees of the competitive grant program need to complete annual reports in order to comply with HRSA reporting requirements. Some grantees have been awarded up to three competitive grants to date.

In the event a new Funding Opportunity Announcement is issued annually for the competitive grant program, the application for new grant funds may take the place of completion of a non-competing continuation progress report.

Likely Respondents: Grantees with Home Visiting Competitive Awards Awarded in Federal Fiscal Years 2012–2017.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden

hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Summary progress on the following activities	Number of respondents	Number of responses per respondent	Total responses	Hours per response	Total burden hours
Home Visiting Competitive Grant Progress Report—FY 2012, FY 2013, FY 2014	37	1	37	25	925
Home Visiting Competitive Grant Progress Report—FY 2015	32	1	32	25	800
Home Visiting Competitive Grant Progress Report—FY2016 and FY 2017	47	2	94	25	2350
Total	116		166	25	4075

Jackie Painter,

Director, Division of the Executive Secretariat.

[FR Doc. 2015–17873 Filed 7–21–15; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Meeting on American Indian/Alaska Native Lesbian, Gay, Bisexual, and Transgender Health Issues

AGENCY: Indian Health Service, HHS.

ACTION: Notice of meeting.

SUMMARY: The Indian Health Service (IHS) is seeking broad public input as it begins efforts to advance and promote the health needs of the American Indian/Alaska Native (AI/AN) Lesbian, Gay, Bisexual, and Transgender (LGBT) community.

DATES: The meeting will be held as shown below:

1. July 27, 2015 from 9:00 a.m. EST to 4:30 p.m. EST.

ADDRESSES: The meeting location is:

1. Rockville, MD—801 Thompson Avenue, Rockville, MD 20852.

Written statements may be submitted to Lisa Neel, MPH, Program Coordinator, Office of Clinical and Preventive Services, Indian Health Service, 801 Thompson Avenue, Suite 300, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Lisa Neel, MPH, Program Coordinator, Office of Clinical and Preventive Services, Indian Health Service, 801 Thompson Avenue, Suite 300, Rockville, MD 20852, Telephone 301–443–4305. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. To facilitate the building security process, those who plan to attend should RSVP to Lisa Neel at *lisa.neel@ihs.gov* or by telephone at 301–443–4305. (This is not a toll-free number.) Public attendance may be limited to the space available. Members of the public may make statements during the meeting to the extent time permits and file written statements with the agency for its consideration. Written statements should be submitted to the address listed above. Summaries of the meeting will be available for public inspection and copying ten days following the meeting at the same address.

Dated: July 15, 2015.

Elizabeth A. Fowler,

Deputy Director for Management Operations, Indian Health Service.

[FR Doc. 2015–17962 Filed 7–21–15; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Division of Behavioral Health, Office of Clinical and Preventive Services; Methamphetamine and Suicide Prevention Initiative; Correction

AGENCY: Indian Health Service, HHS.

ACTION: Notice; correction.

SUMMARY: The Indian Health Service published a document in the **Federal Register** on July 8, 2015, for the FY 2015 Methamphetamine and Suicide Prevention Initiative. The notice contained four incorrect broad objectives for Purpose Area #2.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Gettys, Grant Systems Coordinator, Division of Grants Management (DGM), Indian Health Service, 801 Thompson Avenue, Suite TMP 360, Rockville, MD 20852, Telephone direct (301) 443–2114, or the DGM main number (301) 443–5204. (This is not a toll-free number.)

Corrections

In the **Federal Register** of July 8, 2015, in FR Doc. 2015–16744, on page 39132, in the second column, under the heading Purpose Area 2: Suicide Prevention, Intervention, and Postvention, all the bullet points with corrections should read as follows:

- Expand available behavioral health care treatment services;
- Foster coalitions and networks to improve care coordination;
- Educate and train providers in the care of suicide screening and evidence-based suicide care;
- Promote community education to recognize the signs of suicide, and prevent and intervene in suicides and suicide ideations;
- Improve health system organizational practices to provide evidence-based suicide care;
- Establish local health system policies for suicide prevention, intervention, and postvention;
- Integrate culturally appropriate treatment services; and
- Implement trauma informed care services and programs.

Dated: July 15, 2015.

Elizabeth A. Fowler,

Deputy Director for Management Operations, Indian Health Service.

[FR Doc. 2015–17960 Filed 7–21–15; 8:45 am]

BILLING CODE 4160–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request Process and Outcomes Evaluation of NCI Physical Sciences in Oncology Centers (PS–OC) Initiative (NCI)

SUMMARY: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National

Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 23, 2015 Vol. 80, P. 15228 and allowed 60-days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Cancer Institute (NCI), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments or request more information on the proposed project contact: Nicole Moore, Division of Cancer Biology, 9609 Medical Center Drive, Room 6W508, Bethesda, MD 20892–9714 or call non-toll-free number 301–325–7534 or Email your request, including your address to: *Nicole.Moore@nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: Process and Outcomes Evaluation of NCI Physical Sciences in Oncology Centers (PS–OC) Initiative (NCI), 0925–NEW, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: The NCI launched the Physical Sciences—Oncology Center (PS–OC; *http://physics.cancer.gov/*) program in 2009 as Phase I of the Physical Sciences in Oncology (PSO) Initiative. The PSO Initiative seeks to establish research projects that bring together cancer biologists and oncologists with scientists from the fields of physics, mathematics, chemistry, and engineering to address some of the major questions and barriers in cancer research. As part of this initiative, evaluation plans were developed and consisted of three components, dependent on which year the initiative is in: Prospective for beginning, structured for mid-point, and summative/full outcome evaluation for a decade after the program started. In 2015 the PSO Initiative is transitioning from the beginning to a mid-point phase, which represents a critical time to reflect on the initial outcomes and restructure the process evaluation to account for changes mid-way through the initiative. This proposed request is to conduct on-line surveys with current and former trainees and NCI grantees associated with the program and comparison groups. Additionally, an assessment of publications generated through the PS–OC program will be conducted via a virtual expert review panel. The evaluation will address trainee development and career path post program involvement as well as the impact of the program involvement on program outputs. Results from both the surveys and the expert peer reviewer panel will assess research innovation from the program and inform the future development of the PSO Initiative. This request is to gain OMB approval for the new submission titled, ''Process and Outcomes Evaluation of NCI Physical Sciences in Oncology Centers (PS–OC) Initiative (NCI)'' for 1 year.

OMB approval is requested for 1 year. There are no costs to respondents other than their time. The total estimated annualized burden hours are 955.

ESTIMATED ANNUALIZED BURDEN HOURS

Instrument	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hour
Survey	Current NCI Trainees	210	1	25/60	88
Survey	Former NCI Trainees	340	1	25/60	142
Survey	NCI Grantees	300	1	25/60	125
Scoring Sheet	Expert Reviewers	75	1	8	600

Dated: July 15, 2015.

Karla Bailey,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2015–17859 Filed 7–21–15; 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; Structure Function.

Date: July 29, 2015.

Time: 11:30 a.m. to 1:00 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: Mary Custer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: AIDS and AIDS Related Research.

Date: August 3, 2015.

Time: 11:00 a.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: Mark P. Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–14–022: Juvenile Protective Factors and their Effects on Aging.

Date: August 7, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Elena Smirnova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, 301–435–1236, *smirnove@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: AIDS and AIDS Related Research.

Date: August 11, 2015.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Robert Freund, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, 301–435–1050, *freundr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: AIDS and AIDS Related Research.

Date: August 11, 2015.

Time: 12:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Eduardo A. Montalvo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@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: July 15, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–17858 Filed 7–21–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public 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/or 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 grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Alcohol Abuse and Alcoholism.

Date: September 17, 2015.

Closed: 9:00 a.m. to 10:00 a.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Terrace Conference Rooms, 5635 Fishers Lane, Bethesda, MD 20892.

Open: 10:15 a.m. to 4:00 p.m.

Agenda: Presentations and other business of the Council.

Place: National Institutes of Health, Terrace Conference Rooms, 5635 Fishers Lane, Bethesda, MD 20892.

Contact Person: Abraham P. Bautista, Ph.D., Executive Secretary, National Institute on Alcohol Abuse & Alcoholism National Institutes of Health, 5635 Fishers Lane, RM 2085, Rockville, MD 20852, 301–443–9737, *bautista@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.niaaa.nih.gov/AboutNIAAA/AdvisoryCouncil/Pages/default.aspx,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: July 16, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–17857 Filed 7–21–15; 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: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: National Survey of Substance Abuse Treatment Services (N–SSATS) (OMB No. 0930–0106)—Revision

The Substance Abuse and Mental Health Services Administration (SAMHSA) is requesting a revision of the National Survey of Substance Abuse Treatment (N–SSATS) data collection (OMB No. 0930–0106), which expires on January 31, 2016. N–SSATS provides both national and state-level data on the numbers and types of patients treated and the characteristics of facilities providing substance abuse treatment services. It is conducted under the authority of section 505 of the Public Health Service Act (42 U.S.C. 290aa–4) to meet the specific mandates for annual information about public and private substance abuse treatment providers and the clients they serve.

This request includes:

- Collection of N–SSATS, which is an annual survey of substance abuse treatment facilities; and
- Updating of the Inventory of Behavioral Health Services (I–BHS) which is the facility universe for the N–SSATS as well as the annual survey of mental health treatment facilities, the National Mental Health Services Survey (N–MHSS). The I–BHS includes all substance abuse treatment and mental health treatment facilities known to SAMHSA. (The N–MHSS data collection is covered under OMB No. 0930–0119.)

The information in I–BHS and N–SSATS is needed to assess the nature and extent of these resources, to identify gaps in services, and to provide a database for treatment referrals. Both I–BHS and N–SSATS are components of the Behavioral Health Services Information System (BHSIS).

The request for OMB approval will include a request to update the I–BHS facility listing on a continuous basis and to conduct the N–SSATS and the between cycle N–SSATS (N–SSATS BC) in 2016, 2017, and 2018. The N–SSATS BC is a procedure for collecting services data from newly identified facilities between main cycles of the survey and will be used to improve the listing of treatment facilities in the online Behavioral Health Treatment Services Locator.

Planned Changes

I–BHS: No changes.

N–SSATS: The N–SSATS with client counts will continue to be conducted in alternate years, as in the past with an alternate version of the N–SSATS questionnaire that includes workforce questions as well as questions to update the Treatment Locator conducted in the interim years.

Version B (2016 and 2018)

The workforce questions will be conducted in even years in place of the ''locator'' version of N–SSATS that was completed in even years previously.

The following questions have been deleted:

Questions on religious affiliation, standard operating procedures, how (paper/electronic/both) a facility performs selected activities, questions about reporting client counts, including how the facility will complete client counts; number of facilities in client counts; names and addresses of additional facilities reported for; number of hospital inpatient client counts by category, by number under age 18, number receiving methadone, buprenorphine, or Vivitrol®, and number of dedicated beds; number of residential client counts by category, by number under age 18, and number receiving methadone, buprenorphine, or Vivitrol®, and number of dedicated beds; number of outpatient client counts by category, by number under age 18, and number receiving methadone, buprenorphine, or Vivitrol®, and capacity indicator; type of substance abuse problem, percent of co-occurring clients; and 12-month admissions, and the National Provider Identifier (NPI).

The following questions have been added:

A new question has been added to ascertain the numbers of types of workforce staff and the average number of hours worked per week for each type of staff. Three questions, one for each of the major types of treatment (hospital inpatient, residential, and outpatient) have been added asking for an overall number of active clients on the survey reference date; the purpose is to provide an indication of size of facility for analysis of the added workforce questions. A question asking overall numbers of active clients in the facility that received methadone, buprenorphine, or Vivitrol® for detoxification or maintenance purposes has been added to aid in the analysis of the added workforce question.

Version A (2017)

Client counts will be conducted in odd years. The National Provider Identifier (NPI) number question has been deleted.

N–SSATS (Between Cycles-BC): No changes.

Estimated annual burden for the DASIS activities is shown below:

Type of respondent and activity	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
States:					
I–BHS Online [1]	56	75	4,200	0.08	336
State Subtotal	56		4,200		336
Facilities:					
I–BHS application [2]	600	1	600	0.08	48
Augmentation screener	2,000	1	2,000	0.08	160
N–SSATS questionnaire	17,000	1	17,000	0.61	10,370
N–SSATS BC	2,000	1	2,000	0.42	840
Facility Subtotal	21,600		21,600		11,418
Total	21,656		25,800		11,754

[1] States use the I–BHS Online system to submit information on newly licensed/approved facilities and on changes in facility name, address, status, etc.

[2] New facilities complete and submit the online I–BHS application form in order to get listed on the Inventory.

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 2–1057, One Choke Cherry Road, Rockville, MD 20857 or email her a copy at *summer.king@samhsa.hhs.gov.* Written comments should be received by September 21, 2015.

Summer King,

Statistician.

[FR Doc. 2015–17864 Filed 7–21–15; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning Storage Infrastructure Solution System

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

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (''CBP'') has issued a final determination concerning the country of origin of the VistA imaging tier II storage infrastructure solution (''VistA Storage Solution'') manufactured and distributed by Merlin International (''Merlin''). Based upon the facts presented, CBP has concluded that the United States will be the country of origin of the VistA Storage Solution for purposes of U.S. Government procurement.

DATES: The final determination was issued on July 16, 2015. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within August 21, 2015.

FOR FURTHER INFORMATION CONTACT: Antonio J. Rivera, Valuation and Special Programs Branch, Regulations and Rulings, Office of International Trade (202) 325–0226.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on July 16, 2015 pursuant to subpart B of Part 177, U.S. Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP has issued a final determination concerning the country of origin of the VistA Storage Solution manufactured and distributed by Merlin, which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ H259758, was issued under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreement Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination CBP found that, based upon the facts presented, four U.S.-origin hardware and software components and two foreign-origin hardware and software components were integrated into one end product, the VistA Storage Solution. CBP found that assembling the hardware components together, loading the software components onto the hardware components, and configuring the software components to reach the desired storage infrastructure, which were processes that took place entirely in the United States, substantially transformed the individual components into the final product, the VistA Storage Solution. CBP noted that the majority of the components were from the United States; that the processing took place entirely in the United States; that the name, character and use of the individual components differed from the name, character and use of the final product; that the tariff classification of the foreign components changed when they were integrated into the final product; and, the cost breakdown of each component, to find that under the totality of the circumstances, the country of origin of the VistA Storage Solution will be the United States for purposes of U.S. Government procurement.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determination shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: July 16, 2015.

Harold Singer,

Acting Executive Director, Regulations and Rulings, Office of International Trade, HQ H59758.

July 16, 2015

OT:RR:CTF:VS H259758 AJR

CATEGORY: Origin

George W. Thompson, Esq.
Thompson & Associates, PLLC
1250 Connecticut Avenue, NW, Suite 200, Washington, DC 20036

RE: U.S. Government Procurement; Country of Origin of Storage Infrastructure Solution Systems; Substantial Transformation

Dear Mr. Thompson:

This is in response to your letter, dated November 21, 2014, requesting a final determination on behalf of Merlin International, Inc. (''Merlin''), pursuant to subpart B of part 177 of the U.S. Customs and Border Protection (''CBP'') Regulations (19 C.F.R. part 177). Under these regulations, which implement Title III of the Trade Agreements Act of 1979 (''TAA''), as amended (19 U.S.C. § 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of Merlin's VistA Imaging Tier II Storage Infrastructure Solution (''VistA Storage Solution''). We note that Merlin is a party-at-interest within the meaning of 19 C.F.R. § 177.22(d)(1) and is entitled to request this final determination.

FACTS:

You describe the pertinent facts as follows. The VistA Storage Solution is a record imaging, storage, and data retrieval system produced by Merlin in accordance with its contract with the Veterans Administration (''VA''). The VistA Storage Solution at issue contains a 24 TeraByte (''TB'') storage system.[1] Under its contract with the VA (''VA Contract''), Merlin will install the VistA Storage Solution at 144 VA locations where Veterans Integrated Service Network (''VISN'') facilities are hosted. The VA Contract requires that each installed VistA Storage Solution (1) be networked into a single ''grid'' to allow access to, and automatic replication of, stored data throughout the networked system; while also (2) performing as ''virtual machines'' to ensure that data stored remains available in the event of any system failures. To meet these contract requirements, Merlin designed the VistA Storage Solution, assembling together three main hardware components and configuring them with three main software components, in order to provide the particular product required by the VA.

A. The Hardware Components

Each VistA Storage Solution will consist of at least the following hardware components: two to four Cisco UCS C240 rack-mount servers (''Cisco Servers''); one or more NetApp E2600 series Fibre Channel storage arrays

[1] Merlin produces other VistA Storage Solutions with the same functionality as the subject VistA Storage Solution, but with different storage capabilities that include 18, 36, 90, 120, and 180 TB storage systems.

(''NetApp Storage Arrays''); and, two Cisco Catalyst 2960 Gigabit Ethernet network switches (''Cisco Network Switches'').

You state that the Cisco Servers are produced in the United States and will provide the computing platform for the system. You state that the NetApp Storage Arrays are produced in the United States and will provide the data storage capability for the system. You state that the Cisco Network Switches are produced in the United States or China and will provide network connectivity for the system, enabling management access to the system's components, and user and application access to the system's data storage.

The Cisco Servers, NetApp Storage Arrays, and Cisco Network Switches will be interconnected by cables, mounted on a rack, and supplied electricity through power strips. You state that the cables, racks, and power strips (collectively, ''Miscellaneous Components'') originate in various countries.

B. The Software Components

The Cisco Servers will be loaded with the following software: VMware vSphere 5 ESXi hypervisor software (''VMware''); Novell SuSE Linux Enterprise Server 11 (''Novell''); and, NetApp's StorageGRID software solution (''StorageGRID'').

You state that VMware was developed in the United States and it will enable the Cisco Servers to host three to six ''virtual machines.'' You state that Novell was developed in the United States and it will be the operating system software for the Cisco Servers. You state that StorageGRID was developed in Canada and it will protect images against data loss or corruption by maintaining multiple geographically separated replicas, by proactively and continuously checking integrity, and by self-healing to maintain resiliency in the event of corruption or failure. Additionally, you state that StorageGRID will provide the ''virtual machines'' with: an administration node for administrative access and control; a control node for metadata management and replication management of data objects; a storage node for stored objects; a standard gateway node for access to stored data; and, a primary gateway HA [2] pair providing a high availability cluster of standard gateways.

You state the hardware components, with their standard features, lack the ''grid'' and ''virtual machine'' functions required by the VA Contract. You state that without VMWare and StorageGRID, it would be impossible for the VistA Storage Solution components to act together as part of a multi-site system (*i.e.* a single ''grid''). You also state that without Novell, the Cisco Servers would be unable to operate at all, much less support the ''virtual machine'' requirements.

C. Assembly and Configuration Process

The VistA Storage Solutions will be assembled in Virginia, United States by two of Merlin's subcontractors, Mission Mobility (''MM'') and NetApp Inc. (''NAI''). Once MM obtains the hardware from Merlin it will perform the first assembly process in about two days as follows:

1. Assembling the hardware onto racks, and connecting the individual pieces by cables;
2. Setting the server specifications for compatibility with VA's current document storage and retrieval system (VistA Imaging Tier II);
3. Configuring CIMC [3] and hard drives;
4. Setting proper boot device and the connection to the server CIMC;
5. Connecting drives and media to the servers;
6. Entering the boot menu and configuring the server management IP address;
7. Loading the VMware on the servers;
8. Configuring the storage devices to accept StorageGRID; and,
9. Conducting tests to ensure the equipment operates properly.

After this first assembly, NAI will install the VistA Storage Solutions at individual VA sites in a final assembly process that takes about one to two weeks as follows:

1. Configuring the servers to permit them to communicate on the VISN, use StorageGRID, adjust the Network Time Protocol, deploy VMware templates, set up the vCenter Server Linux Virtual Appliance, and deploy the Open Virtualization Formats;
2. Mapping storage to hosts and creating raw device mapping to provide direct ''virtual machine'' access to storage devices;
3. Installing Novell on each ''virtual machine'' and building the nodes;
4. Installing StorageGRID; and,
5. Conducting tests and connecting the equipment to the VA computer network.

You also state that prior to the final assembly process by NAI, VA employees will remove preloaded firmware (incompatible with the VA Contract requirements) from the Cisco Network Switches and replace it with Cisco Systems firmware package that permits the Cisco Network Switches to operate in virtual mode. After the NAI installation activity, you state that VA technicians will update the Cisco Network Switches with the latest version of Cisco Systems' Internal Operating Software firmware, a United Stated developed firmware.

In an email, dated May 29, 2015, Merlin submitted information concerning the cost of each component, photographs of each hardware component and the installed components together, a workflow diagram of the system, and the VA Contract.

ISSUE:

What is the country of origin of the VistAs for purposes of U.S. Government procurement?

LAW AND ANALYSIS:

Pursuant to Subpart B of Part 177, 19 C.F.R. 177.21 *et seq.,* which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. § 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 C.F.R. § 177.22(a).

In rendering final determinations for purposes of U.S. Government Procurement, CBP applies the provisions of subpart B of Part 177 consistent with the Federal Procurement Regulations. *See* 19 CFR § 177.21. In this regard, CBP recognizes that the Federal Procurement Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated

[2] HA means High-Availability. *See http://www.cisco.com/c/en/us/td/docs/security/nac/appliance/configuration_guide/411/cam/cam411-book/m_ha.html.*

[3] CIMC means Cisco Integrated Management Controller.*See http://www.cisco.com/c/en/us/support/servers-unified-computing/ucs-c-series-integrated-management-controller/products-installation-and-configuration-guides-list.html.*

country end products for acquisitions subject to the TAA. *See* 48 CFR § 25.403(c)(1).

The Federal Acquisition Regulations define ''U.S.-made end product'' as: an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. 48 CFR § 25.003.

With respect to the product under consideration in the instant case, we note that CBP has not previously considered whether the components at issue are substantially transformed when brought together in the manner set forth above. However, CBP has previously considered the substantial transformation of components into servers (*see* Headquarter Ruling (''HQ'') H215555, dated July 13, 2012), into storage arrays (*see* HQ H125975, dated January 19, 2011), and into network switches (*see* HQ H241177, dated December 3, 2013), as ''end products,'' individually. CBP has also considered whether components of various origins have been substantially transformed during the assembly of related products. Particularly, HQ H090115, dated August 2, 2010, considered whether media servers, media gateways,[4] circuit packs, telephone sets, and proprietary software were substantially transformed into a ''Unified Communications Solution,'' the ''end product.'' Though such rulings may not be directly on point, to the extent the VistA Storage Solution is an ''end product,'' we find such guidance applicable to the issue presently before us.

In order to determine whether a substantial transformation occurs when components of various origins are assembled to form completed articles, CBP considers the totality of the circumstances and makes such decisions on a case-by-case basis. The country of origin of the article's components, the extent of the processing that occurs within a given country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, facts such as resources expended on product design and development, extent and nature of post-assembly inspection procedures, and worker skill required during the actual manufacturing process will be considered when analyzing whether a substantial transformation has occurred; however, no one such factor is determinative. In this case, the determination will be ''a mixed question of technology and customs law, mostly the latter.'' *Texas Instruments* v. *United States,* 681 F.2d 778, 783 (CCPA 1982).

The Country of Origin of the Article's Components

In HQ 735315, dated April 10, 1995, CBP considered whether three essential components (a U.S.-origin controlling computer, an Australian-origin optics module with a U.S.-origin printed wiring board assembly (''PWB''), and a U.S.-origin output device such as a printer) were substantially transformed into an optical spectroscopy instrument for purposes of U.S. Government procurement. In determining that the instrument was a product of the United States, it was noted that the majority of the components (the computer, PWB, and printer) and the added software were products of the United States, and their incorporation with the foreign optic module, rendered the instrument a product of the U.S. Similarly, in HQ 561734, dated March 22, 2001, CBP determined that certain multifunctional (printer, copier, and facsimile) machines assembled in Japan from 227 parts (108 from Japan, 92 from Thailand, and 24 from other countries) and eight Japanese subassemblies, were products of Japan for purposes of U.S. Government procurement. It was particularly noted that the Japanese-origin scanner subassembly was characterized as ''the heart of the machine'' in HQ 561734, which is similarly reflected with the U.S.-origin PWB in HQ 735315.

In this case, you state that there are six essential components, four from the United States, one from China, and one from Canada. From the VA Contract, the VistA Storage Solution appears to serve two purposes: (1) giving access to and automatically replicating stored data in the network; and (2) backing up data virtually in the case of any system failure. The VA Contract also notes that the VistA Storage Solution must be compatible with VA's VistA Imaging Tier II, a sophisticated and comprehensive electronic health record (''EHR(s)'') database system used by the VA's medical staff to store, retrieve, and manage documents at various VA locations.[5]

At their basic levels, all six components provide essential qualities to support the purposes of the VA Contract; that is, the server will provide a computer operating structural function, the storage array will provide a storage structural function, the network switch will provide a connectivity structural function, VMware will provide the system with ''virtual machine'' capability, Novell will provide the system with an operating system, and StorageGRID will provide the system with capabilities that enhance its virtual functions and ensure data protection. However, the underlying basis of this product is the ability to store EHRs for their later use by the VA.[6] If the product could not store EHRs, it would not have any EHRs to retrieve. Even when considering its network connectivity and virtual data protection purposes, these functions would not matter if the product was not able to store EHRs in the first place. Similar to the scanner subassembly being the ''heart of the machine'' in HQ 561734, which allowed the multifunctional machine to take in data it would eventually output, the NetApp Storage Array allows the VistA Storage Solution to store EHRs that are later utilized by the functions of its other components. Therefore, only considering the country of origin of the VistA Storage Solution's components, and noting that four of the six components are from the United States, and the particular importance of the U.S.-origin NetApp Storage Array, we find that this factor weighs towards a United States country of origin determination for the VistA Storage Solution.[7]

The Extent of the Processing that Occurs within a Given Country

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens* v. *United States,* 573 F. Supp. 1149 (Ct. Int'l Trade 1983), *aff'd,* 741 F.2d 1368 (Fed. Cir. 1984). Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial

[4] The media gateways described in HQ H090115 packed together wide area network routers and local area network switches.

[5] EHR is an electronic version of a patient's medical history, comprising a collection of standard medical and clinical data gathered by the patient's providers. *See http://www.healthit.gov/providers-professionals/electronic-medical-records-emr.*

[6] The VistA Storage Solution's storage capabilities were emphasized in the VA Contract, which states that the purpose of the solicitation by the VA ''is to acquire Tier II archive storage for use within VA's VistA Imaging environment,'' noting the prior storage capabilities and updated storage requirements, which ''must be reviewed on a regular basis to determine the best solution to meet the system's expanding storage needs.''

[7] This finding is made on the assumption that the four U.S.-origin components of the VistA Storage Solution actually originate in the United States as claimed in the final determination request.

transformation. *See* C.S.D. 80–111, C.S.D. 85–25, C.S.D. 89–110, C.S.D. 89–118, C.S.D. 90–51, and C.S.D. 90–97. If the manufacturing or combining process is a minor one which leaves the identity of the article intact, a substantial transformation has not occurred. *Uniroyal, Inc.* v. *United States,* 3 CIT 220, 542 F. Supp. 1026 (1982), *aff'd* 702 F. 2d 1022 (Fed. Cir. 1983).

In HQ H125975, CBP held that an electronic data storage system that ensures data integrity and availability was a product of Mexico as a result of the assembly and programming operations that took place in Mexico. All of the systems hardware components were assembled into the final product in Mexico and its foreign-origin controller assembly, already assembled into the final product, was reprogrammed with software in Mexico. It was stated that the system could not function in its intended manner without the software.

This case considers a very similar product that will be assembled from subassemblies into its final form, loaded with software, and then configured to customer specifications, all in the same country. This process from assembly to configuration will start and end in the United States and may take more than two weeks to complete. According to the information submitted, the VistA Storage Solution cannot function in its intended manner without the downloaded software components. We also note there are various configuration tasks which take place throughout this process that are essential to the VA Contract purposes, such as configuring the servers to permit them to communicate on the VISN and deploy VMware, and mapping storage to hosts and creating raw device mapping to provide direct ''virtual machines'' access to storage devices. The *NetApp and VMware vSphere Storage Best Practices* [8] is a technical report published by NetApp, detailing the flexible storage infrastructure designs offered by combining NetApp Storage Array, VMware, with servers and network switches, and intended for those architecting, designing, managing, and supporting such a storage infrastructure. In explaining the best practices for device mapping, various storage architecture concepts and constructs, and methods of configuration, it is clear that such tasks are not minimal or simple, but require a certain level of expertise to design and reach the desired storage infrastructure for particular systems like the VistA Storage Solution. Therefore, only considering the extent of processing that occurs within a given country, and noting the entire process will take place in the United States, we find that this factor weighs towards a United States country of origin determination for the VistA Storage Solution.

Whether such Processing Renders a Product with a New Name, Character, and Use

In *Data General* v. *United States,* 4 Ct. Int'l Trade 182 (1982), the court determined that for purposes of determining eligibility under item 807.00, Tariff Schedules of the United States (predecessor to subheading 9802.00.80, Harmonized Tariff Schedule of the United States (''HTSUS'')), the programming of a foreign PROM (Programmable Read-Only Memory chip) in the United States substantially transformed the PROM into a U.S. article. In programming the imported PROMs, the U.S. engineers systematically caused various distinct electronic interconnections to be formed within each integrated circuit. The programming bestowed upon each circuit its electronic function, that is, its ''memory'' which could be retrieved. A distinct physical change was effected in the PROM by the opening or closing of the fuses, depending on the method of programming. The court concluded that altering the non-functioning circuitry comprising a PROM through technological expertise in order to produce a functioning read only memory device, possessing a desired distinctive circuit pattern, was no less a ''substantial transformation'' than the manual interconnection of transistors, resistors and diodes upon a circuit board creating a similar pattern.

In C.S.D. 84-85, 18 Cust. B. & Dec. 1044, CBP stated:

> We are of the opinion that the rationale of the court in the *Data General* case may be applied in the present case to support the principle that the essence of an integrated circuit memory storage device is established by programming; . . . [W]e are of the opinion that the programming (or reprogramming) of an EPROM results in a new and different article of commerce which would be considered to be a product of the country where the programming or reprogramming takes place.

Accordingly, the programming of a device that defines its use generally constitutes substantial transformation. *See also* HQ 558868, dated February 23, 1995 (programming of SecureID Card substantially transforms the card because it gives the card its character and use as part of a security system and the programming is a permanent change that cannot be undone); and HQ 735027, dated September 7, 1993 (programming blank media (EEPROM) with instructions that allow it to perform certain functions that prevent piracy of software constitute substantial transformation); *but see* HQ 732870, dated March 19, 1990 (formatting a blank diskette does not constitute substantial transformation because it does not add value, does not involve complex or highly technical operations and did not create a new or different product); and, HQ 734518, dated June 28, 1993, (motherboards are not substantially transformed by the implanting of the central processing unit on the board because, whereas in *Data General* use was being assigned to the PROM, the use of the motherboard had already been determined when it was imported).

It is claimed that Merlin will take several individual components and combine them in the United States to make an otherwise mere collection of hardware into a functional storage system, specifically compatible with the VA technology demands. These hardware components will not have pairing capability until the software components are downloaded, and it is claimed that their integration into the final product will impart the essential character of the VistA Storage Solution, substantially transforming the individual components that comprise it. In support, HQ H082476, dated May 11, 2010; HQ H034843, dated May 5, 2009; and, HQ H175415, dated October 4, 2011, are cited.[9]

HQ H082476 held that a mass storage device was a product of the United because assembling 12 foreign-origin hardware components (a central processing unit, speed processing circuit, EEPROM, hard disk drive, memory module, etc.) and configuring them with U.S.-developed proprietary software, a process that took place entirely in the United States, constituted a substantial transformation. It was noted that the tariff classification of the assembled hardware without the software (8471.70.40, HTSUS) shifted

[8] This technical report was published by NeApp with contributions from Cisco (Trey Layton), but is independent from Merlin. *See* Vaughn Stewart, Larry Touchette, et al., *NetApp and VMware vSphere Storage Best Practices,* NetApp Technical Report, TR–3749, Version 2.1 (July 2010).

[9] Counsel for Merlin cites to ''*Notice of Issuance of Final Determination Concerning Certain Ethernet Switches,* 76 Reg. Reg. 62431 (Oct. 7, 2011), issued as *Customs Headquarters Ruling* 561568.'' HQ 561568, dated March 22, 2001, was published as 66 FR 17222 and concerns bowling pin sets. The cited 76 Reg. Reg. 62431 concerning Ethernet switches corresponds to HQ H175415, and the correct citation is provided above.

when the product was complete with the software (8471.80.10, HTSUS). The decision particularly emphasized the technical effort in loading the software, and that the ''customization and installation of firmware and application software make[s] what would otherwise be a non-functioning rack storage unit, into [a] proprietary clustered technology.'' HQ H034843 held that USB flash drives were products of Israel or the United States because, though the assembly process began in China and the software and firmware were developed in Israel, the installation and customization of the firmware and software that took place in Israel or the United States made the USB flash drives functional, permitted them to execute their security features, and increased their value. HQ H175415 held that Ethernet switches were products of the United States because, though the hardware components were fully assembled into Ethernet switches in China, they were programmed with U.S.-origin operating software enabling them to interact and route within the network, and to monitor, secure, and access control of the network.

Similarly, the substantial transformation of components into servers, storage arrays, or network switches per HQ H215555, HQ H125975, and HQ H241177, as noted above, is well documented, relying on the same principles discussed in HQ H082476, HQ H034843, and HQ H175415. This suggests that the servers, storage arrays, and network switches, each and of themselves, already have a determined use and character prior to their assembly into a VistA Storage Solution. As HQ 732870 and HQ 734518 point out, when programming does not actually create a new or different product, it may not constitute a substantial transformation. Moreover, HQ 241177 notes certain ''software downloading'' does not amount to ''programming'' which ''involves writing, testing and implementing code necessary to make a computer function a certain way.'' Given these considerations, it would appear, for instance, that programming an imported, already functional, network switch just to customize its network compatibility, would not actually change the identity of the imported product as a network switch. However, the issue before us, with an end product that has functions and purposes beyond network connectivity, requires consideration beyond the function of one single component, but rather consideration of the integrated whole.

In HQ H090115, CBP held, based on a totality of the circumstances, that subassemblies manufactured in China (media servers, media gateways, circuit packs, and telephone sets) were substantially transformed into a ''Unified Communications Solution'' product of the United States. The United States processing, lasting about 16 days, included configuring the software to the end users requirements and integrating the hardware and software to work as one functional unit. It was particularly noted that the software was developed and maintained exclusively in the United States, and added functionality to certain individual components and changed the functionality of others.

In this case, you state there is only one foreign hardware component. Similar to HQ H090115, the foreign hardware component is assembled with other hardware components in the United States, loaded with software, and then configured to the end users requirements. This process occurs entirely in the United States, lasts about 16 days, and will also result in one functional unit. By integrating the network switch into the VistA Storage Solution, the result is not merely a network switch; rather, the network switch will be configured, per the added and customized software components, to specifically work with two other hardware components in a manner that permits storing and retrieving EHRs for a particular and complex medical network. The network switch, though it would be functional as a network switch prior to its assembly and configuration with the other components, would not be functional as the subject end product with its required purposes and functions.

Moreover, though HQ H090115 notes that the development of the software is also relevant, in this case you state that there are three software components, two developed in the United States and one in Canada, all of which will be installed and configured in the United States. Particularly, StorageGRID will be customized in the United States to be compatible with the hardware components and the networked system, the various nodes enabled by StorageGRID will be built during the assembly process in the United States, and the access to storage enabled by StorageGRID will be enabled in the United States by mapping the storage to the servers. As noted in the discussion above concerning *NetApp and VMware vSphere Storage Best Practices,* these tasks are not minimal or simple, but require a certain level of expertise to design and reach the desired storage infrastructure for particular systems like the VistA Storage Solution.

Therefore, only considering whether such processing renders a product with a new name, character, and use, and noting the manner in which the foreign hardware component and foreign software component are integrated to form an end product that functions differently than such components do on their own, we find that this factor weighs towards a United States country of origin determination for the VistA Storage Solution.[10]

Additional Factors

Aside from the factors above weighing towards a finding that the VistA Storage Solution is a product of the United States for purposes of U.S. Government Procurement, we note additional factors that lead to this conclusion. While changes in tariff classification are not determinative, the two foreign components, the Cisco Network Switch (8471.80.1000, HTSUS) and StorageGRID (8523, HTSUS), will change in tariff classification once configured and integrated into the final product (8471.70, HTSUS). *See* HQ H082476. Additionally, the cost breakdown per each hardware component places the most value on the NetAPP Storage Array, followed by the Cisco Server, and then the Cisco Network Switch; while the cost breakdown per each software component places the most value on Novell; followed by VMware, and then StorageGRID.[11]

In summary, Merlin produces the VistA Storage Solution using six main components (three hardware components and three software components), from which only two components are of foreign-origin. The components will be combined, loaded with software, and then configured using skilled technical effort to design and reach the desired storage infrastructure for the VistA Storage Solution. The customization of the components and further installation of the software and firmware make what would otherwise be a non-functional rack storage unit into Merlin's proprietary networked storage system, the VistA Storage Solution. This process, from combining the two U.S.-origin hardware components and one foreign-origin hardware component to installing the two U.S.-origin software

[10] This finding is made on the assumption that the four U.S.-origin components of the VistA Storage Solution actually originate in the United States as claimed in the final determination request.

[11] Aside from the values per component provided by Merlin in the email, dated May 29, 2015, these values aligned with the values per unit costs estimated from Merlin's Product Catalog, dated October 1, 2013, and similarly reflected by Cisco prices, consumer reports, and other price databases.

components and one foreign-origin software component, occurs entirely in Virginia, United States in a period of up to 16 days. As a result of the processing in the United States, based on the totality of the circumstances and assuming that four of the components actually originate in the United States as claimed, we find that the imported hardware and software components will be substantially transformed. Therefore, the country of origin of the VistA Storage Solution will be the United States for purposes of U.S. Government procurement.

HOLDING:

Based on the facts provided, the hardware and software components will be substantially transformed through an assembly process that occurs entirely in the United States. As such, the VistA Storage Solution will be considered a product of the United States for purposes of U.S. Government procurement.

Notice of this final determination will be given in the **Federal Register**, as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR 177.30, any party-at-interest may, within 30 days of publication of the **Federal Register** Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,
Harold Singer, Acting Executive Director
Regulations and Rulings
Office of International Trade

[FR Doc. 2015–17963 Filed 7–21–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2002–11602]

Extension of Agency Information Collection Activity Under OMB Review: Security Programs for Foreign Air Carriers

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0005, abstracted below to OMB for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on April 14, 2015, (80 FR 20003). This information collection is mandatory for foreign air carriers and must be submitted prior to entry into the United States.

DATES: Send your comments by August 21, 2015. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011; telephone (571) 227–2062; email *TSAPRA@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Security Programs for Foreign Air Carriers.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0005.

Forms(s): N/A.

Affected Public: Foreign air carriers.

Abstract: TSA uses the information collected to determine compliance with 49 CFR part 1546 and to ensure passenger safety by monitoring foreign air carrier security procedures. Foreign air carriers must carry out security measures to provide for the safety of persons and property traveling on flights provided by the foreign air carrier against acts of criminal violence and air piracy, and the introduction of explosives, incendiaries, or weapons aboard an aircraft. This information collection is mandatory for foreign air carriers and must be submitted prior to entry into the United States. The TSA information collection includes providing information to TSA as outlined in the carrier's security program, maintaining records of compliance with 49 CFR part 1546 and the foreign air carrier's security program, and security training; suspicious incident reporting, and submitting identifying information on foreign air carriers' flight crews and passengers.

Number of Respondents: 170.

Estimated Annual Burden Hours: An estimated 1,029,010 hours annually.

Dated: July 16, 2015.

Joanna Johnson,

Acting TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2015–17986 Filed 7–21–15; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–R–2015–N087; FXRS282108E8PD0–156–F2013227943]

South Bay Salt Pond Restoration Project, Phase 2; Don Edwards San Francisco Bay National Wildlife Refuge; Draft Environmental Impact Statement/Environmental Impact Report

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for public comments; announcement of meeting.

SUMMARY: We, the U.S. Fish and Wildlife Service (USFWS), in coordination with the California State Coastal Conservancy, announce the availability of a Draft Environmental Impact Statement/Environmental Impact Report (DEIS/EIR) for Phase 2 of the South Bay Salt Pond (SBSP) Restoration Project at the Don Edwards San Francisco Bay National Wildlife Refuge (Refuge) in Alameda, Santa Clara, and San Mateo Counties, California. The DEIS/EIR, which we prepared in accordance with the National Environmental Policy Act of 1969 (NEPA), describes and analyzes the alternatives identified for Phase 2 of the South Bay Salt Pond Restoration Project.

DATES: We will accept comments received or postmarked on or before September 22, 2015. A public meeting will be held on August 4, 2015 between 6 p.m. and 8 p.m. (see **ADDRESSES**).

Persons needing reasonable accommodations in order to attend and participate in the public meeting should contact Ariel Ambruster, by email at *aambrust@ccp.csus.edu* or by phone at 510–528–5006, at least 1 week in advance of the meeting to allow time to process the request.

ADDRESSES: *Document Availability:* You may obtain copies of the document in the following places:

- *Internet: http://www.southbayrestoration.org/planning/phase2/.*
- *In-Person:*
  - San Francisco Bay National Wildlife Refuge Complex Headquarters, 1 Marshlands Road, Fremont, CA 94555.
  - The following libraries:
    - Alviso Branch Library, 5050 N. First St., San Jose, CA 95002.
    - Biblioteca Latino America, 921 South First St., San Jose, CA 95110.
    - California State University Library, 25800 Carlos Bee Blvd., Hayward, CA 94542.
    - Fremont Main Library, 2400 Stevenson Blvd., Fremont, CA 94538.
    - Menlo Park Library, 800 Alma St., Menlo Park, CA 94025.
    - Mountain View Library, 585 Franklin St., Mountain View, CA 94041.
    - Rinconada Library, 1213 Newell Rd., Palo Alto, CA 94303.
    - King Library, 150 E San Fernando St., San Jose, CA 95112.
    - Redwood City Main Library, 1044 Middlefield Road, Redwood City, CA 94063.
    - San Mateo County East Palo Alto Library, 2415 University Ave., East Palo Alto, CA 94303.
    - Santa Clara County Milpitas Library, 160 N Main St., Milpitas, CA 95035.
    - Santa Clara Public Library, 2635 Homestead Rd., Santa Clara, CA 95051.
    - Sunnyvale Public Library, 665 W Olive Ave., Sunnyvale, CA 94086.
    - Natural Resources Library, U.S. Department of the Interior, 1849 C Street NW., Washington, DC 20240–0001.

For how to view comments on the draft EIS from the Environmental Protection Agency (EPA), or for information on EPA's role in the EIS process, see EPA's Role in the EIS Process under **SUPPLEMENTARY INFORMATION**.

Submitting Comments: You may submit written comments by one of the following methods:

- *Electronically:* Send comments via email to *phase2comments@southbayrestoration.org.* Your correspondence should indicate which pond complex, alternative, or issue your comments pertain to.
- *By Hard Copy:* Send written comments to Anne Morkill, Project Leader, Don Edwards San Francisco Bay National Wildlife Refuge, 1 Marshlands Road, Fremont, CA 94555, or to Brenda Buxton, Project Manager, State Coastal Conservancy, 1330 Broadway, 13th Floor, Oakland, CA 94612.
- *By Fax:* You may also send comments by facsimile to 510–792–5828.

To have your name added to our mailing list, contact Ariel Ambruster (see **DATES**).

Public Meeting: A public meeting will be held on August 4, 2015, from 6 p.m. to 8 p.m., at the Mountain View Community Center, located at 201 S. Rengstorff Avenue, Mountain View, California 94040–1706. Staff will be available to take comments and answer questions during this time. The details of the public meeting will be posted on the SBSP Restoration Project's Web site at *http://www.southbayrestoration.org/events/.* Meeting details will also be emailed to the Project's Stakeholder Forum and to those interested parties who request to be notified. Notification requests can be made by contacting the SBSP Restoration Project's public outreach coordinator Ariel Ambruster (see **DATES**).

FOR FURTHER INFORMATION CONTACT: Anne Morkill, Project Leader, USFWS, 510–792–0222.

SUPPLEMENTARY INFORMATION: In coordination with the California State Coastal Conservancy, we publish this notice to announce the availability of a DEIS/EIR for Phase 2 of the SBSP Restoration Project at the Don Edwards San Francisco Bay Refuge in Alameda, Santa Clara, and San Mateo Counties, California. Phase 2 involves Ponds R3, R4, R5, S5, A1, A2W, A8, A8S, A19, A20, and A21. The DEIS/EIR, which we prepared in accordance with the National Environmental Policy Act of 1969 (NEPA), describes and analyzes the alternatives identified for Phase 2 of the SBSP Restoration Project. In addition to our publication of this notice, EPA is publishing a notice announcing the draft CCP and EIS, as required under section 309 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) The publication date of EPA's notice of availability is the start of the public comment period for the draft EIS. Under the CAA, EPA also must subsequently announce the final EIS via the **Federal Register**.

EPA's Role in the EIS Process

The EPA is charged under section 309 of the CAA (42 U.S.C. 7401 *et seq.*) to review all Federal agencies' environmental impact statements (EISs) and to comment on the adequacy and the acceptability of the environmental impacts of proposed actions in the EISs.

EPA also serves as the repository (EIS database) for EISs prepared by Federal agencies and provides notice of their availability in the **Federal Register**. The Environmental Impact Statement (EIS) Database provides information about EISs prepared by Federal agencies, as well as EPA's comments concerning the EISs. All EISs are filed with EPA, which publishes a notice of availability on Fridays in the **Federal Register**.

The notice of availability is the start of the public comment period for draft EISs, and the start of the 30-day ''wait period'' for final EISs, during which agencies are generally required to wait 30 days before making a decision on a proposed action. For more information, see *http://www.epa.gov/compliance/nepa/eisdata.html.* You may search for EPA comments on EISs, along with EISs themselves, at *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

Background

In December 2007, the USFWS and the California Department of Fish and Wildlife (CDFW) published a Final EIS/EIR for the SBSP Restoration Project at the Don Edwards San Francisco Bay Refuge and the CDFW Eden Landing Ecological Reserve (December 28, 2007; 72 FR 73799). The overall south bay salt pond restoration area includes 15,100 acres that the USFWS and the CDFW acquired from Cargill, Inc. in 2003. The lands acquired from Cargill are divided into three pond complexes: The Ravenswood Pond Complex, in San Mateo County, managed by the USFWS; the Alviso Pond complex, also managed

by the USFWS, which is mostly in Santa Clara County, with five ponds in Alameda County; and the Eden Landing Pond Complex, in Alameda County, which is owned and managed by the CDFW. The SBSP Restoration Project presented in the Final EIS/EIR was both programmatic, covering a 50-year period, and project-level, addressing the specific components and implementation of Phase 1.

In January 2008, we signed a Record of Decision selecting the Tidal Emphasis Alternative (Alternative C) for implementation. This alternative will result in 90 percent of the USFWS's ponds on the Refuge being restored to tidal wetlands and 10 percent converted to managed ponds. Under Phase 1 of Alternative C, we restored ponds E8A, E8X, E9, E12, and E13 at the Eden Landing complex; A6, A8, A16, and A17 at the Alviso complex; and SF2 at the Ravenswood complex. We also added several trails, interpretive features, and other recreational access points. Construction was completed on the USFWS ponds in 2013.

We now propose restoration or enhancement of over 2,000 acres of former salt ponds in the second phase of the SBSP Restoration Project. In Phase 2 DEIS/EIR, we provide project-level analysis of proposed restoration or enhancement of portions of the following three geographically separate pond clusters: The Ravenswood Pond Complex (R3, R4, R5, and S5), the Alviso Pond Complex–Mountain View Ponds (A1 and A2W), the Alviso Pond Complex–A8 Ponds (A8 and A8S), and the Alviso Pond Complex–Island Ponds (A19, A20, and A21). Some Phase 2 alternatives also include collaborative restoration and flood management activities with non-USFWS landowners of adjacent lands and managers of public infrastructures. Other Phase 2 alternatives do not include these components. These pond clusters are illustrated in Figures 1–5 on the SBSP Restoration Project Web site at *http://www.southbayrestoration.org/planning/phase2/.*

Phase 2 of the SBSP Restoration Project is intended to restore and enhance tidal wetlands and managed pond habitats in South San Francisco Bay while providing for flood management and wildlife-oriented public access and recreation. In this Phase 2 document, we would continue habitat restoration activities in both USFWS pond complexes, while also providing recreation and public access opportunities and maintaining or improving current levels of flood protection in the surrounding communities. Phase 2 actions are also being planned for implementation at the Eden Landing Pond Complex, which is owned and managed by the CDFW as part of the Eden Landing Wildlife Sanctuary, but these actions will be addressed under a separate process under the NEPA and California Environmental Quality Act (CEQA). We will address activities at other ponds in subsequent phases.

Alternatives

We consider a range of alternatives and their impacts in the DEIS/EIR, including No Action Alternatives for each group of ponds. The range of alternatives includes varying approaches to restoring tidal marshes (including number and location of breaches and other levee modifications), habitat enhancements (islands, transition zones, and channels), modifications to existing levees and berms to maintain or improve flood protection, and recreation and public access components (including trails, boardwalks, and viewing platforms) which correspond to the project objectives.

The alternatives for each group of ponds (''pond cluster'') are described below. The No Action Alternatives are described together, followed by the Action Alternatives that are under consideration for each pond cluster. In each group of ponds, each subsequently lettered alternative usually has successively more components and greater amounts of construction. Thus, at a given pond cluster, Alternative C would involve more components that Alternative B, which has more than Alternative A (No Action). One exception to this arrangement is at Ravenswood, where there are three Action Alternatives and where the defining feature of each alternative is not ''more components versus fewer components'' but rather a different restoration goal for some of the small ponds there.

Alviso–Island Ponds, Alviso–Mountain View Ponds, Alviso–A8 Ponds, and Ravenswood Ponds—Alternatives A (No Action)

Under Alternatives Island A, Mountain View A, A8 A, and Ravenswood A (the No Action Alternative at each of these pond clusters), no new activities would be implemented as part of Phase 2. The pond clusters would continue to be monitored and managed through the activities described in the Adaptive Management Plan (AMP) and in accordance with current USFWS practices.

Alviso Island Ponds

Alternative Island B

Alternative Island B would breach Pond A19's northern levee and remove or lower levees between Ponds A19 and A20 to increase connectivity and improve the ecological function of both ponds.

Alternative Island C

Alternative Island C would include the components of Alternative Island B with the addition of levee breaches on the north sides of Ponds A20 and A21, lowering of portions of levees around Pond A20, pilot channels in Pond A19, and widening the existing breaches on the southern levee of Pond A19.

Alviso-Mountain View Ponds

Alternative Mountain View B

Under Alternative Mountain View B, Ponds A1 and A2W levees would be breached at several points to introduce tidal flow in the ponds. Portions of Pond A1's western levee would be built up to maintain current levels of flood protection provided by the pond itself. Habitat transition zones and habitat islands would be constructed in the ponds to increase habitat complexity and quality for special-status species. A new trail and viewing platform would be installed to improve recreation and public access at these ponds.

Alternative Mountain View C

Under Alternative Mountain View C, levees would be breached and lowered to increase tidal flows in Pond A1, Pond A2W, and Charleston Slough. The inclusion of Charleston Slough (by breaching and lowering much of Pond A1's western levee) is the primary distinguishing feature between Alternative Mountain View B and Alternative Mountain View C. Several additional new trails and viewing platforms would be installed or replaced to improve recreation and public access at the pond cluster. To continue providing water to the City of Mountain View's Shoreline Park sailing lake, a new water intake would be constructed at the proposed breach between Pond A1 and Charleston Slough.

Alviso—A8 Ponds

Alternative A8 B

Alternative A8 B proposes the construction of habitat transition zones in Pond A8S's southwest corner, southeast corner, or both, depending on the amount of material available.

Ravenswood Ponds

Alternative Ravenswood B

Alternative Ravenswood B would open Pond R4 to tidal flows, improve levees to provide additional flood protection, create habitat transition zone along the western edge of Pond R4, establish managed ponds to improve habitat for diving and dabbling birds, increase pond connectivity, and add a viewing platform to improve recreation and public access.

Alternative Ravenswood C

Alternative Ravenswood C would be similar to Alternative Ravenswood B, with the following exceptions: Ponds R5 and S5 would be converted to a particular type of managed pond that is operated to maintain intertidal mudflat elevation; water control structures would be installed on Pond R3 to allow for improvement to the habitat for western snowy plover; an additional habitat transition zone would be constructed; and two public access and recreational trails and additional viewing platforms would be constructed.

Alternative Ravenswood D

Alternative Ravenswood D would open Pond R4 to tidal flows, improve levees to provide additional flood protection, create two habitat transition zones in Pond R4, establish enhanced managed ponds in Ponds R5 and S5, increase pond connectivity, enhance Pond R3 for western snowy plover habitat, remove the levees within and between Ponds R5 and S5, and improve recreation and public access. Alternative Ravenswood D would also allow temporary stormwater detention into Ponds R5 and S5 via connections with the City of Redwood City's Bayfront Canal and Atherton Channel Project. This would treat a residual salinity problem in Ponds R5 and S5.

NEPA Compliance

We are conducting environmental review in accordance with the requirements of NEPA, as amended (42 U.S.C. 4321 *et seq.*), its implementing regulations (40 CFR parts 1500–1508), other applicable regulations, and our procedures for compliance with those regulations. The DEIS/EIR discusses the direct, indirect, and cumulative impacts of the alternatives on biological resources, cultural resources, water quality, and other environmental resources. Measures to minimize adverse environmental effects are identified and discussed in the DEIS/EIR.

Public Comments

We request that you send comments only by one of the methods described in **ADDRESSES**. If you submit a comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

In addition to providing written comments, the public is encouraged to attend a public meeting on August 4, 2015, to solicit comments on the DEIS/EIR. The location of the public meeting is provided in the **ADDRESSES** section. We will accept both oral and written comments at the public meeting.

Ren Lohoefener,

Regional Director, Pacific Southwest Region.

[FR Doc. 2015–17991 Filed 7–21–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZP02000.L54100000.FR0000.LVCLA12A5210.241A; AZA–35780]

Notice of Realty Action: Application for Conveyance of Federally Owned Mineral Interests in Pima County, Arizona; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: This action corrects the land description referenced in the **SUPPLEMENTARY INFORMATION** section of a notice published in the **Federal Register** on Thursday, February 12, 2015 (80 FR 7877).

On page 7877, column 3, line 67 of the notice, which reads, ''THENCE, North 89 degrees 25 minutes 53 seconds West, 3297.38 feet to a point on the North line of Section 21,'' is hereby corrected to read, ''THENCE, North 1 degree 20 minutes 28 seconds West, 3297.38 feet to a point on the North line of Section 21.''

Rem Hawes,

Acting District Manager.

[FR Doc. 2015–17961 Filed 7–21–15; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NERO–STSP–18379; PPNESTSP00 PPMPSPD1Z.YM0000]

Request for Nominations for the Star-Spangled Banner National Historic Trail Advisory Council

AGENCY: National Park Service, Interior.

ACTION: Request for nominations.

SUMMARY: The National Park Service, U.S. Department of the Interior, is seeking nominations for individuals to be considered for appointment to the Star-Spangled Banner National Historic Trail Advisory Council.

DATES: Written nominations must be received by August 21, 2015.

ADDRESSES: Send nominations to: Chuck Grady, Chief of Administration, Fort McHenry National Monument & Historic Shrine, Hampton National Historic Site, Star-Spangled Banner National Historic Trail, 2400 East Fort Avenue, Baltimore, MD 21230, telephone (410) 962–4290, ext. 110, or via email at *charles_grady@nps.gov*.

FOR FURTHER INFORMATION CONTACT: Chuck Grady, Chief of Administration, Fort McHenry National Monument & Historic Shrine, Hampton National Historic Site, Star-Spangled Banner National Historic Trail, 2400 East Fort Avenue, Baltimore, MD 21230, telephone (410) 962–4290, ext. 110 or via email at *charles_grady@nps.gov*.

SUPPLEMENTARY INFORMATION: The Council was established under the National Trails System Act (16 U.S.C. 1241 to 1251, as amended). The purpose of the Council is to consult with the Secretary of the Interior on matters relating to the Star-Spangled Banner NHT, including but not limited to, the selection of rights-of-way, standards for the erection and maintenance of markers along the Trail, and interpretation and administration of the Trail.

The Council shall not exceed 35 members and will be appointed by the Secretary as follows:

a. The head of each Federal department or independent agency administering lands through which the trail route passes, or a designee;

b. A member to represent each State through which the trail passes, and such appointments will be made from recommendations of the Governors of such States; and

c. One or more members to represent private organizations, including corporate and individual landowners and land users, which, in the opinion of

the Secretary, have an established and recognized interest in the trail. Such appointments will be made from recommendations of the heads of such organizations.

Members are appointed for a term of two years. Some Council members may serve as Special Governmental Employees which requires the completion of an annual financial disclosure report and annual ethics training.

Members of the Council receive no pay, allowances, or benefits by reason of their service on the Council. However, while away from their homes or regular places of business in the performance of services for the Council as approved by the Designated Federal Officer (DFO), members may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed such expenses under section 5703 of Title 5 of the United State Code.

Individuals who are federally registered lobbyists are ineligible to serve on all FACA and non-FACA boards, committees, or councils in an individual capacity. The term ''individual capacity'' refers to individuals who are appointed to exercise their own individual best judgment on behalf of the government, such as when they are designated Special Government Employees, rather than being appointed to represent a particular interest.

Meetings will take place at such times as designated by the DFO. Members are expected to make every effort to attend all meetings. Members may not appoint deputies or alternates.

Seeking Nominations for Membership

We are seeking nominations for Council members in all categories. The terms of the majority of the 22 members will expire on August 21, 2015. All those interested in membership, including current members whose terms are expiring, must follow the same nomination process. Nominations should include a resume providing an adequate description the nominee's qualifications, including information that would enable the Department of the Interior to make an informed decision regarding meeting the membership requirements of the Council, and to permit the Department to contact a potential member.

Dated: July 2, 2015.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2015–17994 Filed 7–21–15; 8:45 am]

BILLING CODE 4310–EE–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Table Saws Incorporating Active Injury Mitigation Technology and Components Thereof, DN 3077;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at EDIS,[1] and 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 United States International Trade Commission (USITC) at USITC.[2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at EDIS.[3] 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 has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of SawStop, LLC and SD3, LLC. on July 16, 2015. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain table saws incorporating active injury mitigation technology and components thereof. The complaint name as respondents Robert Bosch Tool Corporation of Mount Prospect, IL and Robert Bosch GmbH of Germany. The complainant requests that the Commission issue a permanent limited exclusion order, cease and desist orders, and a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. § 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3077'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [4]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[5]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: July 16, 2015.

Jennifer Rohrbach,

Supervisory Attorney.

[FR Doc. 2015–17876 Filed 7–21–15; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–130 (Fourth Review)]

Chloropicrin 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 chloropicrin from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES:

Effective Date: July 6, 2015.

FOR FURTHER INFORMATION CONTACT: Cynthia Trainor (202–205–3354), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On July 6, 2015, the Commission determined that the domestic interested party group response to its notice of institution (80 FR 17499, April 1, 2015) 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] [2] 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 August 3, 2015, 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,[3] and any party other than an interested party to thereview may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before August 6, 2015 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 August 6, 2015. 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 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. Please be aware that the Commission's rules with respect to filing have changed. The most recent amendments took effect on 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 *http://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: July 16, 2015.

Jennifer Rohrbach,

Supervisory Attorney.

[FR Doc. 2015–17875 Filed 7–21–15; 8:45 am]

BILLING CODE 7020–02–P

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[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] Chairman Meredith M. Broadbent voted to conduct a full review.

[3] The Commission has found the responses submitted by ASHTA Chemicals Inc., Niklor Chemical Co., Inc., and Trinity Manufacturing, Inc. to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PXI Systems Alliance, Inc.

Notice is hereby given that, on June 26, 2015, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), PXI Systems Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, LinkedHope Intelligent Technology Co., Ltd., Beijing, PEOPLE'S REPUBLIC OF CHINA; and VX Instruments GmbH, Altdorf, GERMANY, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PXI Systems Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On November 22, 2000, PXI Systems Alliance, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 8, 2001 (66 FR 13971).

The last notification was filed with the Department on April 7, 2015. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on April 30, 2015 (80 FR 24278).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2015–17987 Filed 7–21–15; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Entercom Communications Corp. and Lincoln Financial Media Company; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Entercom Communications Corp. and Lincoln Financial Media Company,* Civil Action No. Case 1:15–cv–01119–RC. On July 14, 2015, the United States filed a Complaint alleging that Entercom Communications Corp.'s acquisition of Lincoln Financial Media Company would likely substantially lessen competition in the sale of advertising on English-language broadcast radio stations in the Denver, Colorado metro area, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed on the same day as the Complaint, resolves the case by requiring Entercom to divest certain broadcast radio stations in Denver, Colorado. A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and the industry.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street NW., Suite 1010, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Department of Justice, Antitrust Division's internet Web site, filed with the Court and, under certain circumstances, published in the **Federal Register**. Comments should be directed to David Kully, Chief, Litigation III Section, Antitrust Division, Department of Justice, 450 Fifth Street NW., Suite 4000, Washington, DC 20530 (telephone: 202–305–9969).

Patricia A. Brink,

Director of Civil Enforcement.

United States District Court for the District of Columbia

United States of America, United States Department of Justice, Antitrust Division, Litigation III Section, 450 Fifth Street NW., 4th Floor, Washington, DC 20530, Plaintiff, v. *Entercom Communications Corp., 401 E. City Avenue, Suite 809, Bala Cynwyd, Pennsylvania 19004,* and *Lincoln Financial Media Company, 3340 Peachtree Rd. NE., Suite 1430, Atlanta, Georgia 30326,* Defendants

CASE NO.: 1:15–cv–01119–RC
JUDGE: Rudolph Contreras
FILED: 07/14/15

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to enjoin the proposed acquisition of Lincoln Financial Media Company (''Lincoln'') by Entercom Communications Corp. (''Entercom''), and to obtain other equitable relief. The acquisition likely would substantially lessen competition for the sale of radio advertising to advertisers targeting English-language listeners in the Denver, Colorado Metro Survey Area (''Denver MSA''), in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. The United States alleges as follows:

I. NATURE OF THE ACTION

1. By agreement, as amended and restated, dated December 7, 2014, between Lincoln National Life Insurance Company and Entercom, Entercom agreed to acquire Lincoln in a cash-and-stock deal for $105 million. Lincoln National Life Insurance Company is a subsidiary of Lincoln National Corporation.

2. Entercom and Lincoln own and operate broadcast radio stations in various locations throughout the United States, including a number of stations in Denver, Colorado. Entercom's and Lincoln's broadcast radio stations compete head-to-head for the business of local and national companies that seek to advertise on English-language broadcast radio stations in Denver, Colorado.

3. As alleged in greater detail below, the proposed acquisition would eliminate this substantial head-to-head competition in the Denver MSA and result in advertisers paying higher prices for radio advertising time in that market. Therefore, the proposed acquisition violates Section 7 of the Clayton Act, 15 U.S.C. 18, and should be enjoined.

II. JURISDICTION, VENUE, AND COMMERCE

4. The United States brings this action pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain Entercom and Lincoln from violating Section 7 of the Clayton Act, 15 U.S.C. 18. The Court has subject-matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a), and 1345.

5. Entercom and Lincoln are engaged in interstate commerce and in activities substantially affecting interstate commerce. They own and operate broadcast radio stations in various locations throughout the United States and sell radio advertising for those stations. Their radio advertising sales have had a substantial effect upon interstate commerce.

6. Entercom transacts business and is found in the District of Columbia and has also consented to venue in this District. Lincoln has consented to venue in this District. Venue is therefore proper in this District for both Entercom and Lincoln under Section 12 of the Clayton Act, 15 U.S.C. 22. Entercom and Lincoln have also consented to personal jurisdiction in this District.

III. THE DEFENDANTS

7. Entercom, organized under the laws of Pennsylvania, with headquarters in Bala Cynwyd, Pennsylvania, is one of the largest radio broadcast companies in the United States. It has a nationwide portfolio of over 100 stations in 23 metropolitan areas. In 2014, Entercom reported net revenues of approximately $380 million.

8. Lincoln is an indirect, wholly owned subsidiary of Lincoln National Corporation. Lincoln is organized under the laws of North Carolina, with headquarters in Atlanta, Georgia. Lincoln owns and operates 15 broadcast radio stations in four metropolitan areas. In 2014, Lincoln had net revenues of approximately $69 million.

IV. RELEVANT MARKET

9. The relevant market for Section 7 of the Clayton Act is the sale of radio advertising time to advertisers targeting English-language listeners in the Denver MSA.

10. Entercom and Lincoln sell radio advertising time to local and national advertisers that target English-language listeners in the Denver MSA. An MSA is a geographical unit for which Nielsen Audio, a company that surveys radio listeners, furnishes radio stations, advertisers, and advertising agencies in a particular area with data to aid in evaluating radio audiences. MSAs are widely accepted by radio stations, advertisers, and advertising agencies as the standard geographic area to use in evaluating radio audience size and demographic composition. A radio station's advertising rates typically are based on the station's ability, relative to competing radio stations, to attract listening audiences that have certain demographic characteristics that advertisers want to reach.

11. Entercom and Lincoln radio stations in the Denver MSA generate almost all of their revenues by selling advertising time to local and national advertisers who want to reach listeners in the Denver MSA. Advertising placed on radio stations in an MSA is aimed at reaching listening audiences in that MSA, and radio stations outside that MSA do not provide effective access to these audiences.

12. Many local and national advertisers purchase radio advertising time because they find such advertising valuable, either by itself or as a complement to advertising on other media platforms. Reasons for this include the fact that radio advertising may be more cost-efficient and effective than other media at reaching the advertiser's target audience (individuals most likely to purchase the advertiser's products or services). In addition, radio stations offer certain services or promotional opportunities to advertisers that advertisers cannot obtain as effectively using other media.

13. Many local and national advertisers also consider English-language radio to be particularly effective or necessary to reach their desired customers. These advertisers consider English-language radio, either alone or as a complement to other media, to be the most effective way to reach their target audience, and do not consider other media, including non-English-language radio, such as Spanish-language radio, for example, to be a reasonable substitute.

14. If there were a small but significant and non-transitory increase in the price (''SSNIP'') of radio advertising time on English-language stations in the Denver MSA, advertisers would not reduce their purchases sufficiently to render the price increase unprofitable. Advertisers would not switch enough purchases of advertising time to radio stations outside the MSA, to other media, or to non-English-language stations to render the price increase unprofitable.

15. In addition, radio stations negotiate prices individually with advertisers; consequently, radio stations can charge different advertisers different prices. Radio stations generally can identify advertisers with strong preferences to advertise on radio in their MSAs. Because of this ability to price discriminate among customers, radio stations may charge higher prices to advertisers that view radio in their MSA as particularly effective for their needs, while maintaining lower prices for more price-sensitive advertisers. As a result, Entercom and Lincoln could profitably raise prices to those advertisers that view English-language radio targeting listeners in the Denver MSA as a necessary advertising medium.

V. LIKELY ANTICOMPETITIVE EFFECTS

16. Radio station ownership in the Denver MSA is highly concentrated. Entercom's and Lincoln's combined advertising revenue shares exceed 37 percent for English-language broadcast radio stations in the Denver MSA.

17. As articulated in the Horizontal Merger Guidelines issued by the Department of Justice and the Federal Trade Commission, the Herfindahl-Hirschman Index (''HHI'') is a measure of market concentration.[1] Market concentration is often one useful indicator of the likely competitive effects of a merger. The more concentrated a market, and the more a transaction would increase concentration in a market, the more likely it is that a transaction would result in a meaningful reduction in competition harming consumers. Mergers resulting in highly concentrated markets (with an HHI in excess of 2,500) that involve an increase in the HHI of more than 200 points are presumed to be likely to enhance market power under the merger guidelines.

18. Concentration in the Denver MSA would increase significantly as a result of the proposed acquisition. The post-acquisition HHI in the Denver MSA would be over 3,500 for English-language broadcast radio stations. That HHI is well above the 2,500 threshold at which the Department normally considers a market to be highly concentrated. Entercom's proposed acquisition of Lincoln would result in a substantial increase in the HHI set forth above in excess of the 200 points presumed to be anticompetitive under the merger guidelines.

19. Advertisers that use radio to reach their target audiences select radio stations on which to advertise based upon a number of factors including, among others, the size and demographic composition of a station's audience, and the geographic reach of a station's

[1] See U.S. Dep't of Justice, Horizontal Merger Guidelines § 5.3 (2010), available at *http://www.justice.gov/atr/public/guidelines/hmg-2010.html.* The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2,600$). It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches a maximum of 10,000 points when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

broadcast signal. Many advertisers seek to reach a large percentage of their target audiences by selecting those stations whose listening audience is highly correlated to their target audience. If a number of stations broadcasting in the same MSA efficiently reach a target audience, advertisers benefit from the competition among those stations to offer better prices and services.

20. Entercom and Lincoln, each of which operates highly rated radio stations in the Denver MSA, are important competitors for English-language listeners in the Denver MSA. Moreover, Entercom and Lincoln each have multiple stations in the Denver MSA that seek to appeal to and attract the same listening audiences. For many local and national advertisers buying radio advertising time in the Denver MSA, the Entercom and Lincoln stations are close substitutes for each other based upon their specific audience characteristics.

21. During individual price negotiations between advertisers and radio stations, advertisers often provide the stations with information about their advertising needs, including their target audience and the desired frequency and timing of ads. Radio stations have the ability to charge advertisers differing rates based in part on the number and attractiveness of competitive radio stations that can meet a particular advertiser's specific target needs. During negotiations, advertisers that desire to reach a certain target audience and certain reach and frequency goals in the Denver MSA can gain more competitive rates by ''playing off'' Entercom stations, individually and collectively, against Lincoln stations, individually and collectively. The proposed acquisition would end that competition.

22. Post-acquisition, if Entercom raised prices or lowered services to those advertisers that buy advertising time on the Entercom and Lincoln stations in the Denver MSA, non-Entercom stations in that MSA, risking a significant loss of their existing audiences, would be unlikely to change their formats to attempt to attract the Entercom stations' audiences. Even if one or more non-Entercom stations changed their format, they would be unlikely to attract in a timely manner enough listeners to make a price increase or service reduction unprofitable for Entercom.

23. The entry of new radio stations into the Denver MSA would not be timely, likely, or sufficient to deter the exercise of market power.

24. The effect of the proposed acquisition of Lincoln by Entercom would be to lessen competition substantially in interstate trade and commerce in violation of Section 7 of the Clayton Act.

VII. VIOLATION ALLEGED

25. The United States hereby repeats and realleges the allegations of paragraphs 1 through 23 as if fully set forth herein.

26. Entercom's proposed acquisition of Lincoln would likely substantially lessen competition in interstate trade and commerce in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and would likely have the following effects, among others:

a) competition in the sale of advertising time on English-language radio stations in the Denver MSA would be substantially lessened;

b) actual and potential competition in the Denver MSA between Entercom and Lincoln in the sale of radio advertising time would be eliminated; and

c) prices for advertising time on English-language radio stations in the Denver MSA would likely increase, and the quality of services would likely decline.

VI. REQUEST FOR RELIEF

The United States requests:

a) That the Court adjudge the proposed acquisition to violate Section 7 of the Clayton Act, 15 U.S.C. § 18;

b) That the Court permanently enjoin and restrain the Defendants from carrying out the proposed acquisition or from entering into or carrying out any other agreement, understanding, or plan by which Lincoln would be acquired by, acquire, or merge with Entercom;

c) That the Court award the United States the costs of this action; and

d) That the Court award such other relief to the United States as the Court may deem just and proper.

Dated: July 14, 2015

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. *ENTERCOM COMMUNICATIONS CORP. and LINCOLN FINANCIAL MEDIA COMPANY,* Defendants.
CASE NO.: 1:15-cv-01119-RC
JUDGE: Rudolph Contreras
FILED: 07/14/15

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. § 16(b)-(h), plaintiff United States of America (''United States'') files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

Defendant Entercom Communications Corp. (''Entercom'') and Lincoln National Life Insurance Company, a subsidiary of Lincoln National Corporation, entered into a Purchase Agreement, as amended and restated, dated December 7, 2014, pursuant to which Entercom would acquire Defendant Lincoln Financial Media Company (''Lincoln'') for $105 million. Entercom's and Lincoln's broadcast radio stations compete head-to-head for the business of local and national companies that seek to advertise on English-language broadcast radio stations in the Denver, Colorado Metro Survey Area (''MSA'').

The United States filed a civil antitrust Complaint on July 14, 2015 seeking to enjoin the proposed acquisition. The Complaint alleges that the acquisition's likely effect would be to increase English-language broadcast radio advertising prices in the Denver MSA in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

At the same time the Complaint was filed, the United States also filed a Hold Separate Stipulation and Order (''Hold Separate'') and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the proposed acquisition. The proposed Final Judgment, which is explained more fully below, requires Defendants to divest the following broadcast radio stations (the ''Divestiture Stations'') to an Acquirer approved by the United States in a manner that preserves competition in the Denver MSA: KOSI FM, KKFN FM, and KYGO FM. These three broadcast radio stations are

located in Denver, Colorado. The Hold Separate requires Defendants to take certain steps to ensure that the Divestiture Stations are operated as competitively independent, economically viable and ongoing business concerns, uninfluenced by Entercom so that competition is maintained until the required divestitures occur.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. The Defendants and the Proposed Acquisition

Entercom is incorporated in Pennsylvania, with its headquarters in Bala Cynwyd, Pennsylvania. Entercom owns and operates a nationwide portfolio of over 100 broadcast radio stations in 23 metropolitan areas, including the Denver MSA.

Lincoln is an indirect, wholly owned subsidiary of Lincoln National Corporation. Lincoln is organized under the laws of North Carolina, with headquarters in Atlanta, Georgia. Lincoln owns and operates 15 broadcast radio stations in four metropolitan areas, including the Denver MSA.

Pursuant to an agreement, as amended and restated, dated December 7, 2014, between Lincoln National Life Insurance Company and Entercom, Entercom agreed to acquire Lincoln in a cash-and-stock deal for $105 million. Lincoln National Life Insurance Company is a subsidiary of Lincoln National Corporation.

Entercom and Lincoln compete head-to-head against one another for the business of local and national advertisers that seek to purchase radio advertising time that targets English-language listeners located in the Denver MSA. The proposed acquisition would eliminate that competition.

B. Anticompetitive Consequences of the Transaction

1. Broadcast Radio Advertising

The Complaint alleges that the sale of broadcast radio advertising time to advertisers targeting English-language listeners located in the Denver MSA constitutes a relevant product market for analyzing this acquisition under Section 7 of the Clayton Act. Entercom and Lincoln sell radio advertising time to local and national advertisers that seek to target English-language listeners in the Denver MSA. An MSA is a geographical unit for which Nielson Audio, a company that surveys radio listeners, furnishes radio stations, advertisers, and advertising agencies in a particular area with data to aid in evaluating radio audiences. MSAs are widely accepted by radio stations, advertisers, and advertising agencies as the standard geographic area to use in evaluating radio audience size and demographic composition. A radio station's advertising rates typically are based on the station's ability, relative to competing radio stations, to attract listening audiences that have certain demographic characteristics that advertisers want to reach.

Entercom and Lincoln broadcast radio stations in the Denver MSA generate almost all of their revenues by selling advertising time to local and national advertisers who want to reach listeners present in that MSA. Advertising placed on radio stations in an MSA is aimed at reaching listening audiences in that MSA, and radio stations outside that MSA do not provide effective access to these audiences.

Many local and national advertisers purchase radio advertising time because they find such advertising valuable, either by itself or as a complement to advertising on other media platforms. For such advertisers, radio time (a) may be less expensive and more cost-efficient than other media in reaching the advertiser's target audience (individuals most likely to purchase the advertiser's products or services); or (b) may offer promotional opportunities to advertisers that they cannot replicate as effectively using other media. For these and other reasons, many local and national advertisers who purchase radio advertising time view radio as a necessary advertising medium for them or as a necessary advertising complement to other media.

Many local and national advertisers also consider English-language radio to be particularly effective or necessary to reach their desired customers. These advertisers consider English-language radio, either alone or as a complement to other media, to be the most effective way to reach their target audience, and do not consider other media, including non-English-language radio, such as Spanish-language radio, for example, to be a reasonable substitute.

If there were a small but significant and non-transitory increase in the price (''SSNIP'') on radio advertising time on English-language stations in the Denver MSA, advertisers would not reduce their purchases sufficiently to render the price increase unprofitable. Advertisers would not switch enough purchases of advertising time to radio stations outside the MSA, to other media, or to non-English-language stations to render the price increase unprofitable.

In addition, radio stations negotiate prices individually with advertisers; consequently, radio stations can charge different advertisers different prices. Radio stations generally can identify advertisers with strong preferences to advertise on radio in their MSAs. Because of this ability to price discriminate among customers, radio stations may charge higher prices to advertisers that view radio in their MSA as particularly effective for their needs, while maintaining lower prices for more price-sensitive advertisers. As a result, Entercom and Lincoln could profitably raise prices to those advertisers that view English-language radio that targets listeners in the Denver MSA as a necessary advertising medium.

2. Harm to Competition in the Denver MSA

The Complaint alleges that the proposed acquisition likely would lessen competition substantially in interstate trade and commerce, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and likely would have the following effects, among others:

a) competition in the sale of broadcast radio advertising on English-language radio stations in the Denver MSA would be lessened substantially;

b) competition between Entercom broadcast radio stations and Lincoln broadcast radio stations in the sale of broadcast radio advertising in the Denver MSA would be eliminated; and

c) the prices for advertising time on English-language broadcast radio stations in the Denver MSA likely would increase.

The acquisition, by eliminating Lincoln as a separate competitor and combining its operations with Entercom's, would allow Entercom to increase its share of the broadcast radio advertising revenues in the Denver MSA. In the Denver MSA, combining the Entercom and Lincoln broadcast radio stations would give Entercom approximately 37 percent of advertising sales on English-language broadcast radio stations.

Entercom's acquisition of Lincoln also would further concentrate an already highly concentrated broadcast radio market in the Denver MSA. Using the Herfindahl-Hirschman Index (''HHI''), a

standard measure of market concentration (defined and explained in Appendix A), the post-acquisition HHI in the Denver MSA would be over 3,500 for English-language broadcast radio stations. Entercom's proposed acquisition of Lincoln would result in a substantial increase in the HHI set forth above in excess of the 200 points presumed likely to enhance market power under the Horizontal Merger Guidelines issued by the Department of Justice and Federal Trade Commission.

Furthermore, the transaction combines stations and station groups that are close substitutes and vigorous head-to-head competitors for advertisers seeking to reach specific English-language audiences in the Denver MSA. Advertisers select radio stations to reach a large percentage of their target audience based upon a number of factors, including, *inter alia*, the size of the station's audience, the demographic characteristics of its audience, and the geographic reach of a station's broadcast signal. Many advertisers seek to reach a large percentage of their target listeners by selecting those stations whose audience best correlates to their target listeners. Entercom and Lincoln, each of which operates highly rated radio stations in the Denver MSA, are important competitors for English-language listeners in the Denver MSA. Moreover, Entercom and Lincoln have multiple stations in the Denver MSA that seek to appeal to and attract the same listening audiences. For many local and national advertisers buying time in the Denver MSA, the Entercom and Lincoln stations are close substitutes for each other based on their specific audience characteristics.

During individual price negotiations between advertisers and radio stations, advertisers often provide the stations with information about their advertising needs, including their target audience and the desired frequency and timing of their advertisements. Radio stations have the ability to charge advertisers differing rates based in part on the number and attractiveness of competitive radio stations that can meet a particular advertiser's audience, reach, and frequency needs. During negotiations, advertisers that desire to reach a certain target audience and certain reach and frequency goals in the Denver MSA can gain more competitive rates by ''playing off'' Entercom stations, individually and collectively, against Lincoln stations, individually and collectively. The proposed acquisition would end that competition.

Post-acquisition, if Entercom raised prices or lowered services to those advertisers that buy advertising time on the Entercom and Lincoln stations in the Denver MSA, non-Entercom stations in that MSA, risking a significant loss of their existing audiences, would be unlikely to change their formats to attempt to attract the Entercom stations' audiences. Even if one or more non-Entercom stations changed their format, they would be unlikely to attract in a timely manner enough listeners to make a price increase or service reduction unprofitable for Entercom. Finally, the entry of new radio stations into the Denver MSA would not be timely, likely, or sufficient to deter the exercise of market power.

For all these reasons, the Complaint alleges that Entercom's proposed acquisition of Lincoln would lessen competition substantially in the sale of radio advertising time to advertisers targeting English-language listeners in the Denver MSA, eliminate head-to-head competition between Entercom and Lincoln stations in the Denver MSA, and result in increased prices and reduced quality of service for radio advertisers in that MSA, all in violation of Section 7 of the Clayton Act.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The divestiture requirement of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the Denver MSA by maintaining the Divestiture Stations as independent, economically viable competitors. The proposed Final Judgment requires Entercom to divest the following broadcast radio stations located in the Denver MSA to Bonneville International Corporation: KOSI FM, KKFN FM, and KYGO FM. The United States has approved this divestiture buyer. The Antitrust Division required Entercom to identify the Acquirer of the Divestiture Stations in order to provide greater certainty and efficiency in the divestiture process.

The ''Divestiture Assets'' are defined in Paragraph II.H of the proposed Final Judgment to cover all assets, tangible or intangible, principally devoted to and necessary for the operation of the Divestiture Stations as viable, ongoing commercial broadcast radio stations. With respect to each Divestiture Station, the divestiture will include assets sufficient to satisfy the United States, in its sole discretion, that such assets can and will be used to operate each station as a viable, ongoing, commercial radio business.

To ensure that the Divestiture Stations are operated independently from Entercom after the divestiture, Sections IV and XI of the proposed Final Judgment prohibit Defendants from entering into any agreements during the term of the Final Judgment that create a long-term relationship with or any entanglements that affect competition between either Defendant and the Acquirer of the Divestiture Stations concerning the Divestiture Assets after the divestiture is completed. Examples of prohibited agreements include agreements to reacquire any part of the Divestiture Assets, agreements to acquire any option to reacquire any part of the Divestiture Assets or to assign the Divestiture Assets to any other person, agreements to enter into any time brokerage agreement, local marketing agreement, joint sales agreement, other cooperative selling arrangement, or shared services agreement, or agreements to conduct other business negotiations jointly with the Acquirer(s) with respect to the Divestiture Assets, or providing financing or guarantees of financing with respect to the Divestiture Assets, during the term of this Final Judgment. The shared services prohibition does not preclude Defendants from continuing or entering into any non-sales-related shared services agreement that is approved in advance by the United States in its sole discretion. The time brokerage agreement prohibition does not preclude Defendants from entering into an agreement pursuant to which Bonneville can begin operating KOSI FM, KKFN FM, and KYGO FM immediately after the Court's approval of the Hold Separate Stipulation and Order in this matter, so long as the agreement with Bonneville expires upon the consummation of a final agreement to divest the Divestiture Assets to Bonneville.

Defendants are required to take all steps reasonably necessary to accomplish the divestiture quickly and to cooperate with prospective purchasers. Because transferring the broadcast license for each of the Divestiture Stations requires FCC approval, Defendants are specifically required to use their best efforts to obtain all necessary FCC approvals as expeditiously as possible. The divestiture of each of the Divestiture Stations must occur within 90 calendar days after the filing of the Hold Separate Stipulation and Order in this matter, subject to extension during the pendency of any necessary FCC order pertaining to the divestiture. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed ninety (90) calendar days in total, and shall notify the Court in such circumstances.

In the event that Defendants do not accomplish the divestitures the periods

prescribed in the proposed Final Judgment, the proposed Final Judgment provides that the Court, upon application of the United States, will appoint a trustee selected by the United States to effect the divestitures. If a trustee is appointed, the proposed Final Judgment provides that Entercom will pay all costs and expenses of the trustee. The trustee's commission will be structured to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States describing his or her efforts to accomplish the divestiture of any remaining stations. If the divestiture has not been accomplished after 6 months, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. §''15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the United States Department of Justice, Antitrust Division's Internet Web site and, under certain circumstances, published in the **Federal Register**.

Written comments should be submitted to:

David C. Kully
Chief, Litigation III Section
Antitrust Division
United States Department of Justice
450 5th Street, N.W. Suite 4000
Washington, DC 20530

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and Defendants may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Entercom's acquisition of Lincoln. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the sale of English-language broadcast radio advertising in the Denver MSA. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States v. SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States v, U.S. Airways Group, Inc.*, No. 13–cv–1236 (CKK), 2014–1 Trade Cas. (CCH) ¶ 78, 748, 2014 U.S. Dist. LEXIS 57801, at *7 (D.D.C. Apr. 25, 2014) (noting the court has broad discretion of the adequacy of the relief at issue); *United States v. InBev N.V./S.A.,* No. 08–1965 (JR), 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.'').[2]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers,

[2] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004) *with* 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns*, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States v. Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460–62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[3] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns*, 489 F. Supp. 2d at 17; *see also U.S. Airways*, 2014 U.S. Dist. LEXIS 57801, at *16 (noting that a court should not reject the proposed remedies because it believes others are preferable); *Microsoft*, 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland v. United States,* 460 U.S. 1001 (1983); *see also U.S. Airways*, 2014 U.S. Dist. LEXIS 57801, at *8 (noting that room must be made for the government to grant concessions in the negotiation process for settlements (citing *Microsoft*, 56 F.3d at 1461)); *United States v. Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns*, 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft*, 56 F.3d at 1459; *see also U.S. Airways*, 2014 U.S. Dist. LEXIS 57801, at *9 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459–60. As this Court recently confirmed in *SBC Communications*, courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns*, 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2); *see also U.S. Airways,* 2014 U.S. Dist. LEXIS 57801, at * 9 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[4] A court can make its public interest determination based on the competitive impact statement and response to public comments alone. *U.S. Airways,* 2014 U.S. Dist. LEXIS 57801, at * 9.

VIII. DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

[3] *Cf. BNS*, 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft*, 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'').

[4] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

Dated: July 14, 2015

Respectfully submitted,

Mark A. Merva * (D.C. Bar #451743)
Trial Attorney
United States Department of Justice
Antitrust Division
Litigation III Section
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* Attorney of Record

APPENDIX A

The term ''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). The HHI takes into account the relative size distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 points when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1,500 and 2,500 points are considered to be moderately concentrated, and markets in which the HHI is in excess of 2,500 points are considered to be highly concentrated. *See* U.S. Department of Justice & FTC, *Horizontal Merger Guidelines* § 5.3 (2010). Transactions that increase the HHI by more than 200 points in highly concentrated markets presumptively raise antitrust concerns under the *Horizontal Merger Guidelines* issued by the Department of Justice and the Federal Trade Commission. *See id.*

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. *ENTERCOM COMMUNICATIONS CORP. and LINCOLN FINANCIAL MEDIA COMPANY*, Defendants.
CASE NO.: 1:15–cv–01119–RC
JUDGE: Rudolph Contreras
FILED: 07/14/15

PROPOSED FINAL JUDGMENT

WHEREAS, plaintiff, the United States of America filed its Complaint on July 14, 2015, and plaintiff and Entercom Communications Corp. (''Entercom'') and Lincoln Financial Media Company (''Lincoln''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

AND WHEREAS, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prompt and certain divestiture of certain rights and assets by the defendants to assure that competition is not substantially lessened;

AND WHEREAS, the United States requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, defendants have represented to the United States that the divestitures required below can and will be made, and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby ORDERED, ADJUDGED, and DECREED:

I. JURISDICTION

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

II. DEFINITIONS

As used in this Final Judgment:

A. ''Entercom'' means defendant Entercom Communications Corp., a Pennsylvania corporation headquartered in Bala Cynwyd, Pennsylvania, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. ''Lincoln'' means defendant Lincoln Financial Media Company, a North Carolina corporation headquartered in Atlanta, Georgia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Acquirer'' means Bonneville International Corporation, or another entity to which the defendants divest any Divestiture Assets.

D. ''MSA'' means Metropolitan Survey Area as defined by A.C. Nielsen Company and used by the *Investing in Radio BIA Market Report 2014* (1st edition). MSAs are ranked according to the number of households therein and are used by broadcasters, advertisers, and advertising agencies to aid in evaluating radio audience size and composition.

E. ''KOSI FM'' means the broadcast radio station located in the Denver, Colorado MSA owned by defendant Entercom.

F. ''KKFN FM'' means the broadcast radio station located in the Denver, Colorado MSA owned by defendant Lincoln.

G. ''KYGO FM'' means the broadcast radio station located in the Denver, Colorado MSA owned by defendant Lincoln.

H. ''Divestiture Assets'' means all of the assets, tangible or intangible, principally devoted to and necessary for the operations of KOSI FM, KKFN FM and KYGO FM as viable, ongoing commercial broadcast radio stations, except as otherwise agreed to in writing by the United States Department of Justice, including, but not limited to, all real property (owned or leased) principally devoted to and necessary for the operation of the stations, all broadcast equipment, office equipment, office furniture, fixtures, materials, supplies, and other tangible property principally devoted to and necessary for the operation of the stations; all licenses, permits, authorizations, and applications therefore issued by the Federal Communications Commission (''FCC'') and other government agencies related to the stations; all contracts (including programming contracts and rights), agreements, network agreements, leases, and commitments and understandings of Defendants principally devoted to and necessary for the operation of the stations; all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials, and promotional materials relating to the stations; all customer lists, contracts, accounts, and credit records; all logs and other records maintained by Defendants in connection with the stations; and rights (pursuant to a lease or other agreement acceptable to the United States in its sole discretion) to transmission facilities necessary for the operations of KOSI FM, KKFN FM and KYGO FM.

III. APPLICABILITY

A. This Final Judgment applies to Entercom and Lincoln as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Sections IV and V of this Final Judgment, defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the defendants' Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirer(s) of assets divested pursuant to the Final Judgment.

IV. DIVESTITURES

A. Defendants are ordered and directed, within ninety (90) calendar days after the filing of the Hold Separate Stipulation and Order in this matter, to divest the Divestiture Assets to an Acquirer or Acquirers acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed ninety (90) calendar days in total, and shall notify the Court in such circumstances. With respect to divestiture of the Divestiture Assets by defendants or the trustee appointed pursuant to Section V of this Final Judgment, if applications have been filed with the FCC within the period permitted for divestiture seeking approval to assign or transfer licenses to the Acquirer(s) of the Divestiture Assets, but an order or other dispositive action by the FCC on such applications has not been issued before the end of the period permitted for divestiture, the period shall be extended with respect to divestiture of the Divestiture Assets for which no FCC order has issued no later than ten (10) business days after the order of the FCC consenting to the assignment of the Divestiture Assets to Bonneville has become final. Entercom shall use its best efforts to accomplish the divestitures ordered by this Final Judgment as expeditiously as possible, including using its best efforts to obtain all necessary FCC approvals as expeditiously as possible. This Final Judgment does not limit the FCC's exercise of its regulatory powers and process with respect to the Divestiture Assets. Authorization by the FCC to conduct the divestiture of a Divestiture Asset in a particular manner will not modify any of the requirements of this Final Judgment.

B. In the event that defendants are attempting to divest assets related to KOSI FM, KKFN FM or KYGO FM to an Acquirer other than Bonneville:

(1) Defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets;

(2) Defendants shall inform any person making inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment;

(3) Defendants shall offer to furnish to all bona fide prospective acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privilege or work-product doctrine; and

(4) Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide the Acquirer(s) and the United States information relating to the personnel involved in and necessary to the operation or management of the Divestiture Assets to enable the Acquirer(s) to make offers of employment. Defendants shall not interfere with any negotiations by the Acquirer(s) to employ or contract with any employee of any defendant who is involved in and necessary to the operation or management of the Divestiture Assets.

D. Defendants shall permit the Acquirer(s) of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of KOSI FM, KKFN FM and KYGO FM; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. Entercom shall warrant to the Acquirer(s) that each Divestiture Asset will be operational on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

G. Entercom shall warrant to the Acquirer(s) that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each Divestiture Asset, and that, following the sale of the Divestiture Assets, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

H. The foregoing Sections IV.C through IV.G shall not apply in the event that the acquirer of the Divestiture Assets is Bonneville pursuant to the Asset Exchange Agreement dated as of July 10, 2015, by and among Entercom Radio, LLC, Entercom License, LLC, Entercom Denver, LLC, Entercom California, LLC, and Bonneville International Coprporation, and, as of the Closing, Lincoln Financial Media Company.

I. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V of this Final Judgment, shall include the entire Divestiture Assets and be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer(s) as part of a viable, ongoing commercial radio broadcasting business, and the divestiture of such assets will achieve the purposes of this Final Judgment and remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment:

(1) shall be made to an Acquirer or Acquirers that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the commercial radio broadcasting business; and

(2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and defendants gives defendants the ability unreasonably to raise any Acquirer's costs, to lower any Acquirer's efficiency, or otherwise to interfere in the ability of any Acquirer to compete effectively.

V. APPOINTMENT OF TRUSTEE

A. If defendants have not divested the Divestiture Assets within the time period specified in Section IV(A), defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a Divestiture Trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a Divestiture Trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The Divestiture Trustee shall have the power and authority to accomplish the divestiture to an Acquirer(s) acceptable

to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture. Any such investment bankers, attorneys, or other agents shall serve on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the Divestiture Trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

D. The Divestiture Trustee shall serve at the cost and expense of defendants pursuant to a written agreement, on such terms and conditions as the United States approves, including confidentiality requirements and conflict-of-interest certifications. The trustee shall account for all monies derived from its sale of the Divestiture Assets and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services yet unpaid and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the Divestiture Trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount. If the Divestiture Trustee and defendants are unable to reach agreement on the trustee's or any agents' or consultants' compensation or other terms and conditions of engagement within 14 calendar days of appointment of the trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. The Divestiture Trustee shall, within three (3) business days of hiring any other professionals or agents, provide written notice of such hiring and the rate of compensation to defendants and the United States.

E. Defendants shall use their best efforts to assist the Divestiture Trustee in accomplishing the required divestiture. The Divestiture Trustee and any consultants, accountants, attorneys, and other agents retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information or any applicable privileges. Defendants shall take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestiture.

F. After its appointment, the Divestiture Trustee shall file monthly reports with the United States and, as appropriate, the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the Divestiture Trustee has not accomplished the divestiture ordered under this Final Judgment within six months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent such report contains information that the Divestiture Trustee deems confidential, such report shall not be filed in the public docket of the Court. The Divestiture Trustee shall at the same time furnish such report to the United States which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by the United States.

H. If the United States determines that the Divestiture Trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, it may recommend the Court appoint a substitute Divestiture Trustee.

VI. NOTICE OF PROPOSED DIVESTITURE

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants or the Divestiture Trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the Divestiture Trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Acquirer(s), any other third party, or the Divestiture Trustee, if applicable, additional information concerning the proposed divestiture(s), the proposed Acquirer(s), and any other potential Acquirer. Defendants and the Divestiture Trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer(s), any third party, and the Divestiture Trustee, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer(s) or upon objection by the United States, a divestiture proposed under Section IV or Section V

shall not be consummated. Upon objection by defendants under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. FINANCING

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. HOLD SEPARATE

Until the divestiture required by this Final Judgment has been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

IX. AFFIDAVITS

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V of this Final Judgment, defendants shall deliver to the United States an affidavit as to the fact and manner of their compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for and complete the sale of the Divestiture Assets, including efforts to secure FCC or other regulatory approvals, and to provide required information to prospective acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitations on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, each defendant shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Each such affidavit shall also include a description of the efforts defendants have taken to complete the sale of the Divestiture Assets, including efforts to secure FCC or other regulatory approvals. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

X. COMPLIANCE INSPECTION

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as the Hold Separate Stipulation and Order, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

(1) access during defendants' office hours to inspect and copy, or at the option of the United States, to require defendants to provide hard copies or electronic copies of, all books, ledgers, accounts, records, data and documents in the possession, custody or control of defendants, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. NO REACQUISITION OR OTHER PROHIBITED ACTIVITIES

After the Divestiture Assets have been divested to an Acquirer or Acquirers acceptable to the United States in its sole discretion, Defendants may not (1) reacquire any part of the Divestiture Assets, (2) acquire any option to reacquire any part of the Divestiture Assets or to assign the Divestiture Assets to any other person, (3) enter into any time brokerage agreement, local marketing agreement, joint sales agreement, other cooperative selling arrangement, or shared services agreement, or conduct other business negotiations jointly with the Acquirer(s) with respect to the Divestiture Assets, or (4) provide financing or guarantees of financing with respect to the Divestiture Assets, during the term of this Final Judgment.

The shared services prohibition does not preclude defendants from continuing or entering into any non-sales-related shared services agreement that is approved in advance by the United States in its sole discretion.

If defendants reach an agreement to divest the Divestiture Assets to the Acquirer, defendants may also enter into an agreement, approved in advance by the United States in its sole discretion, under which a defendant cedes to the Acquirer the sole right and ability to operate one or more of KOSI FM, KKFN FM and KYGO FM after the Court's approval of the Hold Separate Stipulation and Order in this matter, provided that any such time brokerage agreement (as well as any time brokerage agreement between a defendant and the Acquirer relating to any other broadcast radio stations in the Denver MSA) must expire upon the

termination of a final agreement to divest the Divestiture Assets to the Acquirer or upon the consummation of a final agreement to divest the Divestiture Assets to the Acquirer.

XII. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. EXPIRATION OF FINAL JUDGMENT

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XIV. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon, and the United States' responses to comments. Based on the record before the Court, which includes the Competitive Impact Statement and any comments and responses to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: ____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16

United States District Judge

[FR Doc. 2015–17992 Filed 7–21–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Wireless Industrial Technology Konsortium, Inc.

Notice is hereby given that, on June 24, 2015, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Wireless Industrial Technology Konsortium, Inc. (''WITEK'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Siemens AG, Karlsruhe, GERMANY, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and WITEK intends to file additional written notifications disclosing all changes in membership.

On August 8, 2008, WITEK filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 18, 2008 (73 FR 54170).

The last notification was filed with the Department on April 2, 2015. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on May 7, 2015 (80 FR 26298).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2015–17989 Filed 7–21–15; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Interchangeable Virtual Instruments Foundation, Inc.

Notice is hereby given that, on June 26, 2015, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Interchangeable Virtual Instruments Foundation, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, RADX Technologies, San Diego, CA, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Interchangeable Virtual Instruments Foundation, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 29, 2001, Interchangeable Virtual Instruments Foundation, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 30, 2001 (66 FR 39336).

The last notification was filed with the Department on August 8, 2014. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on September 12, 2014 (79 FR 54745).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2015–17988 Filed 7–21–15; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJP) Docket No. 1691]

Meeting of the Office of Justice Programs' Science Advisory Board

AGENCY: Office of Justice Programs (OJP), Justice.

ACTION: Notice of meeting; renewal of charter.

SUMMARY: This notice announces a forthcoming meeting of OJP's Science Advisory Board (''the Board''). General Function of the Board: The Board is chartered to provide OJP, a component of the Department of Justice, with valuable advice in the areas of science and statistics for the purpose of enhancing the overall impact and performance of its programs and activities in criminal and juvenile justice.

DATES: The meeting will take place on Thursday, August 6, 2015, from approximately 9 a.m. to 3 p.m., with a break for lunch at approximately 12:00 p.m. The meeting will resume on Friday, August 7, 2015, from 8:30 a.m. to 4:00 p.m., ET, with a break for lunch at approximately 12:30 p.m.

ADDRESSES: The meeting will take place in the Main Conference Room and the Executive Conference Room on the third floor of the Office of Justice Programs, 810 7th Street, Northwest, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Katherine Darke, Designated Federal Officer (DFO), Office of the Assistant Attorney General, Office of Justice Programs, 810 7th Street Northwest, Washington, DC 20531; Phone: (202) 616–7373 [Note: This is not a toll-free

number]; Email: *katherine.darke@usdoj.gov.*

SUPPLEMENTARY INFORMATION: This meeting is being convened to brief the OJP Assistant Attorney General and the Board members on the progress of the subcommittees, discuss any recommendations they may have for consideration by the full Board, and brief the Board on various OJP-related projects and activities. The final agenda is subject to adjustment, but the meeting will likely include briefings of the subcommittees' activities and discussion of future Board actions and priorities. This meeting is open to the public. Members of the public who wish to attend this meeting must register with Katherine Darke at the above address at least seven (7) calendar days in advance of the meeting. Registrations will be accepted on a space available basis. Access to the meeting will not be allowed without registration. Persons interested in communicating with the Board should submit their written comments to the DFO, as the time available will not allow the public to directly address the Board at the meeting. Anyone requiring special accommodations should notify Ms. Darke at least seven (7) calendar days in advance of the meeting.

Renewal of Council Charter: In addition to notifying the public about the OJP Science Advisory Board meeting, this **Federal Register** Notice notifies the public that the Charter of the OJP Science Advisory Board has been renewed in accordance with the Federal Advisory Committee Act, Section 14(a)(1). The renewal Charter was signed by former U.S. Attorney General Eric Holder on April 15, 2015. One can obtain a copy of the renewal Charter by accessing the Coordinating Council's Web site at *http://ojp.gov/sab.htm.*

Katherine Darke,

Science Policy Advisor and SAB DFO, Office of the Assistant Attorney General, Office of Justice Programs.

[FR Doc. 2015–17886 Filed 7–21–15; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

DEPARTMENT OF EDUCATION

Office of Career, Technical, and Adult Education; Rehabilitation Services Administration; Comment Request for Information Collection for the WIOA Performance Management, Information, and Reporting System (OMB Control No. 1205–0NEW), New Collection

ACTION: Notice.

SUMMARY: The U.S. Departments of Labor and Education (the Departments), as part of their continuing effort to reduce paperwork and respondent burden, are conducting a preclearance consultation to provide the public and Federal agencies with an opportunity to comment on the proposed collection of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)] (PRA). The PRA helps ensure that respondents can provide requested data in the desired format with minimal reporting burden (time and financial resources), collection instruments are clearly understood and the impact of collection requirements on respondents can be properly assessed.

Currently, the Departments are soliciting comments concerning the collection of data for the WIOA Performance Management, Information, and Reporting System (OMB Control No. 1205–0NEW). The data collections included in this reporting system fulfill requirements in WIOA Sec.116(d)(1) for the development of report templates for the State Performance Report for WIOA core programs, the Local Area Performance Report, and the Eligible Training Provider Report. Previously, a supporting statement was provided for this data collection under OMB Control No. 1205–0420, which was made public on April 16, 2015. The sole difference between the aforementioned supporting statement and the subject of this notice is that OMB Control No. 1205–0NEW does not include the non-WIOA related, currently cleared burden.

DATES: Submit written comments to the office listed in the addresses section below on or before *September 21, 2015.*

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ETA–2015–0007 or via postal mail, commercial delivery, or hand delivery. A copy of the proposed information collection request (ICR) with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from *http://www.regulations.gov* or by contacting Luke Murren by telephone at 202–693–3733 (this is not a toll-free number) or by email at *murren.luke@dol.gov*. Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD). Fax: 202–693–2766.

Mail and hand delivery/courier: Send written comments to Luke Murren, Office of Policy Development and Research, Room N5641, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Due to security-related concerns, there may be a significant delay in the receipt of submissions by United States Mail. You must take this into consideration when preparing to meet the deadline for submitting comments.

Comments submitted in response to this comment request will become a matter of public record and will be summarized and included in the request for Office of Management and Budget approval of the information collection request. In addition, comments regardless of the delivery method, will be posted without change on the *http://www.regulations.gov* Web site; consequently, the Departments recommend commenters not include personal information such as a Social Security Number, personal address, telephone number, email address, or confidential business information that they do not want made public. It is the responsibility of the commenter to determine what to include in the public record.

SUPPLEMENTARY INFORMATION:

I. Background

Section 116 of WIOA requires States that operate core programs of the publicly-funded workforce system to comply with common performance accountability requirements. As such, States that operate core programs must submit common performance data to demonstrate that specified performance levels are achieved.

WIOA Sec. 116(d)(2)—''Contents of State Performance Reports''— mandates that the Secretaries of Labor and Education develop a template for performance reports to be used by States, local boards, and eligible

providers of training services for reporting on outcomes achieved by the WIOA core programs (the Adult, Dislocated Worker, and Youth programs under Title I; the Adult Education and Family Literacy Act program under Title II; the Wagner-Peyser Act program amended by Title III; and the Vocational Rehabilitation Services program under Title IV). Required annual data for the core programs include those related to primary performance indicators, participant counts and costs, and barriers to employment.

The WIOA Annual Local Area Performance Report Template is a subset of the WIOA Annual State Performance Report Template that, under section 116(d)(3) of WIOA, requires the collection of the same aforementioned counts and costs disaggregated by barriers to employment with respect to the primary indicators for the Title I Youth, Adult, and Dislocated Worker programs.

WIOA Sec. 116(d)(4)—''Contents of Eligible Training Provider Report'' (in 20 CFR part 677 of the NPRM)—mandates the collection of specific information for each program of study for each eligible provider of training services under Title I Adult and Dislocated Worker programs. Required data must include those related to primary performance indicators, participant counts and costs, and barriers to employment.

These templates have been designed to maximize the value of the reports for workers, jobseekers, employers, local elected officials, State officials, Federal policymakers, and other key stakeholders. At the same time they have been designed to reflect the specific requirements of the reports as described in WIOA section 116(d)(2) through (4).

Once States, local areas, and eligible training providers submit the required data, it will be used by the Departments to assess the effectiveness of WIOA's core programs and to monitor and analyze the performance of their grantees. This data collection format permits the Departments to evaluate program effectiveness, monitor compliance with statutory requirements, and analyze participant activity, while complying with OMB efforts to streamline Federal performance reporting.

Under this collection, participation will be measured based on the count of individuals who meet the proposed definition of a ''participant''—*e.g.,* those who have received staff-level services within the program year, or have received vocational rehabilitation services under a signed individualized plan for employment. An individual will be considered to have exited after they have gone 90 days without service, and with no future services scheduled. Should they return for additional services after the 90 days—within the same program year and exit in that same program year—the individual's exit date will be changed to reflect only the last exit date in that program year. If the individual exits in a subsequent program year, they would be counted as a new participant for purposes of that subsequent program year. Counting unique individuals in this manner will allow an unduplicated count of participants in the accountability and reporting system. The Departments understand that this may affect quarterly reporting results and counts of services rendered early in the program year for those core programs that submit quarterly reports, particularly for core programs whose current reporting practices differ from what is described above. As such, we greatly encourage your comments on the potential impact on individual states and local areas of this and all other items discussed in this package as we continue to finalize the details of this information collection process.

II. Review Focus

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submissions of responses).

III. Current Actions

Type of Review: New collection.

Title: WIOA Performance Management, Information, and Reporting System.

OMB Number: 1205–0NEW.

Affected Public: State governments.

Estimated Total Annual Respondents: 194.

Estimated Total Annual Responses: 18,691,589.

Estimated Total Annual Burden Hours: 2,228,295.

Total Estimated Annual Other Costs Burden: $0.

We will summarize and/or include in the request for OMB approval of the ICR, the comments received in response to this comment request; they will also become a matter of public record.

As mentioned above, this ICR is intended to cover the performance data collection and reporting requirements in section 116 of WIOA. The notice of proposed rulemaking (NPRM) implementing WIOA was published on April 16, 2015, at 80 FR 20573–20687. The comment period closed on June 15, 2015.

Sec. 506(b)(1) of WIOA states that section 116 of WIOA will go into effect at the start of the second full program year after the date WIOA was enacted. WIOA was enacted on July 22, 2014. Therefore, section 116's performance accountability system will be effective on July 1, 2016. Approval of this information collection request is required so that the states, locals, and other entities can begin programming their management information systems in order to enable them to collect the necessary data to implement the data collection and reporting requirements of section 116 in accordance with the WIOA statute.

If this information collection receives OMB approval, it may be finalized before the proposed regulations are finalized. If this occurs, the Departments will resubmit this ICR to OMB for its approval when the Final Rule is published, as required by 5 CFR 1320.11(h). However, the Departments plan to review and analyze any comments received on the NPRM that are relevant to this ICR, together with comments received on this ICR as we finalize this ICR. This is intended to enable the Departments to finalize this ICR before finalizing the proposed regulations, and to eliminate the need to make any substantive changes to the ICR when the Final Rule is published.

Portia Wu,

Assistant Secretary for Employment and Training, Department of Labor.

Johan E. Uvin,

Acting Assistant Secretary for Career, Technical, and Adult Education, Department of Education.

Michael K. Yudin,

Assistant Secretary for Special Education and Rehabilitative Services, Department of Education.

[FR Doc. 2015–17888 Filed 7–21–15; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (15–063)]

Notice of Intent To Grant an Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant exclusive license.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive license in the United States to practice the invention described and claimed in U.S. Provisional Patent Application No. 62/116,742, titled ''A Method and Stamp for Repeatable Image Correlation Micro Patterning and Resulting Specimen Produced Therefrom,'' NASA Case No. LAR–18577–1, and any nonprovisional patent applications resulting therefrom, to 1900 LLC, having its principal place of business in Clemson, South Carolina. Certain patent rights in this invention have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR. 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated partially exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of Chief Counsel, NASA Langley Research Center, MS 30, Hampton, VA 23681; (757) 864–3221 (phone), (757) 864–9190 (fax).

FOR FURTHER INFORMATION CONTACT: Andrea Z. Warmbier, Patent Attorney, Office of Chief Counsel, NASA Langley Research Center, MS 30, Hampton, VA 23681; (757) 864–3221; Fax: (757) 864–9190. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov.*

Mark P. Dvorscak,

Agency Counsel for Intellectual Property.

[FR Doc. 2015–17943 Filed 7–21–15; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (15–062)]

Notice of Intent To Grant a Partially Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant partially exclusive license.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant a partially exclusive license in the United States to practice the invention described and claimed in U.S. Patent No. 8,977,482 B2 entitled ''Method and Apparatus for Generating Flight-Optimizing Trajectories,'' NASA Case No. LAR–18077–1; U.S. Provisional Patent Application No. 62/058,390 entitled ''Traffic Aware Planner (TAP) Human Machine Interface (HMI) Version 4,'' NASA Case No. LAR–18551–P; and U.S. Provisional Patent Application No. 62/058,423 entitled ''Traffic Aware Planner (TAP) Human Machine Interface (HMI) Version 4,'' NASA Case No. LAR–18551–P2, to Alaska Airlines, Incorporated having its principal place of business in Seattle, Washington. The fields of use may be limited to, but not necessarily limited to, aircraft owned and operated by Alaska Airlines, Incorporated. The patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective partially exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective partially exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR. 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated partially exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of Chief Counsel, NASA Langley Research Center, MS 30, Hampton, VA 23681; (757) 864–3230 (phone), (757) 864–9190 (fax).

FOR FURTHER INFORMATION CONTACT: Jennifer L. Riley, Patent Attorney, Office of Chief Counsel, NASA Langley Research Center, MS 30, Hampton, VA 23681; (757) 864–5057; Fax: (757) 864–9190. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov.*

Mark P. Dvorscak,

Agency Counsel for Intellectual Property.

[FR Doc. 2015–17942 Filed 7–21–15; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (15–061)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: Interested persons are invited to submit written comments regarding the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 7th Street NW., Washington DC, 20543. Attention: Desk Officer for NASA.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Frances Teel, NASA PRA

Clearance Officer, NASA Headquarters, 300 E Street SW., Mail Code JF000, Washington, DC 20546, or *Frances.C.Teel@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

NASA's founding legislation, the Space Act of 1958, as amended, directs the Agency to expand human knowledge of Earth and space phenomena and to preserve the role of the United States as a leader in aeronautics, space science, and technology. The NASA Office of Education has three primary goals: (1) Strengthen NASA and the Nation's future workforce, (2) attract and retain students in science, technology, engineering and mathematics, or STEM, disciplines, and (3) engage Americans in NASA's mission.

This notice informs the public of NASA's intent to revise a currently approved information collection for a project formerly known as the NASA Summer of Innovation Project. The request for renewal pertains to the administration of surveys to youth in support of the agency's STEM challenge activities for middle school youth. The information collection was revised to collect the minimum amount of data required to (1) evaluate the activity for improvement opportunities, and (2) collect outcome data to assess the activity model's effectiveness in meeting its intended objectives. Youth surveys have been retained in this information collection, but the parent survey and teacher focus groups have been eliminated to reduce burden. The number of youth participating in this information collection has been reduced to reflect the estimated number of participants who will be engaged in this activity in the future. The cost of the information collection, to participating members of the public, has also been reduced as a result of these and other changes to the information collection.

II. Method of Collection

Electronic.

III. Data

Title: NASA Office of Education STEM Challenges.

OMB Number: 2700–0150.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals.

Estimated Number of Respondents: 810.

Estimated Annual Responses: 1,620.

Estimated Time per Response: 6 minutes.

Estimated Total Annual Burden Hours: 162.

Estimated Total Annual Cost: $1,175.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Frances Teel,

NASA PRA Clearance Officer.

[FR Doc. 2015–17927 Filed 7–21–15; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0166]

Information Collection: NRC Form 531 ''Request for Taxpayer Identification Number''

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, NRC Form 531 ''Request for Taxpayer Identification Number''.

DATES: Submit comments by September 21, 2015. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

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

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0166. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; 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: Tremaine Donnell, Office of Information Services, Mail Stop: T–5 F53, 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: Tremaine Donnell, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6258; email: *INFOCOLLECTS.Resource@NRC.GOV.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0166 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- Federal rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0166. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2015–0166 on this Web site.
- 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.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ADAMS ML15138A184. The supporting statement and NRC Form 531 ''Request for Taxpayer Identification Number'' is No. ADAMS ML15138A173.
- 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.
- NRC's Clearance Officer: A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, Tremaine Donnell, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–

6258; email: *INFOCOLLECTS.Resource@NRC.GOV.*

B. Submitting Comments

Please include Docket ID NRC–2015–0166 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 in comment submissions that you do not want to be 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 into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* NRC Form 531, Request for Taxpayer Identification Number.

2. *OMB approval number:* 3150–0188.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* NRC Form 531.

5. *How often the collection is required or requested:* Licensees are only required to submit once, however, a continuous monthly request is sent until the licensee submits the Taxpayer Identification Number.

6. *Who will be required or asked to respond:* NRC Form 531 is used to collect TINs and information sufficient to identify the licensee or applicant for licenses, certificates, approvals and registrations.

7. *The estimated number of annual responses:* 300 responses.

8. *The estimated number of annual respondents:* 300 respondents.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 25 hours.

10. *Abstract:* The Debt Collection Improvement Act of 1996 requires that agencies collect taxpayer identification numbers (TINs) from individuals who do business with the Government, including contractors and recipients of credit, licenses, permits, and benefits. The TIN will be used to process all electronic payments (refunds) made to licensees by electronic funds transfer by the Department of the Treasury. The Department of the Treasury will use the TIN to determine whether the refund can be used to administratively offset any delinquent debts reported to the Treasury by other government agencies. In addition, the TIN will be used to collect and report to the Department of the Treasury any delinquent indebtedness arising out of the licensee's or applicant's relationship with the NRC.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the estimate of the burden of the information collection accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated at Rockville, Maryland, this 16th day of July 2015.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2015–17869 Filed 7–21–15; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission for OMB Review; Comments Request

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Notice and request for comments.

SUMMARY: Overseas Private Investment Corporation, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on the ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery'' for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et. seq.). This collection was developed as part of a Federal Government-wide effort to streamline the process for seeking feedback from the public on service delivery. This notice announces our intent to submit this collection to OMB for approval and solicits comments on specific aspects for the proposed information collection.

DATES: Comments must be received within sixty (60) calendar days of publication of this Notice.

ADDRESSES: Mail all comments and requests for copies of the subject form to OPIC's Agency Submitting Officer: James Bobbitt, Overseas Private Investment Corporation, 1100 New York Avenue NW., Washington, DC 20527.

FOR FURTHER INFORMATION CONTACT: OPIC Agency Submitting Officer: James Bobbitt, (202) 336–8558.

SUPPLEMENTARY INFORMATION:

Abstract: The proposed information collection activity provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

The Agency will only submit a collection for approval under this

generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Summary Form Under Review

Type of Request: Approval of a new information collection.

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Form Number: OPIC–258.

Description of Affected Public: U.S. companies or citizens investing overseas.

Estimated Number of Reponses: 40.

Average Expected Annual Number of Activities: 1.

Average Number of Respondents per Activity: 40.

Annual Number of Responses: 40.

Frequency of Response: Once per request.

Burden Hours: 6.6 hours.

Dated: July 15, 2015.

Nichole Skoyles,

Administrative Counsel, Department of Legal Affairs.

[FR Doc. 2015–17901 Filed 7–21–15; 8:45 am]

BILLING CODE 3210–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission for OMB Review; Comments Request

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the agency is submitting an existing collection in use without an OMB control number for OMB review and approval and requests public review and comment on the submission. Comments are being solicited on the need for the information; the accuracy of OPIC's burden estimate; the quality, practical utility, and clarity of the information to be collected; and ways to minimize reporting the burden, including automated collected techniques and uses of other forms of technology.

DATES: Comments must be received within sixty (60) calendar days of publication of this Notice.

ADDRESSES: Mail all comments and requests for copies of the subject form to OPIC's Agency Submitting Officer: James Bobbitt, Overseas Private Investment Corporation, 1100 New York Avenue NW., Washington, DC 20527. See **SUPPLEMENTARY INFORMATION** for other information about filing.

FOR FURTHER INFORMATION CONTACT: OPIC Agency Submitting Officer: James Bobbitt, (202)336–8558.

SUPPLEMENTARY INFORMATION: All mailed comments and requests for copies of the subject form should include form number OPIC–257 on both the envelope and in the subject line of the letter. Electronic comments and requests for copies of the subject form may be sent to *James.Bobbitt@opic.gov,* subject line OPIC–257.

Summary Form Under Review

Type of Request: Approval for existing collection in use without an OMB control number.

Title: Enterprise Development Network Project Information Questionnaire.

Form Number: OPIC–257

Frequency of Use: Once per applicant per project. The form is used to generate online sales leads. It is completed by the applicant and the information collected is routed to OPIC-affiliated Loan Originators. Applicants may make multiple submissions of the same project information, but the overwhelming majority submit once per applicant per project.

Type of Respondents: Business or other institutions; individuals.

Standard Industrial Classification Codes: All.

Description of Affected Public: Companies or citizens investing overseas.

Reporting Hours: 16 hours (5 minutes per form).

Number of Responses: 192 per year.

Federal Cost: $0. Automated leads are generated and sent to OPIC Affiliates for review, prequalification and action.

Authority for Information Collection: Sections 231; 234(b); and 234(c) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The Project Information Questionnaire is the principal document used by OPIC's Enterprise Development Network (EDN) to collect project and contact information. These leads are routed to a network of approved Loan Originators. After review, Loan Originators can contact the project sponsors and offer assistance in the preparation and submission of OPIC loan applications.

Dated: July 17, 2015.

Nichole Skoyles,

Administrative Counsel, Department of Legal Affairs.

[FR Doc. 2015–17908 Filed 7–21–15; 8:45 am]

BILLING CODE 3210–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2015–103; Order No. 2594]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an additional Global Expedited Package Services 3 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* July 23, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
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III. Ordering Paragraphs

I. Introduction

On July 15, 2015, the Postal Service filed notice that it has entered into an additional Global Expedited Package Services 3 (GEPS 3) negotiated service agreement (Agreement).[1]

To support its Notice, the Postal Service filed a copy of the Agreement, a copy of the Governors' Decision authorizing the product, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket No. CP2015–103 for consideration of matters raised by the Notice.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than July 23, 2015. The public portions of the filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Lyudmila Y. Bzhilyanskaya to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2015–103 for consideration of the matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, Lyudmila Y. Bzhilyanskaya is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than July 23, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register.**

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2015–17940 Filed 7–21–15; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75469; File No. SR–NYSEARCA–2015–62]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule

July 16, 2015.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 10, 2015, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule (''Fee Schedule''). The Exchange proposes to implement the fee change effective July 10, 2015. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to enhance the application of the Limit of Fees on Firm and Broker Dealer Open Outcry Executions (the ''Firm Cap'') to include Qualified Contingent Cross Transactions (''QCCs'').

Currently, the Exchange imposes a Firm Cap of $100,000 per month on combined Firm Proprietary Fees and Broker Dealer Fees for transactions clearing in the customer range, if executed in open outcry (*i.e.,* Manual Transactions). The Firm Cap excludes Strategy Executions, Royalty Fees, firm trades executed via a Joint Back Office agreement, and Mini option contracts.[4]

To date, fees arising from QCCs have not been included in the Firm Cap because QCCs are not executed in open outcry. Rather, QCCs are executed by the entry of a matched trade into the Exchange System and reported electronically.[5] Because Firms and Broker Dealers are generally represented on the Floor by Floor Brokers and QCC transactions may be entered into the System from a terminal on the Floor as part of an array of services that a Floor Brokerage operation can offer to clients, the Exchange proposes to include fees

[1] Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, July 15, 2015 (Notice).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Fee Schedule, endnote 9.

[5] *See* Rule 6.90. Qualified Contingent Crosses (providing in relevant part that QCCs are ''automatically executed upon entry into the NYSE Arca System provided that the execution (i) is not at the same price as a Customer Order in the Consolidated Book and (ii) is at or between the NBBO''). *See also* Commentary .01 to Rule 6.90 (providing that QCC orders ''can be entered into the NYSE Arca System from on the Floor of the Exchange only by Floor Brokers'').

for QCCs executed by Floor Brokers in the aggregation towards the Firm Cap. The Exchange believes this proposed change would encourage Firms and Broker Dealers to direct a greater number of their orders, including QCC orders, to the Trading Floor, given the increased opportunities to achieve the Firm Cap on their monthly transaction fees. For example, if a Broker Dealer achieves the Firm Cap with the inclusion of $20,000 in QCC fees, the Broker Dealer may be inclined to direct other orders to the Exchange Floor having reached the Firm Cap, which increased liquidity would benefit all market participants. The Exchange notes that competing options exchanges likewise include QCC transactions in monthly fee caps similar to the Firm Cap.[6]

The proposed inclusion of QCC fees in the Firm Cap would not affect the Floor Broker Rebate for Executed Orders, as Floor Brokers would still earn the Rebate even if the fee for the transaction itself is capped.

Consistent with the proposed change, the Exchange proposes to change the name of this fee from ''Limit of Fees on Firm and Broker Dealer Open Outcry Executions'' to ''Firm and Broker Dealer Monthly Fee Cap,'' which the Exchange believes would add more clarity and consistency to the fee schedule. Relatedly, the Exchange also proposes to modify the language in the Firm Cap regarding the exclusion of Mini options which erroneously refers to Strategy Executions. Specifically, the Exchange proposes to replace the language ''Mini option contracts are excluded from the Limit of Fees on Strategy Executions,'' with ''Mini option contracts are excluded from the Firm and Broker Dealer Monthly Fee Cap.'' The Exchange believes that this change would add clarity and consistency to the Fee Schedule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[8] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes the inclusion of the Floor executed QCCs under the Firm Cap is reasonable and not unfairly discriminatory because it would provide additional opportunities for Firms and Broker Dealers to achieve the Firm Cap, which may, in turn, encourage more business, not limited to QCC trades, to be brought to the Floor, which would benefit all market participants. The proposed change is reasonable, equitable and not unfairly discriminatory as the Firm Cap would not be meaningful for Customers or Professional Customers because neither Customers nor Professional Customers pay transaction charges for QCCs. The proposed change is also reasonable, equitable and not unfairly discriminatory towards Market Makers, as Market Makers are generally charged a lower fee for Manual executions, and have alternative avenues to reduce transaction fees.[9] In addition, the Exchange believes that by including QCCs in the Firm Cap, thereby making the Cap more achievable and encouraging additional order flow not limited to QCCs, Market Makers are provided a greater opportunity to interact with order flow, which, in turn, benefits market participants.

The Exchange also believes that the proposed change is reasonable because several competing options exchanges likewise include QCC transactions in monthly fee caps similar to Firm Cap.[10]

The Exchange believes that its proposal to modify the name of this fee, as well as the language regarding the exclusion of Mini options from the Firm Cap to correct the erroneous reference to Strategy Executions, would add clarity and consistency to the Fee Schedule to the benefit of all market participants.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[11] the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed change would continue to encourage competition, including by attracting a wider variety of business to the Floor of the Exchange, which would continue to make the Exchange a more competitive venue for, among other things, order execution and price discovery. The Exchange believes the proposed fee change would not unduly burden any particular group of market participants trading on the Exchange vis-à-vis another group. Specifically, neither Customers nor Professional Customers are charged for QCC transactions. Moreover, Market Makers are generally charged a lower fee for Manual executions, and have alternative avenues to reduce transaction fees.[12] In addition, the Exchange believes that by including QCCs in the Firm Cap, thereby making the Cap more achievable and encouraging additional order flow not limited to QCCs, Market Makers are provided a greater opportunity to interact with order flow, which, in turn, benefits market participants.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[13] of the Act and subparagraph (f)(2) of Rule 19b–4[14] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if

[6] *See, e.g.,* NYSE Amex Options fee schedule, *available at, https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE_Amex_Options_Fee_Schedule.pdf* (including QCCs in the Monthly Firm Fee Cap for Manual transactions, which aggregates the fees associated with Firm Manual transactions and cap them at $100,000 per month, per Firm); NASDAQ OMX PHLX LLC fee schedule, *available at, http://www.nasdaqtrader.com/Micro.aspx?id=phlxpricing* (including QCCs in the Monthly Firm Fee Cap, which aggregates the fees associated with Firm Floor Options Transactions and QCCs and cap them at $75,000 per month, per Firm).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) and (5).

[9] *See generally* Fee Schedule (various credits available to Market Makers for posted monthly volume, including for executions in Penny Pilot Issues and SPY).

[10] *See supra* n. 6.

[11] 15 U.S.C. 78f(b)(8).

[12] *See supra* n. 9.

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(2).

it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [15] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2015–62 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2015–62. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549–1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2015–62 and should be submitted on or before August 12, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–17893 Filed 7–21–15; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78s(b)(2)(B).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75471; File No. SR–FINRA–2014–047]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Adopt FINRA Rule 2241 (Research Analysts and Research Reports) in the Consolidated FINRA Rulebook

July 16, 2015.

I. Introduction

On November 14, 2014, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule to adopt NASD Rule 2711 (Research Analysts and Research Reports) as a FINRA rule, with several modifications, amend NASD Rule 1050 (Registration of Research Analysts) and Incorporated NYSE Rule 344 to create an exception from the research analyst qualification requirement, and renumber NASD Rule 2711 as FINRA Rule 2241 in the consolidated FINRA rulebook. The proposal was published for comment in the **Federal Register** on November 24, 2014.[3] The Commission received four comments on the original proposal.[4] On February 19, 2015, FINRA filed Amendment No. 1 responding to these original comments received to the proposal as well as to propose amendments in response to these comments. The proposal, as amended by Amendment No. 1, was published for comment in the **Federal Register** on March 18, 2015.[5] On February 20, 2015, the Commission issued an order instituting proceedings pursuant to section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposal. This order was published for comment in the **Federal Register** on February 26, 2015.[7] The Commission received a further three comments regarding the proceedings or in response to Amendment No. 1,[8] to which FINRA responded via letter on May 5, 2015.[9]

This order approves the proposed rule change.

II. Description of the Proposed Rule Change

As described more fully in the Notice, FINRA proposed to adopt, in the Consolidated FINRA Rulebook, NASD Rule 2711 (Research Analysts and Research Reports), with several modifications, as FINRA Rule 2241. The proposed rule change also would amend NASD Rule 1050 (Registration of Research Analysts) and Incorporated NYSE Rule 344 (Research Analysts and Supervisory Analysts) to create an exception from the research analyst qualification requirements.

FINRA believes that the proposed rule change would retain the core provisions of the current rules, broaden the obligations on members to identify and manage research-related conflicts of interest, restructure the rules to provide some flexibility in compliance without diminishing investor protection, extend

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 73622 (Nov. 18, 2014); 79 FR 69939 (Nov. 24, 2014) (''Notice''). On January 6, 2015, FINRA consented to extending the time period for the Commission to either approve or disapprove the proposed rule change, or to institute proceedings to determine whether to approve or disapprove the proposed rule change, to February 20, 2015.

[4] *See* Letter from Kevin Zambrowicz, Associate General Counsel & Managing Director and Sean Davy, Managing Director, SIFMA, dated Dec. 15, 2014 (''SIFMA''), Letter from Hugh D. Berkson, President-Elect, Public Investors Arbitration Bar Association, dated Dec. 15, 2014 (''PIABA Equity''), Letter from Stephanie R. Nicholas, WilmerHale, dated Dec. 16, 2014 (''WilmerHale Equity One''), and Letter from William Beatty, President and Washington (State) Securities Administrator, North American Securities Administrators Association, Inc., dated Dec. 19, 2014 (''NASAA Equity One'').

[5] Exchange Act Release No. 74488 (Mar. 12, 2015); 80 FR 14174 (Mar. 18, 2015) (''Amendment Notice'').

[6] 15 U.S.C. 78s(b)(2)(B).

[7] Exchange Act Release No. 74339 (Feb. 20, 2015); 80 FR 10528 (Feb. 26, 2015).

[8] Letter from Egidio Mogavero, Managing Director and Chief Compliance Officer, JMP Securities, dated Mar. 19, 2015 (''JMP''), Letter from Stephanie R. Nicholas, WilmerHale, dated Apr. 6, 2015 (''WilmerHale Equity Two''), and Letter from William Beatty, President and Washington (State) Securities Administrator, North American Securities Administrators Association, Inc., dated Apr. 17, 2015 (''NASAA Equity Two'').

[9] Letter from Philip Shaikun, Vice President and Associate General Counsel, FINRA, dated May 5, 2015 (''FINRA Response'').

protections where gaps have been identified, and provide clarity to the applicability of existing rules. Where consistent with protection of users of research, FINRA believes that the proposed rule change reduces burdens where appropriate. The description below is the proposal as amended by Amendment No. 1.[10]

As stated above, the Commission originally received four comments on the proposal. Of these, three expressed general support for the proposal,[11] but one objected to the general formulation of the proposal as a principles-based rule.[12] Of the three comments received in regards to the proceedings or Amendment No. 1, one had comments limited to specific provisions of the proposal,[13] one was supportive of the proposal as amended by Amendment No. 1 with certain specific comments,[14] and one reiterated prior concerns regarding the principles-based nature of the proposal.[15]

A. Definitions

FINRA proposed to mostly maintain the definitions in current NASD Rule 2711, with certain modifications. Specifically, FINRA made minor changes to the definition of ''investment banking services'' to clarify that such services include all acts in furtherance of a public or private offering on behalf of an issuer.[16] FINRA also would clarify, in the definition of ''research analyst account,'' that the definition does not apply to a registered investment company over which a research analyst or member of the research analyst's household has discretion or control, provided that the research analyst or member of the research analyst's household has no financial interest in the investment company, other than a performance or management fee.[17] FINRA proposed to exclude from the definition of ''research report'' communications concerning open-end registered investment companies that are not listed or traded on an exchange (*i.e.,* mutual funds).[18] FINRA further proposed to exclude from the definition of ''research report'' communications that constitute private placement memoranda and comparable offering-related documents prepared in connection with investment banking services transactions, other than those that purport to be research.[19] FINRA sought to move the definitions of ''third-party research report'' and ''independent third-party research report'' into the definitional section of the proposed rule that are, in NASD Rule 2711, in a different section of that rule.[20] Lastly, FINRA would adopt a definition of ''sales and trading personnel'' to include persons in any department or division, whether or not identified as such, who perform any sales or trading service on behalf of a member.[21]

B. Identifying and Managing Conflicts of Interest

FINRA proposed to create a new section entitled ''Identifying and Managing Conflicts of Interest.'' This section contains an overarching provision that requires members to establish, maintain, and enforce written policies and procedures reasonably designed to identify and effectively manage conflicts of interest related to the preparation, content, and distribution of research reports and public appearances by research analysts and the interaction between research analysts and persons outside of the research department, including investment banking and sales and trading personnel, the subject companies, and customers.[22] The written policies and procedures would be required to be reasonably designed to promote objective and reliable research that reflects the truly held opinions of research analysts and to prevent the use of research or research analysts to manipulate or condition the market or favor the interests of the member or a current or prospective customer or class of customers.[23] These provisions, FINRA asserted, set out the fundamental obligation for a member to establish and maintain a system to identify and mitigate conflicts and to foster integrity and fairness in its research products and services. The proposed rule change then sets forth the requirements for those written policies and procedures. According to FINRA, this approach would allow for some flexibility to manage identified conflicts, with some specified prohibitions and restrictions where disclosure does not adequately mitigate them. FINRA asserted that most of these requirements have been experience tested and found effective.[24]

1. Prepublication Review

As proposed, the first of these minimum requirements would require that the policies and procedures prohibit prepublication review, clearance, or approval of research reports by persons engaged in investment banking services activities and restrict or prohibit such review, clearance, or approval by other persons not directly responsible for the preparation, content, and distribution of research reports, other than legal and compliance personnel.[25]

2. Coverage Decisions

The proposed rule change would require that the policies and procedures restrict or limit input by the investment banking department into research coverage decisions to ensure that research management independently makes all final decisions regarding the research coverage plan.[26]

3. Supervision and Control of Research Analysts

The proposed rule change would require that the policies and procedures prohibit persons engaged in investment banking activities from supervision or control of research analysts, including influence or control over research analyst compensation evaluation and determination.[27]

4. Research Budget Determinations

The proposed rule change would require that the policies and procedures

[10] See Notice for a description of the original proposal. See also Exhibit 4 to SR–FINRA–2014–047 for a comparison of changes made in the rule text in Amendment No. 1.

[11] SIFMA, PIABA Equity, and WilmerHale Equity One.

[12] NASAA Equity One.

[13] JMP.

[14] WilmerHale Equity Two.

[15] NASAA Equity Two.

[16] *See* proposed FINRA Rule 2241(a)(5). The current definition includes, without limitation, many common types of investment banking services. FINRA proposed to add the language ''or otherwise acting in furtherance of'' either a public or private offering to further emphasize that the term ''investment banking services'' is meant to be construed broadly.

[17] *See* proposed FINRA Rule 2241(a)(9).

[18] *See* proposed FINRA Rule 2241(a)(11). In the Notice, FINRA explained that it was proposing this change because ''sales material regarding mutual funds is already subject to a separate regulatory regime . . . [t]he extensive content standards of these rules, combined with the filing and review of mutual fund sales material by FINRA staff, substantially reduce the likelihood that such material will include materially misleading information about the funds.'' FINRA also stated their belief that because these products are pooled investment vehicles, ''it is much less likely that a report on a mutual fund would affect the fund's NAV to the same extent that a research report on a single stock might impact its share price.''

[19] *See* proposed FINRA Rule 2241(a)(11)(D).

[20] *See* proposed FINRA Rules 2241(a)(3) and (14). FINRA stated it believes this change would create a more streamlined and user friendly rule to combine defined terms in a single definitional section.

[21] *See* proposed FINRA Rule 2241(a)(12).

[22] *See* proposed FINRA Rule 2241(b)(1).

[23] *See* proposed FINRA Rule 2241(b)(2).

[24] *See, e.g.,Joint Report by NASD and the NYSE on the Operation and Effectiveness of the Research Analyst Conflict of Interest Rules* (December 2005), available at *http://www.finra.org/web/groups/industry/@ip/@issues/@rar/documents/industry/p015803.pdf.*

[25] *See* proposed FINRA Rule 2241(b)(2)(A).

[26] *See* proposed FINRA Rule 2241(b)(2)(B).

[27] *See* proposed FINRA Rule 2241(b)(2)(C).

limit determination of the research department budget to senior management, excluding senior management engaged in investment banking services activities.[28]

5. Compensation

The proposed rule change would require that the policies and procedures prohibit compensation based upon specific investment banking services transactions or contributions to a member's investment banking services activities.[29] The policies and procedures further would require a committee that reports to the member's board of directors—or if none exists, a senior executive officer—to review and approve at least annually the compensation of any research analyst who is primarily responsible for preparation of the substance of a research report. The committee would not be permitted to have representation from a member's investment banking department. The committee would be required to consider, among other things, the productivity of the research analyst and the quality of his or her research and would also be required to document the basis for each research analyst's compensation.[30] FINRA stated that these provisions are consistent with the requirements in current Rule 2711(d).

6. Information Barriers

The proposed rule change would require that the policies and procedures establish information barriers or other institutional safeguards reasonably designed to ensure that research analysts are insulated from the review, pressure, or oversight by persons engaged in investment banking services activities or other persons, including sales and trading personnel, who might be biased in their judgment or supervision.[31]

7. Retaliation

The proposed rule change would require that the policies and procedures prohibit direct or indirect retaliation or threat of retaliation against research analysts employed by the member or its affiliates by persons engaged in investment banking services activities or other employees as the result of an adverse, negative, or otherwise unfavorable research report or public appearance written or made by the research analyst that may adversely affect the member's present or prospective business interests.[32]

8. Quiet Periods

The proposed rule change would require that the policies and procedures define quiet periods of a minimum of ten days after an initial public offering (''IPO''), and a minimum of three days after a secondary offering, during which the member must not publish or otherwise distribute research reports, and research analysts must not make public appearances, relating to the issuer if the member has participated as an underwriter or dealer in the IPO or, with respect to the quiet periods after a secondary offering, acted as a manager or co-manager of that offering.[33]

With respect to these quiet-period provisions, the proposed rule change would reduce the current forty day quiet period for IPOs to a minimum of ten days after the completion of the offering for any member that participated as an underwriter or dealer, and reduces the ten day secondary offering quiet period to a minimum of three days after the completion of the offering for any member that has acted as a manager or co-manager in the secondary offering. The proposed rule change would maintain exceptions to these quiet periods for research reports or public appearances concerning the effects of significant news or a significant event on the subject company and, for secondary offerings, research reports or public appearances pursuant to Rule 139 under the Securities Act of 1933 regarding a subject company with ''actively-traded securities.''

The proposed rule change also eliminates the current quiet periods of fifteen days before and after the expiration, waiver or termination of a lock-up agreement.

9. Solicitation and Marketing

In addition, the proposed rule change would require firms to adopt written policies and procedures to restrict or limit activities by research analysts that can reasonably be expected to compromise their objectivity.[34] This would include the existing prohibitions on participation in pitches and other solicitations of investment banking services transactions as well as road shows and other marketing on behalf of issuers related to such transactions. We understand these to be a non-exhaustive list of the types of activities that can violate this provision.[35] FINRA noted that, consistent with existing guidance, analysts may listen to or view a live webcast of a transaction-related road show or other widely attended presentation by investment banking to investors or the sales force from a remote location, or another room if they are in the same location.[36]

The proposed rule change also would add Supplementary Material .01, which would codify FINRA's existing interpretation that the solicitation provision prohibits members from including in pitch materials any information about a member's research capacity in a manner that suggests, directly or indirectly, that the member might provide favorable research coverage.[37]

10. Joint Due Diligence and Other Interactions With Investment Banking

The proposed rule would establish a new proscription with respect to joint due diligence activities—*i.e.,* due diligence by the research analyst in the presence of investment banking department personnel—during a specified time period. Specifically, proposed Supplementary Material .02 states that FINRA interprets the overarching principle requiring members to, among other things, establish, maintain and enforce written policies and procedures that address the interaction between research analysts and those outside of the research department, including investment banking and sales and trading personnel, subject companies and customers, to prohibit the performance of joint due diligence prior to the selection of underwriters for the investment banking services transaction. FINRA clarified that, in response to a comment that this provision may interfere with the JOBS Act,[38] they ''would interpret the provision to apply only to the extent it is not contrary to the JOBS Act'' and ''[t]hus, for example, would not interpret the joint due diligence prohibition to apply where the joint due diligence activities involve a communication with the management of an EGC that is attended by both the

[28] *See* proposed FINRA Rule 2241(b)(2)(D).

[29] *See* proposed FINRA Rule 2241(b)(2)(E).

[30] *See* proposed FINRA Rule 2241(b)(2)(F).

[31] *See* proposed FINRA Rule 2241(b)(2)(G).

[32] *See* proposed FINRA Rule 2241(b)(2)(H).

[33] *See* proposed FINRA Rule 2241(b)(2)(I). Consistent with the Jumpstart Our Business Startups Act (''JOBS Act''), those quiet periods do not apply following the IPO or secondary offering of an Emerging Growth Company (''EGC''), as that term is defined in section 3(a)(80) of the Act.

[34] *See* proposed FINRA Rule 2241(b)(2)(L).

[35] *See id.* (requiring procedures that ''restrict or limit activities by research analysts that can reasonably be expected to compromise their objectivity, *including prohibiting* [participation in pitches and other solicitations and participation in certain road shows]'') (emphasis added).

[36] *See* NASD *Notice to Members* 07–04 (January 2007) and NYSE *Information Memo* 07–11 (January 2007).

[37] *See* proposed FINRA Rule 2241.01 and *Notice to Members* 07–04 (January 2007).

[38] JMP.

research analyst and an investment banker.'' [39]

The proposed rule would continue to prohibit investment banking department personnel from directly or indirectly directing a research analyst to engage in sales or marketing efforts related to an investment banking services transaction, and directing a research analyst to engage in any communication with a current or prospective customer about an investment banking services transaction.[40] Supplementary Material .03 clarifies that three-way meetings between research analysts and a current or prospective customer in the presence of investment banking department personnel or company management about an investment banking services transaction would be prohibited by this provision.[41] FINRA believes that the presence of investment bankers or issuer management could compromise a research analyst's candor when talking to a current or prospective customer about a deal. Supplementary Material .03 would also retain the current requirement that any written or oral communication by a research analyst with a current or prospective customer or internal personnel related to an investment banking services transaction must be fair, balanced, and not misleading, taking into consideration the overall context in which the communication is made.

11. Promises of Favorable Research and Prepublication Review by Subject Company

FINRA proposed to maintain the current prohibition against promises of favorable research, a particular research recommendation, rating, or specific content as inducement for receipt of business or compensation.[42] The proposed rule would further require policies and procedures to prohibit prepublication review of a research report by a subject company for purposes other than verification of facts.[43] Supplementary Material .05 would maintain the current guidance applicable to the prepublication submission of a research report to a subject company. Specifically, sections of a draft research report would be permitted to be provided to non-investment banking personnel or the subject company for factual review, provided that: (1) The draft sections do not contain the research summary, research rating, or price target; (2) a complete draft of the report is provided to legal or compliance personnel before sections are submitted to non-investment banking personnel or the subject company; and (3) any subsequent proposed changes to the rating or price target are accompanied by a written justification to legal or compliance and receive written authorization for the change. The member also would be required to retain copies of any draft and the final version of the report for three years.[44]

12. Personal Trading Restrictions

FINRA proposed to require that firms establish written policies and procedures that restrict or limit research analyst account trading in securities, any derivatives of such securities and funds whose performance is materially dependent upon the performance of securities covered by the research analyst.[45] Such policies and procedures would be required to ensure that research analyst accounts, supervisors of research analysts, and associated persons with the ability to influence the content of research reports do not benefit in their trading from knowledge of the content or timing of a research report before the intended recipients of such research have had a reasonable opportunity to act on the information in the research report.[46] The proposal would maintain the current prohibitions on research analysts receiving pre-IPO shares in the sector they cover and trading against their most recent recommendations. However, members would be permitted to define financial hardship circumstances, if any, in which a research analyst would be permitted to trade against his or her most recent recommendation.[47] The proposed rule change includes Supplementary Material .10, which would provide that FINRA would not consider a research analyst account to have traded in a manner inconsistent with a research analyst's recommendation where a member has instituted a policy that prohibits any research analyst from holding securities, or options on or derivatives of such securities, of the companies in the research analyst's coverage universe, provided that the member establishes a reasonable plan to liquidate such holdings consistent with the principles in paragraph (b)(2)(J)(i) and such plan is approved by the member's legal or compliance department.[48]

C. Content and Disclosure in Research Reports

With some modification, the proposed rule change would maintain the current disclosure requirements. The proposed rule change would add a requirement that a member must establish, maintain and enforce written policies and procedures reasonably designed to ensure that purported facts in its research reports are based on reliable information.[49] FINRA stated that it has included this provision because it believes members should have policies and procedures to foster verification of facts and trustworthy research on which investors may rely. The policies and procedures would also be required to be reasonably designed to ensure that any recommendation, rating or price target has a reasonable basis and is accompanied by a clear explanation of any valuation method used and a fair presentation of the risks that may impede achievement of the recommendation, rating or price target.[50]

In addition, the proposed rule change would require a member to disclose in any research report at the time of publication or distribution of the report: [51]

- If the research analyst or a member of the research analyst's household has a financial interest in the debt or equity securities of the subject company (including, without limitation, whether it consists of any option, right, warrant, future, long or short position), and the nature of such interest; [52]
- If the research analyst has received compensation based upon (among other factors) the member's investment banking revenues; [53]
- If the member or any of its affiliates: (i) Managed or co-managed a public offering of securities for the subject company in the past 12 months; (ii) received compensation for investment banking services from the subject company in the past 12 months; or (iii) expects to receive or intends to seek compensation for investment banking services from the subject company in the next three months; [54]
- If, as of the end of the month immediately preceding the date of publication or distribution of a research report (or the end of the second most recent month if the publication or distribution date is less than 30 calendar days after the end of the most recent

[39] FINRA Response.
[40] *See* proposed FINRA Rule 2241(b)(2)(M).
[41] *See* proposed FINRA Rule 2241.03.
[42] *See* proposed FINRA Rule 2241(b)(2)(K).
[43] *See* proposed FINRA Rule 2241(b)(2)(N).
[44] *See* proposed FINRA Rule 2241.05.
[45] *See* proposed FINRA Rule 2241(b)(2)(J).
[46] *See* proposed FINRA Rule 2241(b)(2)(J)(i).
[47] *See* proposed FINRA Rule 2241(b)(2)(J)(ii).
[48] *See* proposed FINRA Rule 2241.10.
[49] *See* proposed FINRA Rule 2241(c)(1)(A).
[50] *See* proposed FINRA Rule 2241(c)(1)(B).
[51] *See* proposed FINRA Rule 2241(c)(4).
[52] *See* proposed FINRA Rule 2241(c)(4)(A).
[53] *See* proposed FINRA Rule 2241(c)(4)(B).
[54] *See* proposed FINRA Rule 2241(c)(4)(C).

month), the member or its affiliates have received from the subject company any compensation for products or services other than investment banking services in the previous 12 months; [55]

• If the subject company is, or over the 12-month period preceding the date of publication or distribution of the research report has been, a client of the member, and if so, the types of services provided to the issuer. Such services, if applicable, must be identified as either investment banking services, non-investment banking services, non-investment banking securities-related services or non-securities services; [56]

• If the member was making a market in the securities of the subject company at the time of publication or distribution of the research report; [57] and

• If the research analyst received any compensation from the subject company in the previous 12 months.[58]

The proposed rule change would also expand upon the current ''catch-all'' disclosure, which mandates disclosure of any other material conflict of interest of the research analyst or member that the research analyst knows or has reason to know of at the time of the publication or distribution of a research report. The proposed rule change would go beyond the existing provision by requiring disclosure of material conflicts known not only by the research analyst, but also by any ''associated person of the member with the ability to influence the content of a research report.'' [59] The proposed rule change defines a person with the ''ability to influence the content of a research report'' as an associated person who is required to review the content of the research report or has exercised authority to review or change the research report prior to publication or distribution. This term does not include legal or compliance personnel who may review a research report for compliance purposes but are not authorized to dictate a particular recommendation, rating or price target.[60] FINRA stated that the ''reason to know'' standard in this provision would not impose a duty of inquiry on the research analyst or others who can influence the content of a research report. Rather, it would cover disclosure of those conflicts that should reasonably be discovered by those persons in the ordinary course of discharging their functions.

The proposed rule change also maintains the requirement to disclose when a member or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company.[61] The determination of beneficial ownership would continue to be based upon the standards used to compute ownership for the purposes of the reporting requirements under section 13(d) of the Exchange Act.

The proposal would modify the exception for disclosure that would reveal material non-public information regarding specific potential future investment banking transactions of the subject company to also include specific potential future investment banking transactions of other companies, such as a competitor of the subject company.[62] The proposal also continues to permit a member that distributes a research report covering six or more companies (compendium report) to direct the reader in a clear manner as to where the applicable disclosures can be found. An electronic compendium research report may hyperlink to the disclosures. A paper compendium report must include a toll-free number or a postal address where the reader may request the disclosures. In addition, paper compendium reports may include a web address where the disclosures can be found.[63]

D. Disclosures in Public Appearances

The proposal would group in a separate provision the disclosures required when a research analyst makes a public appearance.[64] The required disclosures would remain substantively the same as under the current rules,[65] including if the member or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company (as computed in accordance with section 13(d) of the Exchange Act). Unlike in research reports, the ''catch all'' disclosure requirement in public appearances would apply only to a conflict of interest of the research analyst or member that the research analyst knows or has reason to know at the time of the public appearance. FINRA stated it understands that supervisors or legal and compliance personnel, who otherwise might be captured by the definition of an associated person ''with the ability to influence,'' typically do not have the opportunity to review and insist on changes to public appearances, many of which are extemporaneous in nature. The proposal would also retain the current requirement in NASD Rule 2711(h)(12) to maintain records of public appearances sufficient to demonstrate compliance by research analysts with the applicable disclosure requirements.[66]

E. Disclosure Required by Other Provisions

With respect to both research reports and public appearances, members and research analysts would continue to be required to comply with applicable disclosure provisions of FINRA Rule 2210 and the federal securities laws.[67]

F. Termination of Coverage

The proposed rule change would retain, with non-substantive modifications, the provision in the current rules that requires a member to notify its customers if it intends to terminate coverage of a subject company.[68] Such notification would need to be made promptly,[69] using the member's ordinary means to disseminate research reports on the subject company to its various customers. Unless impracticable, the notice would be required to be accompanied by a final research report, comparable in scope and detail to prior research reports, and include a final recommendation or rating. If impracticable to provide a final research report, recommendation, or rating, a firm would be required to disclose to its customers the reason for terminating coverage. FINRA clarified in the Notice that it ''expects such circumstances to be exceptional, such as where a research analyst covering a subject company or sector has left the member or the member has discontinued coverage of the industry or sector.''

G. Distribution of Member Research Reports

The proposal would require firms to establish, maintain and enforce written policies and procedures reasonably designed to ensure that a research report is not distributed selectively to internal trading personnel or a particular customer or class of customers in advance of other customers that the firm has previously determined are entitled to receive the research report.[70] The

[55] *See* proposed FINRA Rule 2241(c)(4)(D).
[56] *See* proposed FINRA Rule 2241(c)(4)(E).
[57] *See* proposed FINRA Rule 2241(c)(4)(G).
[58] *See* proposed FINRA Rule 2241(c)(4)(H).
[59] *See* proposed FINRA Rule 2241(c)(4)(I).
[60] *See* proposed FINRA Rule 2241.08.
[61] *See* proposed FINRA Rule 2241(c)(4)(F).
[62] *See* proposed FINRA Rule 2241(c)(5).
[63] *See* proposed FINRA Rule 2241(c)(7).
[64] *See* proposed FINRA Rule 2241(d).
[65] *See* NASD Rules 2711(h)(1), (h)(2)(B) and (C), (h)(3) and (h)(9).
[66] *See* proposed FINRA Rule 2241(d)(3).
[67] *See* proposed FINRA Rule 2241(e).
[68] *See* proposed FINRA Rule 2241(f).
[69] While current Rule 2711(f)(6) does not contain the word ''promptly,'' FINRA has interpreted the provision to require prompt notification of termination of coverage of a subject company.
[70] *See* proposed FINRA Rule 2241(g).

proposal includes further guidance to explain that firms would be permitted to provide different research products and services to different classes of customers, provided the products are not differentiated based on the timing of receipt of potentially market moving information and the firm discloses its research dissemination practices to all customers that receive a research product.[71]

H. Distribution of Third-Party Research Reports

The proposal would maintain the existing third-party disclosure requirements,[72] while incorporating a change to the ''catch-all'' provision to include material conflicts of interest that an associated person of the member with the ability to influence the content of a research report knows or has reason to know at the time of the distribution of the third-party research report. In addition, the proposed rule change would require members to disclose any other material conflict of interest that can reasonably be expected to have influenced the member's choice of a third-party research provider or the subject company of a third-party research report.[73]

FINRA stated that the proposal would continue to address qualitative aspects of third-party research reports. For example, the proposal would maintain, but in the form of policies and procedures, the existing requirement that a registered principal or supervisory analyst review and approve third-party research reports distributed by a member. To that end, the proposed rule change would require a member to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that any third-party research it distributes contains no untrue statement of material fact and is otherwise not false or misleading. For the purpose of this requirement, a member's obligation to review a third-party research report would extend to any untrue statement of material fact or any false or misleading information that should be known from reading the research report or is known based on information otherwise possessed by the member.[74] The proposal further would prohibit a member from distributing third-party research if it knows or has reason to know that such research is not objective or reliable.[75]

The proposal would maintain the existing exceptions for ''independent third-party research reports.'' Specifically, such research would not require principal pre-approval or, where the third-party research is not ''pushed out,'' the third-party disclosures.[76] As to the latter, a member would not be considered to have distributed independent third-party research where the research is made available by the member: (a) Upon request; (b) through a member-maintained Web site; or (c) to a customer in connection with a solicited order in which the registered representative has informed the customer, during the solicitation, of the availability of independent research on the solicited equity security and the customer requests such independent research.

Finally, under the proposed rule change, members would be required to ensure that a third-party research report is clearly labeled as such and that there is no confusion on the part of the recipient as to the person or entity that prepared the research report.[77]

I. Exemption for Firms With Limited Investment Banking Activity

The current rule exempts firms with limited investment banking activity—those that over the previous three years, on average per year, have managed or co-managed 10 or fewer investment banking transactions and generated $5 million or less in gross revenues from those transactions—from the provisions that prohibit a research analyst from being subject to the supervision or control of an investment banking department employee because the potential conflicts with investment banking are minimal.[78] However, those firms remain subject to the provision that requires the compensation of a research analyst to be reviewed and approved annually by a committee that reports to a member's board of directors, or a senior executive officer if the member has no board of directors.[79] That provision further prohibits representation on the committee by investment banking department personnel and requires the committee to consider the following factors when reviewing a research analyst's compensation: (1) The research analyst's individual performance, including the research analyst's productivity and the quality of research; (2) the correlation between the research analyst's recommendations and the performance of the recommended securities; and (3) the overall ratings received from clients, the sales force and peers independent of investment banking, and other independent ratings services.[80] The proposed rule change would extend the exemption for firms with limited investment banking activity so that such firms would not be subject to the compensation committee provision. The proposal would still prohibit these firms from compensating a research analyst based upon specific investment banking services transactions or contributions to a member's investment banking services activities.[81]

The proposed rule change would further exempt firms with limited investment banking activity from the provisions restricting or limiting research coverage decisions and budget determinations. In addition, the proposal would exempt eligible firms from the requirement to establish information barriers or other institutional safeguards to insulate research analysts from the review or oversight by investment banking personnel or other persons, including sales and trading personnel, who may be biased in their judgment or supervision. However, those firms would still be required to establish information barriers or other institutional safeguards reasonably designed to ensure that research analysts are insulated from *pressure* by investment banking and other non-research personnel who might be biased in their judgment or supervision.

J. Exemption From Registration Requirements for Certain ''Research Analysts''

The proposed rule change would amend the definition of ''research analyst'' for the purposes of the registration and qualification requirements to limit the scope to persons who produce ''research reports'' and whose primary job function is to provide investment research (*e.g.,* registered representatives or traders

[71] *See* proposed FINRA Rule 2241.07.

[72] NASD Rule 2711(h)(13)(A) currently requires the distributing member firm to disclose the following, if applicable: (1) If the member owns 1% or more of any class of equity securities of the subject company; (2) if the member or any affiliate has managed or co-managed a public offering of securities of the subject company or received compensation for investment banking services from the subject company in the past 12 months, or expects to receive or intends to seek compensation for such services in the next three months; (3) if the member makes a market in the subject company's securities; and (4) any other actual, material conflict of interest of the research analyst or member of which the research analyst knows or has reason to know at the time the research report is distributed or made available.

[73] *See* proposed FINRA Rule 2241(h)(4).

[74] *See* proposed FINRA Rules 2241(h)(1) and (h)(3).

[75] *See* proposed FINRA Rule 2241(h)(2).

[76] *See* proposed FINRA Rule 2241(h)(5) and (6).

[77] *See* proposed FINRA Rule 2241(h)(7).

[78] *See* NASD Rule 2711(k).

[79] *See* NASD Rule 2711(d)(2).

[80] *See* NASD Rule 2711(d) and (k).

[81] *See* proposed FINRA Rules 2241(b)(2)(E) and (i).

generally would not be included).[82] FINRA stated that the revised definition is not intended to carve out anyone for whom the preparation of research is a significant component of their job. Rather, it is intended to provide relief for those who produce research reports on an occasional basis. The existing research rules, in accordance with the mandates of the Sarbanes-Oxley Act of 2002 (''Sarbanes-Oxley''), are constructed such that the author of a communication that meets the definition of a ''research report'' is a ''research analyst,'' irrespective of his or her title or primary job.

K. Attestation Requirement

The proposed rule change would delete the requirement to attest annually that the firm has in place written supervisory policies and procedures reasonably designed to achieve compliance with the applicable provisions of the rules, including the compensation committee review provision. As FINRA explained in the Notice, firms already are obligated pursuant to NASD Rule 3010 (Supervision) to have a supervisory system reasonably designed to achieve compliance with all applicable securities laws and regulations and FINRA rules. Moreover, the research rules also are subject to the supervisory control rules (NASD Rule 3012) and the annual certification requirement regarding compliance and supervisory processes (FINRA Rule 3130).[83] As such, FINRA did not believe that a separate attestation requirement for the research rules was unnecessary.

L. Obligations of Persons Associated with a Member

Proposed Supplementary Material .09 would clarify the obligations of each associated person under those provisions of the proposed rule change that require a member to restrict or prohibit certain conduct by establishing, maintaining and enforcing particular written policies and procedures. Specifically, the proposal provides that, consistent with FINRA Rule 0140, persons associated with a member would be required to comply with such member's policies and procedures as established pursuant to proposed FINRA Rule 2241.[84] In addition, consistent with Rule 0140, Supplementary Material .09 states that it shall be a violation of proposed Rule 2241 for an associated person to engage in the restricted or prohibited conduct to be addressed through the establishment, maintenance, and enforcement of policies and procedures required by Rule 2241, including applicable supplementary material.

M. General Exemptive Authority

The proposed rule change would provide FINRA, pursuant to the Rule 9600 Series, with authority to conditionally or unconditionally grant, in exceptional and unusual circumstances, an exemption from any requirement of the proposed rule for good cause shown, after taking into account all relevant factors and provided that such exemption is consistent with the purposes of the rule, the protection of investors, and the public interest.[85]

III. Summary of Comment Letters, Discussion, and Commission Findings

In response to the proposal as originally proposed by FINRA, the Commission received four comments.[86] Of these, three expressed general support for the proposal,[87] but one objected to the general formulation of the proposal as a principles-based rule.[88] The specifics of these comments were summarized when the Commission instituted proceedings and again when the Commission noticed Amendment No. 1.[89] FINRA filed Amendment No. 1 as a response to these earlier comments as discussed when the amendment was noticed.[90] In the time since Amendment No. 1 was filed, the Commission has received three comment letters on the proposal.[91] FINRA submitted a letter in response to these comments.[92]

Three of the four commenters to the original proposal,[93] and one of the three commenters to the proposal in connection with instituting proceedings or with regards to Amendment No. 1,[94] expressed general support for the proposal. The Commission notes this support.

A. Comments and Discussion Regarding the Principles-Based Approach of the Proposed Rule Change

The rule proposal would adopt a policies and procedures approach to identification and management of research-related conflicts of interest and require those policies and procedures to prohibit or restrict particular conduct. Commenters both to the original proposal and after it was amended by Amendment No. 1 expressed several concerns with the approach.

Two commenters, with regards to the original proposal, asserted that the mix of a principles-based approach with prescriptive requirements was confusing in places and posed operational challenges. In particular, the commenters recommended eliminating the minimum standards for the policies and procedures.[95] One of those commenters had previously expressed support for the proposed policies-based approach with minimum requirements,[96] but asserted that the proposed rule text requiring procedures to ''at a minimum, be reasonably designed to prohibit'' specified conduct is superfluous or confusing. Another commenter opposed a shift to a policies and procedures scheme ''without also maintaining the proscriptive nature of the current rules.'' The commenter therefore favored retaining the proscriptive approach in the current rules and also requiring that firms maintain policies and procedures designed to ensure compliance.[97] One commenter to the original proposal questioned the necessity of the ''preamble'' requiring policies and procedures that ''restrict or limit activities by research analysts that can reasonably be expected to compromise their objectivity'' that precedes specific prohibited activities related to investment banking transactions.[98] Finally, some commenters to the original proposal suggested FINRA eliminate language in the supplementary material that provides that the failure of an associated person to comply with the firm's policies and procedures constitutes a violation of the proposed rule itself.[99] These

[82] *See* proposed NASD Rule 1050(b) and proposed Incorporated NYSE Rule 344.10.

[83] NASD Rules 3010 and 3012 have been adopted with changes as consolidated FINRA rules. The new rules become effective December 1, 2014. *See supra* note 20.

[84] *See* proposed FINRA Rule 2241.09. FINRA Rule 0140(a), among other things, provides that persons associated with a member shall have the same duties and obligations as a member under the Rules.

[85] *See* proposed FINRA Rule 2241(j).

[86] *See* note 4, *supra.*

[87] SIFMA, PIABA Equity, and WilmerHale Equity One.

[88] NASAA Equity One.

[89] Exchange Act Release No. 74339 (Feb. 20, 2015); 80 FR 10528 (Feb. 26, 2015) and Amendment Notice.

[90] *Id.*

[91] JMP, WilmerHale Equity Two, and NASAA Equity Two.

[92] FINRA Response.

[93] SIFMA, WilmerHale Equity One, and PIABA Equity.

[94] WilmerHale Equity Two.

[95] SIFMA and WilmerHale Equity One.

[96] Letter from Amal Aly, Managing Director and Associate General Counsel, SIFMA, to Marcia E. Asquith, Corporate Secretary, FINRA, dated November 14, 2008 regarding *Regulatory Notice* 08–55 (Research Analysts and Research Reports).

[97] NASAA Equity One.

[98] WilmerHale Equity One.

[99] SIFMA and WilmerHale Equity One.

commenters argued that because members may establish policies and procedures that go beyond the requirements set forth in the rule, the provision may have the unintended consequence of discouraging firms from creating standards in their policies and procedures that extend beyond the rule. One of those commenters suggested that the remaining language in the supplementary material adequately holds individuals responsible for engaging in restricted or prohibited conduct covered by the proposals.[100]

FINRA stated that it believes the framework will maintain the same level of investor protection in the current rules while providing both some flexibility for firms to align their compliance systems with their business model and philosophy and imposing additional obligations to proactively identify and manage emerging conflicts. Even under a policies and procedures approach, FINRA believes that the proposals would effectively maintain, with some modifications, the key proscriptions in the current rules—*e.g.,* prohibitions on prepublication review, supervision of research analysts by investment banking and participation in pitches and road shows. FINRA stated it disagrees that the ''preamble'' to some of those prohibitions is unnecessary. As with the more general overarching principles-based requirement to identify and manage conflicts of interest, the introductory principle that requires written policies and procedures to restrict or limit activities by research analysts that can reasonably be expected to compromise their objectivity recognizes that FINRA cannot identify every conflict related to research at every firm and therefore requires proactive monitoring and management of those conflicts. FINRA stated it does not believe this ''preamble'' language is redundant with the broader overarching principle because it applies more specifically to the activities of research analysts and, unlike the broader principle, would preclude the use of disclosure as a means of conflict management for those activities.

One commenter, with regards to the proposal as amended by Amendment No. 1, reiterated its earlier comments regarding their concerns relating to the principles-based nature of the proposal. This commenter stated that the historical mismanagement of the conflicts of interest inherent to equity research by firms necessitates a proscriptive, rather than principles-based approach. The commenter noted that violations in this area are ''recent and continued'' and that they and other commenters noted that the proposal seemed ''unclear and likely to result in confusion.'' [101] FINRA disagreed with the commenter noting that ''the proposed framework effectively maintains, with a few modifications, the key proscriptions in the current rules . . . because the proposals require policies and procedures that must prohibit or restrict specified conduct, such as research analyst participation in soliciting investment banking business or road shows.'' [102]

In light of the overarching principle that requires firms to establish, maintain and enforce written policies and procedures reasonably designed to identify and effectively manage research-related conflicts, the ''at a minimum'' language was meant to convey that additional conflicts management policies and procedures may be needed to address emerging conflicts that may arise as the result of business changes, such as new research products, affiliations or distribution methods at a particular firm. FINRA stated it intends for firms to proactively identify and manage those conflicts with appropriately designed policies and procedures. Thus, FINRA's inclusion of the ''at a minimum'' language was not intended to suggest that firms' written policies and procedures must go beyond the specified prohibitions and restrictions in the proposal where no new conflicts have been identified. However, FINRA stated it believes the overarching requirement for policies and procedures reasonably designed to identify and effectively manage research-related conflicts suffices to achieve the intended regulatory objective, and therefore to eliminate any confusion, FINRA proposed in Amendment No. 1 to amend the proposal to delete the ''at a minimum'' language.

One commenter regarding the proposal as amended by Amendment No. 1 specifically took issue with this action of removing the ''at a minimum'' requirement as ''this language was helpful in maintaining the prescriptive nature of the current rules by ensuring that a firm's policies and procedures met at least a minimum standard.'' [103] Another noted its approval.[104] FINRA responded that this change ''was meant to clarify that FINRA did not expect firms' written policies and procedures to go beyond the specified prohibitions and restrictions in the proposals where no new conflicts had been identified . . . [h]owever . . . removing that language did not change the overarching requirement for written policies and procedures reasonably designed to identify and effectively manage emerging conflicts—a significant additional obligation that does not exist in the current rules.'' [105]

FINRA clarified in Amendment No. 1 that it appreciates the commenters' concerns with respect to language in the supplementary material that would make a violation of a firm's policies a violation of the underlying rule. According to FINRA, the supplementary material was intended to hold individuals responsible for engaging in the conduct that the policies and procedures effectively restrict or prohibit. FINRA stated that it agrees that purpose is achieved with the language in the supplementary material that states that, consistent with FINRA Rule 0140, ''it shall be a violation of [the Rule] for an associated person to engage in the restricted or prohibited conduct to be addressed through the establishment, maintenance and enforcement of policies and procedures required by [the Rule] or related Supplementary Material.'' Therefore, FINRA proposed in Amendment No. 1 to amend the proposed rule change to delete the language stating that a violation of a firm's policies and procedures shall constitute a violation of the rule itself.

One commenter responding to the proposal as amended by Amendment No. 1 objected to this change.[106] Another noted its approval for the change.[107] FINRA responded that the change would not affect the ability of FINRA to ''hold individuals responsible for engaging in conduct that the policies and procedures effectively restrict or prohibit.'' FINRA further suggested that it did not believe that individuals should be punished by FINRA where those individuals violate procedures members instituted voluntarily that go beyond the minimum requirements of the rule.[108]

Lastly, one commenter regarding the institution of proceedings sought leeway or guidance regarding examiners' interpretation of FINRA's rules, specifically, what constitutes ''reasonable,'' with regards to small firms who have only institutional

[100] WilmerHale Equity One.

[101] NASAA Equity Two. *See also* NASAA Equity One, SIFMA, and WilmerHale Equity One.

[102] FINRA Response.

[103] NASAA Equity Two.

[104] WilmerHale Equity Two.

[105] FINRA Response.

[106] NASAA Equity Two.

[107] WilmerHale Equity Two.

[108] FINRA Response. *See also* WilmerHale Equity One (suggesting the change).

clients.[109] FINRA stated that the proposal is principles-based and is designed to allow some flexibility, but will consider providing additional guidance, as appropriate, where questions arise.[110]

B. Comments and Discussion Regarding Definitions and Terms Used in the Proposal

One commenter requested that the original proposal define the term ''sales and trading personnel'' as ''persons who are primarily responsible for performing sales and trading activities, or exercising direct supervisory authority over such persons.'' [111] The commenter's proposed definition was intended to clarify that the proposed restrictions on sales and trading personnel activities should not extend to: (1) Senior management who do not directly supervise those activities but have a reporting line from such personnel (*e.g.,* the head of equity capital markets); or (2) persons who occasionally function in a sales and trading capacity. FINRA stated it intends for the sales and trading personnel conflict management provisions to apply to individuals who perform sales and trading functions, irrespective of their job title or the frequency of engaging in the activities. As such, FINRA clarified it does not intend for the rule to capture as sales and trading personnel senior management, such as the chief executive officer, who do not engage in or supervise day-to-day sales and trading activities. However, FINRA stated it believes the applicable provisions should apply to individuals who may occasionally perform or directly supervise sales and trading activities. Otherwise, investors could be put at risk with respect to the research or transactions involved when those individuals are functioning in those capacities because the conflict management procedures and proscriptions and required disclosures would not apply. Therefore, FINRA proposed in Amendment No. 1 to amend the rule to define sales and trading personnel to include ''persons in any department or division, whether or not identified as such, who perform any sales or trading service on behalf of a member.'' FINRA notes that it believes that this proposed definition is more consistent with the definition of ''investment banking department'' in the current and proposed rules.

One commenter to the original proposal asked FINRA to include an exclusion from the definition of ''research report'' for private placement memoranda and similar offering-related documents prepared in connection with investment banking services transactions.[112] The commenter noted that such offering-related documents typically are prepared by investment banking personnel or non-research personnel on behalf of investment banking personnel. The commenter asserted that absent an express exception, the proposals could turn investment banking personnel into research analysts and make the rule unworkable. The commenter noted that NASD Rule 2711(a) excludes communications that constitute statutory prospectuses that are filed as part of a registration statement and contended that the basis for that exception should apply equally to private placement memoranda and similar offering-related documents.

FINRA clarified that the definition of ''research report'' is generally understood not to include such offering-related documents prepared in connection with investment banking services transactions. In the course of administering the filing review programs under FINRA Rules 2210 (Communications with the Public), 5110 (Corporate Financing Rule), 5122 (Member Private Offerings) and 5123 (Private Placements of Securities), FINRA stated it has not received any inquiries or addressed any issues that indicate there is confusion regarding the scope of the research analyst rules as applied to offering-related documents prepared in connection with investment banking activities. Regardless, FINRA proposed in Amendment No. 1 to amend the proposed rule change to exclude private placement memoranda and similar offering-related documents prepared in connection with investment banking services transactions other than those that purport to be research from the definition of ''research report'' to provide firms with greater clarity as to the status of such offering-related documents under the proposal. The commenter noted its approval in its comment letter regarding Amendment No. 1.[113]

One commenter asked FINRA to refrain from using the concept of ''reliable'' research in the proposals as it may inappropriately connote accuracy in the context of a research analyst's opinions.[114] However, another commenter supported the requirement to have policies and procedures reasonably designed to ensure that research reports are based on reliable information.[115] FINRA pointed to their discussion in Item 5 of the Proposing Release and stated it believes that the term ''reliable'' is commonly understood and notes that the term is used in certain research-related provisions in Sarbanes-Oxley without definition. FINRA stated that it did not believe the term connotes accuracy of opinions.

One commenter asked FINRA to eliminate as redundant the term ''independently'' from the provisions permitting non-research personnel to have input into research coverage, so long as research management ''independently makes all final decisions regarding the research coverage plan.'' [116] The commenter asserted that inclusion of ''independently'' is confusing since the proposal would, in the commenter's view, permit input from non-research personnel into coverage decisions.[117] One commenter who responded to the order instituting proceedings expressed support for this comment as well.[118] FINRA stated it included ''independently'' to make clear that research management alone is vested with making final coverage decisions. Thus, for example, a firm could not have a committee that includes a majority of research management personnel but also other individuals make final coverage decisions by a vote. As such, FINRA declined to eliminate the term as suggested.

One commenter to the institution of proceedings suggested that the terms ''manager'' and ''co-manager'' used with regards to the quiet period provisions in the proposal were unclear.[119] FINRA responded that the terms used in the proposal are commonly understood and there had been no previous comments about uncertainty in the terms. FINRA further pointed out that the terms mentioned by the commenter as those used in the industry, ''lead manager'' and ''book-running manager,'' are both

[109] JMP.

[110] FINRA Response.

[111] WilmerHale Equity One. For consistency with the debt research proposal, FINRA also proposed in Amendment No. 1 to amend the proposed rule change to use the term ''sales and trading personnel.''

[112] WilmerHale Equity One.

[113] WilmerHale Equity Two.

[114] SIFMA.

[115] NASAA.

[116] WilmerHale Equity One.

[117] Proposed FINRA Rule 2241(b)(2)(B) specifically states that the policies and procedures must ''restrict or limit input by the investment banking department into research coverage decisions to ensure that research management independently makes all final decisions regarding the research coverage plan.'' Presumably, the commenter believes this permits investment banking input so long as the final decisions are made by research management.

[118] JMP.

[119] *Id.*

''managers'' for these purposes and that, for secondary offerings, both managers and co-managers have the same treatment.[120]

C. Comments and Discussion Regarding Information Barriers

The proposed rule would require written policies and procedures to ''establish information barriers or other institutional safeguards reasonably designed to ensure that research analysts are insulated from the review, pressure or oversight by persons engaged in investment banking services activities or other persons, including sales and trading department personnel, who might be biased in their judgment or supervision.'' Some commenters to the original proposal suggested that ''review'' was unnecessary in this provision because the review of research analysts was addressed sufficiently in other parts of the proposed rule.[121] One of these commenters further suggested that the terms ''review'' and ''oversight'' are redundant.[122] FINRA stated that it does not agree that the terms ''review'' and ''oversight'' are coextensive, as the former may connote informal evaluation, while the latter may signify more formal supervision or authority. While other provisions of the proposed rule change may address related conduct—*e.g.,* the provision that prohibits investment banking personnel from supervision or control of research analysts—FINRA stated that this provision extends to ''other persons'' who may be biased in their judgment or supervision. Finally, FINRA noted that ''review, pressure or oversight'' mirrors language in Sarbanes-Oxley. Accordingly, FINRA declined to revise the proposed rule.

One commenter to the original proposal asked FINRA to clarify that the information barriers or other institutional safeguards required by the proposed rule are not intended to prohibit or limit activities that would otherwise be permitted under other provisions of the rule.[123] FINRA stated that was their intent and believed that the rules of statutory construction would compel that result.

This commenter stated in their comment in response to Amendment No. 1 that they interpreted this to mean that the proposal would permit members to allow persons engaged in sales and trading activities to provide informal and formal feedback on research analysts as one factor to be considered by research management for the purposes of the evaluation of the analyst.[124] FINRA stated that, in general, it agreed with the commenter's interpretation.[125]

The commenter also asserted that the terms ''bias'' and ''pressure'' are broad and ambiguous on their face and requested that FINRA clarify that for purposes of the information barriers requirement that they are intended to address persons who may try to improperly influence research.[126] As an example, the commenter asked whether a bias would be present if an analyst was pressured to change the format of a research report to comply with the research department's standard procedures or the firm's technology specifications. FINRA stated that it believes the terms ''pressure'' and ''bias'' are commonly understood, particularly in the context of rules intended to promote analyst independence and objectivity. To that end, FINRA noted that the terms appear in certain research-related provisions of Sarbanes–Oxley without definition. Thus, with respect to the commenter's example, FINRA stated it does not believe a bias would be present simply because someone insists that a research analyst comply with formatting or technology specifications that do not otherwise implicate the rules.

One commenter asked FINRA to modify the information barriers or other institutional safeguards requirement to conform the provision to FINRA's ''reasonably designed'' standard for policies and procedures that members must adopt.[127] FINRA stated it believed the change would be consistent with the standard for policies and procedures elsewhere in the proposals, and therefore proposed to amend the provision as requested in Amendment No. 1. The commenter noted its approval in its comment regarding Amendment No. 1.[128]

One commenter to the original proposal opposed as overbroad the proposed expansion of the current ''catch-all'' disclosure requirement to include ''any other material conflict of interest of the research analyst or member that a research analyst *or an associated person of the member with the ability to influence* the content of a research report knows or has reason to know'' at the time of publication or distribution of research report.[129] (emphasis added) The commenter expressed concern about the emphasized language. Another commenter supported the proposed expansion of the current ''catch-all'' disclosure requirement.[130]

FINRA stated that it proposed the change to capture material conflicts of interest known by persons other than the research analyst (*e.g.,* a supervisor or the head of research) who are in a position to improperly influence a research report. FINRA defined ''ability to influence the content of a research report'' in supplementary material as ''an associated person who, in the ordinary course of that person's duties, has the authority to review the research report and change that research report prior to publication or distribution.'' The commenter stated that the proposed change could capture individuals (especially legal and compliance personnel) who might be required to disclose confidential information that is not covered by the exception in the proposals that would not require disclosure where it would ''reveal material non-public information regarding specific potential future investment banking transactions of the subject company.'' This is because, according to the commenter, legal and compliance may be aware of material conflicts of interest relating to the subject company that involve material non-public information regarding specific future investment banking transactions of a *competitor* of the subject company. The commenter also expressed concern that the provision would slow down dissemination of research to canvass all research supervisors and management for conflicts. The commenter suggested that the change was unnecessary given other objectivity safeguards in the proposals that would guard against improper influence.

FINRA stated it continues to believe that a potential gap exists in the current rules where a supervisor or other person with the authority to change the content of a research report knows of a material conflict. However, FINRA stated it intended for the provision to capture only those individuals who are required to review the content of a particular research report or have exercised their authority to review or change the research report prior to publication or distribution. In addition, FINRA stated it did not intend to capture legal or compliance personnel who may review a research report for compliance purposes but are not authorized to dictate a particular recommendation,

[120] FINRA Response.

[121] SIFMA and WilmerHale Equity One.

[122] WilmerHale Equity One.

[123] *Id.*

[124] WilmerHale Equity Two.

[125] FINRA Response.

[126] WilmerHale Equity One.

[127] *Id.*

[128] WilmerHale Equity Two.

[129] WilmerHale Equity One.

[130] NASAA Equity One.

rating or price target. FINRA proposed in Amendment No. 1 to amend the supplementary material in the proposals consistent with this clarification. In addition, FINRA proposed in Amendment No. 1 to modify the exception in proposed Rules 2241(c)(5) and (d)(2) (applying to public appearances) not to require disclosure that would otherwise reveal material non-public information regarding specific potential future investment banking transactions, whether or not the transaction involves the subject company.

This commenter in their comment in response to Amendment No. 1, while expressing their support for these changes, asked FINRA to make a modification of the parties who trigger disclosure of any other material conflict of interest. Specifically, the commenter asked FINRA to limit this disclosure to only be required when someone has authority to dictate a particular recommendation, rating, or price target.[131] The commenter was seeking to extend this authority requirement to other parities that can trigger the disclosure, specifically persons who review the report and persons who have exercised authority to review or change the report generally. FINRA declined to make further changes, noting that the change in Amendment No. 1 ''was meant to limit application of the provision where there is a discrete review by [legal or compliance personnel] outside of the research department who do not have primary content review responsibilities'' and that ''those individuals that a firm requires to review research reports (*e.g.,* a Supervisory Analyst) or who exercise their authority to change a research report (*e.g.,* a Director of Research) by definition have the ability to influence the content of a research report.'' [132]

One commenter requested confirmation that members may rely on hyperlinked disclosures for research reports that are delivered electronically, even if these reports are subsequently printed out by customers.[133] As long as a research report delivered electronically contains a hyperlink directly to the required disclosures, FINRA stated that the standard will be satisfied.

D. Comments and Discussion Regarding Research Products with Differing Recommendations

The proposal requires firms to establish, maintain and enforce written policies and procedures reasonably designed to ensure that a research report is not distributed selectively to internal trading personnel or a particular customer or class of customers in advance of other customers that the firm has previously determined are entitled to receive the research report. The proposals also include supplementary material that explains that firms may provide different research products to different classes of customers—*e.g.,* long term fundamental research to all customers and short-term trading research to certain institutional customers—provided the products are not differentiated based on the timing of receipt of potentially market moving information and the firm discloses, if applicable, that one product may contain a different recommendation or rating from another product.

One commenter supported the provisions as proposed with general disclosure,[134] while another contended that FINRA should require members to disclose when their research products and services do, in fact, contain a recommendation contrary to the research product or service received by other customers.[135] The commenter favoring general disclosure asserted that disclosure of specific instances of contrary recommendations would impose significant burdens unjustified by the investor protection benefits. The commenter stated that a specific disclosure requirement would require close tracking and analysis of every research product or service to determine if a contrary recommendation exists. The commenter further stated that the difficulty of complying with such a requirement would be exacerbated in large firms by the number of research reports published and research analysts employed and the differing audiences for research products and services.[136] They asserted that some firms may publish tens of thousands of research reports each year and employ hundreds of analysts across various disciplines and that a given research analyst or supervisor could not reasonably be expected to know of all other research products and services that may contain differing views.

The opposing commenter stated that they believed that permitting contrary opinions while only disclosing the possibility of this contrary research to investors was insufficient to adequately protect investors because the use of ''may'' in a disclosure is not the same as disclosing that there actually are opposing opinions. Further, they questioned whether such disclosure was consistent with the Act in that it may be contrary to Rule 10b–5 by permitting the omission of a material fact in the research report. This commenter did not believe that the disclosure of actual opposing views would be burdensome on members as they should be aware of contrasting opinions. As a result, they argue that FINRA should require specific disclosures.[137]

The supplementary material states that products may lead to different recommendations or ratings, provided that each is consistent with the member's ratings system for each respective product. In other words, all differing recommendations or ratings must be reconcilable such that they are not truly at odds with one another. Since the proposals would not allow inconsistent recommendations that could mislead one or more investors, FINRA stated that it believes general disclosure of alternative products with different objectives and recommendations is appropriate relative to its investor protection benefits. The commenter who supported this approach noted FINRA's position with approval in its comment regarding Amendment No. 1.[138]

E. Comments and Discussion Regarding Quiet Periods

The proposal would eliminate or reduce the quiet periods during which a member may not publish or otherwise distribute research reports or make a public appearance following its participation in an offering. Citing recent enforcement actions in the research area, one commenter did not support elimination or reduction of the quiet periods.[139] FINRA stated it believes that the separation, disclosure, and certification requirements in the current rules and Regulation AC have had greater impact on the objectivity of research than maintaining quiet periods during which research may not be distributed and research analysts may not make public appearances. FINRA noted that there is a cost to investors when they are deprived of information and analysis during quiet periods. FINRA stated it believes that the proposed changes to the quiet periods would promote information flow to investors without jeopardizing the objectivity of research. FINRA also noted that the enforcement actions cited by the commenter that favors retaining the existing quiet periods did not

[131] WilmerHale Equity Two.
[132] FINRA Response.
[133] WilmerHale Equity One.
[134] WilmerHale Equity One.
[135] PIABA Equity.
[136] WilmerHale Equity One.
[137] PIABA Equity.
[138] WilmerHale Equity Two.
[139] NASAA Equity One.

involve the quiet period provisions of the rules, nor, in FINRA's view, would maintaining the current quiet periods have deterred the conduct in those cases.

This commenter restated its objection to the shortened quiet periods mandated by the proposal in its comments regarding Amendment No. 1. The commenter noted that ''[t]he current quiet periods allow firms to 'cool off' after the completion of certain activities before their research departments can offer coverage on the subject securities or issuers'' and that the commenter had concerns that the shortened periods would lead to more promises of favorable research due to the research being distributed more quickly.[140] FINRA stated its belief that the shorter periods were adequate,[141] noting prior statements that, in their view, the remainder of the proposal as well as Regulation AC[142] will be or is effective in deterring biased research without the need for the longer periods called for in NASD Rule 2711.[143]

Other commenters requested that FINRA retain the exceptions in NASD Rule 2711(f) that permits: (i) The publication and distribution of research or a public appearance concerning the effects of significant news or a significant event on the subject company during the quiet period; and (ii) the publication of distribution of research pursuant to Rule 139 under the Securities Act of 1933.[144] FINRA agreed that those exceptions should be included and therefore amended the proposed rule change in Amendment No. 1. One of these commenters noted its approval of this change in its comment regarding Amendment No. 1.[145]

F. Comments and Discussion Regarding Other Institutional Separation Issues

One commenter with regards to the institution of proceedings suggested that FINRA clarify that the proposal would not interfere with senior managers who oversee research departments along with other non-research departments as they represent is the practice at a number of smaller firms, including pre-publication review by such managers.[146] FINRA responded that, while there is no express exception for managers who manage multiple departments in this way, the rule excepts firms with limited investment banking authority. Further, FINRA stated it did not intend to cover with this rule sales and trading or investment banking personnel who do not engage in or directly supervise day-to-day trading or investment banking activities.[147] The implication of FINRA's response seems to be that, to the extent that the commenter's activities can fall within either of these concepts, it should be permitted under the proposed rule.

This commenter also suggested that FINRA interpret selling concessions from public financings be permitted to be included in compensation decisions for research analysts. This commenter stated that this is because ''[b]eing that analysts take part in these [sic] sale efforts, they should be permitted to be compensated from these specific sources of revenue.'' [148] FINRA noted that such an interpretation ''would reintroduce the very conflict that FINRA believes the provision [prohibiting analyst compensation based on specific investment banking revenue] has, in combination with other provisions, effectively alleviated'' and declined to agree with the commenter's interpretation.[149]

G. Comments and Discussion Regarding Disclosure Requirements

Two commenters opposed the requirement in the proposal that members disclose, in an equity research report, if they or their affiliates maintain a significant financial interest in the debt of the research company.[150] The commenters noted that the debt research analyst proposal does not contain a dedicated requirement to disclose significant debt holdings. Rather, that proposal relies on the ''catch-all'' provision, which would require disclosure of a firm's debt holdings of a subject company only where it rises to an actual material conflict of interest.[151] The commenters asserted that the reasoning in the debt proposal—*e.g.,* that firms do not have systems to track ownership of debt securities and that the number and complexity of bonds and the fact that a firm may be both long and short different bonds of the same issuer makes real-time disclosure of credit exposure difficult—applies equally to equity research as far as a member's debt holdings. Another commenter supported the requirement in the equity proposal that members disclose, in an equity research report, if they or their affiliates maintain a significant financial interest in the debt of the research company.[152] One commenter also stated that while FINRA correctly noted that the United Kingdom's Financial Conduct Authority rules require disclosure of debt holdings in equity research reports, that requirement is more akin to the ''catch-all'' provision because the disclosure is further limited to circumstances where the holdings ''may reasonably be expected to impair the objectivity of research recommendations'' or ''are significant in relation to the research recommendations.'' [153] FINRA stated it believes that amending the equity proposal to the treat disclosure of debt holdings consistent with the debt proposal would promote consistency and efficiency while maintaining the same level of investor protection. Therefore, FINRA proposed to amend the proposed rule change in Amendment No. 1 accordingly, including modifying a similar disclosure requirement when making public appearances.

One commenter regarding the institution of proceedings had concerns that the provision in the proposal requiring disclosure of when a member ''expects to receive or intends to seek'' investment banking compensation provides no meaningful disclosure, could mandate disclosure of material, non-public information, and is overly burdensome to track.[154] FINRA noted that this is a disclosure currently required of members under NASD Rule 2711, an exception exists (in that rule and would be retained in the proposal) that does not mandate disclosure to the extent such disclosure would result in disclosure of material, non-public information regarding specific future transactions, and it provides investors with meaningful information regarding the member's objectivity that justify the burdens that it may create.[155]

H. Comments and Discussion Regarding Impact on Global Settlement

One commenter asked FINRA to confirm in any Regulatory Notice announcing adoption of the proposed rule change that provisions relating to research coverage and budget decisions and joint due diligence are intended to supersede the corresponding terms of the Global Research Analyst Settlement

[140] NASAA Equity Two.
[141] FINRA Response.
[142] 17 CFR 242.500–505.
[143] *See* Notice.
[144] SIFMA and WilmerHale Equity One.
[145] WilmerHale Equity Two.
[146] JMP.
[147] FINRA Response.
[148] JMP.
[149] FINRA Response.
[150] SIFMA and WilmerHale Equity One.
[151] *See* Exchange Act Release No. 73623 (Nov. 18, 2014); 79 FR 69905 (Nov. 24, 2014).
[152] NASAA Equity One.
[153] WilmerHale Equity One.
[154] JMP.
[155] FINRA Response.

(''Global Settlement'').[156] FINRA reiterated its position, as discussed in the 2012 United States Government Accountability Office (''GAO'') Report on Securities Research,[157] that it does not believe that the terms of the Global Settlement should be modified through FINRA rulemaking and instead should be determined by the court overseeing the enforcement action. Therefore, FINRA stated it does not intend for any provisions of the equity proposal that may be adopted to supersede provisions of the Global Settlement. One commenter supported this position.[158]

I. Comments and Discussion Regarding FINRA's Exemptive Authority

One commenter opposed the provision that would give FINRA the authority to grant, in exceptional or unusual circumstances, an exemption from the requirement of the proposed rule for good cause shown.[159] The commenter stated that the provision had not been sufficiently justified by, among other things, providing examples of where an exemption would be justified. FINRA stated that the purpose of exemptive authority is to provide a mechanism of relief in unusual factual circumstances that cannot be foreseen, where application of the rule would frustrate or be inconsistent with its intended purposes. As such, FINRA believes that it is difficult if not impossible for it to provide examples of where it would be appropriate to use the authority. However, as FINRA stated in the proposal, it believes that the scope of the rule's subject matter and the diversity of firm sizes, structures and research business and distribution models make it more likely that factual circumstances may arise that had not been contemplated by the rule. In addition, FINRA notes that the authority is limited not only to unusual and exceptional circumstances, but also to a showing of good cause. The Commission notes that the proposal is consistent with other FINRA proposals [160] and expects FINRA to consult with Commission staff prior to issuing such relief, and to discuss whether the proposed exception may be considered a proposed rule change pursuant to section 19(b)(1) of the Act and Rule 19b–4 thereunder.[161]

J. Comments and Discussion Regarding Implementation Date

One commenter requested that the implementation date be at least 12 months after Commission approval of the proposed rule change.[162] Another commenter similarly requested that FINRA provide a ''grace period'' of one year or the maximum time permissible, if that is less than one year, between the adoption of the proposed rule and the implementation date.[163] FINRA stated it is sensitive to the time firms may require to update their policies and procedures and systems to comply and will take those factors into consideration when establishing implementation dates.

K. The Proposal Meets the Requirements of Section 15D of the Act

Section 15D requires the Commission, or upon the authorization and direction of the Commission, a registered securities association or national securities exchange to have adopted, not later than July 30, 2003, rules reasonably designed to address conflicts of interest that can arise when securities analysts recommend equity securities in research reports and public appearances, in order to improve the objectivity of research and provide investors with more useful and reliable information, including rules designed to address certain specific requirements.[164] NASD Rule 2711 and NYSE Rule 472 were adopted to meet this statutory mandate.[165] As the proposed rule change would replace NASD Rule 2711, we considered whether the proposed rule continues to fulfill the mandates of section 15D and, in general, we believe that the proposal does.

Section 15D requires a number of specific provisions, all of which are present in the proposed rule change in the form of required policies and procedures of members. Specifically, the proposed rule change will include rules designed (1) to foster greater public confidence in securities research, and to protect the objectivity and independence of securities analysts, by (a) restricting the prepublication clearance or approval of research reports by persons employed by the broker or dealer who are engaged in investment banking activities, or persons not directly responsible for investment research, other than legal or compliance staff,[166] (b) limiting the supervision and compensatory evaluation of securities analysts to officials employed by the broker or dealer who are not engaged in investment banking activities,[167] and (c) requiring that a broker or dealer and persons employed by a broker or dealer who are involved with investment banking activities may not, directly or indirectly, retaliate against or threaten to retaliate against any securities analyst employed by that broker or dealer or its affiliates as a result of an adverse, negative, or otherwise unfavorable research report that may adversely affect the present or prospective investment banking relationship of the broker or dealer with the issuer that is the subject of the research report, except that such rules may not limit the authority of a broker or dealer to discipline a securities analyst for causes other than such research report in accordance with the policies and procedures of the firm; [168] (2) to define periods during which brokers or dealers who have participated, or are to participate, in a public offering of securities as underwriters or dealers should not publish or otherwise distribute research reports relating to such securities or to the issuer of such securities; [169] and (3) establish structural and institutional safeguards within brokers or dealers to assure that securities analysts are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in investment banking activities might potentially bias their judgment or supervision.[170]

Further, the proposed rule change mandates the disclosures required by section 15D. Specifically, the proposed rule change requires disclosure of (1) the extent to which the securities analyst has debt or equity investments in the issuer that is the subject of the appearance or research report; [171] (2) whether any compensation has been received by the broker or dealer, or any affiliate thereof, including the securities analyst, from the issuer that is the subject of the appearance or research report, subject to such exemptions as the Commission may determine as appropriate and necessary to prevent

[156] WilmerHale Equity One.

[157] GAO, *Securities Research, Additional Actions Could Improve Regulatory Oversight of Analyst Conflicts of Interest,* January 2012.

[158] NASAA Equity Two.

[159] NASAA Equity One.

[160] *See* FINRA Rule 5131(f).

[161] 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4.

[162] SIFMA.

[163] WilmerHale Equity.

[164] 15 U.S.C. 78o–6(a).

[165] *See* Exchange Act Release No. 48252 (Jul. 29, 2003); 68 FR 45875 (Aug. 4, 2003).

[166] 15 U.S.C. 78o–6(a)(1)(A) and proposed FINRA Rule 2241(b)(2)(A).

[167] 15 U.S.C. 78o–6(a)(1)(B) and proposed FINRA Rule 2241(b)(2)(C).

[168] 15 U.S.C. 78o–6(a)(1)(C) and proposed FINRA Rule 2241(b)(2)(H).

[169] 15 U.S.C. 78o–6(a)(2) and proposed FINRA Rule 2241(b)(2)(I).

[170] 15 U.S.C. 78o–6(a)(3) and proposed FINRA Rule 2241(b)(2)(G).

[171] 15 U.S.C. 78o–6(b)(1) and proposed FINRA Rule 2241(c)(4)(A).

disclosure by virtue of this paragraph of material non-public information regarding specific potential future investment banking transactions of such issuer, as is appropriate in the public interest and consistent with the protection of investors; [172] (3) whether an issuer, the securities of which are recommended in the appearance or research report, currently is, or during the 1-year period preceding the date of the appearance or date of distribution of the report has been, a client of the broker or dealer, and if so, stating the types of services provided to the issuer; [173] and (4) whether the securities analyst received compensation with respect to a research report, based upon (among any other factors) the investment banking revenues (either generally or specifically earned from the issuer being analyzed) of the broker or dealer.[174]

L. The Proposal Is Not Inconsistent With the JOBS Act

The JOBS Act prohibits certain rules by national securities associations with regards to research reports regarding EGCs. Specifically, section 105(b) of the JOBS Act amended section 15D of the Act to prohibit the Commission or a national securities association registered under section 15A of the Act from adopting or maintaining any rule or regulation in connection with an IPO of the common equity of an EGC that either (1) restricts, based on functional role, which associated persons of a broker, dealer, or member of a national securities association, may arrange for communications between an analyst and a potential investor; [175] or (2) restricts an analyst from participating in any communications with the management of an EGC that is also attended by any other associated person of a broker, dealer, or member of a national securities association whose functional role is other than as an analyst.[176] Section 105(d) further prohibits the Commission or any national securities association registered under section 15A of the Act from adopting or maintaining any rule or regulation that prohibits any broker, dealer, or member of a national securities association from publishing or distributing any research report or making a public appearance, with respect to the securities of an EGC, either within any prescribed period of time following the IPO date of the EGC, or within any prescribed period of time prior to the expiration date of any agreement between the broker, dealer, or member of a national securities association and the EGC or its shareholders that restricts or prohibits the sale of securities held by the EGC or its shareholders after the IPO date. The proposal is not inconsistent with these requirements.

One commenter noted that, because joint meetings are permitted by the JOBS Act, the provision in the proposal prohibiting joint due diligence conferences should be clarified.[177] As explained above in the description of the joint due diligence provision, FINRA clarified that it ''would interpret the provision to apply only to the extent it is not contrary to the JOBS Act'' and ''[t]hus, for example, would not interpret the joint due diligence prohibition to apply where the joint due diligence activities involve a communication with the management of an EGC that is attended by both the research analyst and an investment banker.'' [178] We believe that, as a result, the joint due diligence provision in the proposal cannot be seen as contrary to section 15D(c)(2) of the Act.[179]

J. Summary of Findings and Conclusion

The Commission has carefully considered the proposed rule change, all of the comments received, and FINRA's responses to the comments. Based on its review of the record, the Commission finds that the proposed rule change, as amended by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[180] In particular, the Commission finds that the proposed rule change, as amended by Amendment No. 1, is consistent with section 15A(b)(6) of the Act, which requires, among other things, that FINRA's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[181] Further, the Commission finds that the proposed rule change, as amended by Amendment No. 1, is consistent with Section 15D of the Act which requires, among other things, that the Commission, or upon the authorization and direction of the Commission, a registered securities association or national securities exchange, adopt rules reasonably designed to address conflicts of interest that can arise when securities analysts recommend equity securities in research reports and public appearances, in order to improve the objectivity of research and provide investors with more useful and reliable information.[182]

FINRA stated in their proposal that it ''believes the proposed rule change protects investors and the public interest by maintaining, and in some cases expanding, structural safeguards to insulate research analysts from influences and pressures that could compromise the objectivity of research reports and public appearances on which investors rely to make investment decisions'' and ''that the proposed rule change prevents fraudulent and manipulative acts and practices by requiring firms to identify and manage, often with extensive disclosure, conflicts of interest related to the preparation, content and distribution of research.'' [183] FINRA also noted that ''[a]t the same time, the proposal furthers the public interest by increasing information flow to investors in select circumstances—*e.g.,* before and after the expiration of lock up provisions—where FINRA believes the integrity of research will not be compromised.'' [184]

The Commission generally agrees with these assertions. The Commission

[172] 15 U.S.C. 78o–6(b)(2) and proposed FINRA Rule 2241(c)(4)(B)–(D), (H), and (c)(5).

[173] 15 U.S.C. 78o–6(b)(3) and proposed FINRA Rule 2241(c)(4)(E).

[174] 15 U.S.C. 78o–6(b)(4) and proposed FINRA Rule 2241(c)(4)(B).

[175] 15 U.S.C. 78o–6(c)(1).

[176] 15 U.S.C. 78o–6(c)(2).

[177] JMP.

[178] FINRA Response.

[179] The staff notes that the proposal is consistent with FAQs issued by the staff concerning the analyst conflicts of interest provisions of the JOBS Act. Specifically, in FAQ 4, the staff provided three examples of purely ministerial statements that an analyst might provide at a pitch meeting for an ECG before the firm is formally retained to underwrite an offering and three examples of purely ministerial statements that an analyst might provide after the firm is formally retained to underwrite an offering, provided such statements are also in compliance with FINRA rules prohibiting promises of favorable research and solicitation. Thus, for instance, the FAQs suggest that an analyst may ask follow up questions in order to understand factual matters being presented provided such questions do not imply that the analyst is soliciting investment banking business or otherwise promising favorable research. The FAQs also suggest that firms should institute and enforce appropriate controls with regards to such pitch meetings to prevent violations of FINRA rules prohibiting solicitations or promises of favorable research, including analysts that may try to imbed such solicitations or promises in follow-up questions, during their introductions, or in outlining their research program and factors the analyst would consider in analyzing the company. Therefore, when taken in context with the entirety of the FAQ, the staff notes that the examples provided in the FAQs did not and were not intended to permit otherwise impermissible activities solely because they are conducted via the ministerial examples given in the FAQ.

[180] 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).

[181] 15 U.S.C. 78o–3(b)(6).

[182] 15 U.S.C. 78o–6.

[183] Notice.

[184] *Id.*

found NASD Rule 2711 (and NYSE Rule 472) to meet the standards of sections 15A(b)(6) and 15D of the Act when adopted and as they have been amended since their original adoption.[185] While the proposed rule change, as amended, is not an exact copy of these earlier provisions, it retains the vast majority of these rules as minimum standards required of members. The Commission believes that the vital elements of NASD Rule 2711 designed to address research analyst conflicts of interest—prohibitions on pre-publication review,[186] institutional separations between investment banking and research,[187] prohibitions on research analyst compensation based on investment banking results,[188] prohibitions on research analysts participating in investment banking efforts,[189] prohibitions on promises of favorable research coverage,[190] and important disclosures,[191] to name a few examples—are carried over to new FINRA Rule 2241.

Further, the proposed rule change includes new provisions that help ensure investor protection. For example, the proposed rule would require research management make independent decisions regarding research coverage,[192] information barriers or other institutional safeguards between research and investment banking, sales and trading, and other persons who might be biased in their judgment or supervision including, for certain members, requiring physical separation,[193] and ensure that purported facts in research reports are based on reliable information.[194] Also, where provisions have been altered, FINRA has generally kept the important element of the provision but required members to establish reasonable policies and procedures tailored to a member's business. For example, NASD Rule 2711(g)(2) prohibits ''research analyst accounts'' from purchasing or selling securities issued by a company that the analyst covers for a period beginning thirty calendar days before and ending five calendar days after the publication of a research report, subject to certain exceptions. Under proposed FINRA Rule 2241(b)(2)(J), the same general principal applies (analysts and accounts they control should not trade in a security in such a way that the analyst benefits from knowledge of the content or timing of a research report ahead of its intended audience) without setting strict numerical timelines that may or may not be appropriate in every circumstance. Members may set periods that are longer or shorter than the current thirty/five day paradigm, but could be subject to liability if they are not reasonably designed to prevent the unwanted conduct.

Regarding concerns raised by commenters regarding the principles-based structure of the proposal, we note the proposed rule change retains the key provisions of NASD Rule 2711 and includes a number of new protections for investors including the requirement that research management make independent decisions regarding research coverage,[195] maintenance of information barriers or other institutional safeguards between research and investment banking, sales and trading, and other persons who might be biased in their judgment or supervision including, for certain members, requiring physical separation,[196] and ensure that purported facts in research reports are based on reliable information.[197] Further, FINRA's responses to interpretive questions posed by the commenters to the original proposal in the Amendment Notice seem to have helped reduce uncertainty or confusion regarding how the proposal will operate in light of the principles-based structure. For example, one commenter noted with approval the clarification regarding the ''at a minimum'' requirement, which seemed to be the source of the commenter's confusion.[198] FINRA also provided guidance in response to comments on other issues in the FINRA Response. For example, FINRA responded to an assertion by a commenter,[199] agreeing that, consistent with the current rule and subject to controls regarding evaluation based on improper or inappropriate reviews, sales and trading personnel can provide feedback for purposes of evaluating an analyst. With regards to the context provided by FINRA, we particularly support the clarification that physical separation is expected except in extraordinary situations where the costs are unreasonable due to a firm's size or resources and that, even then, that the firm must establish written policies and procedures, including information barriers, to effectively achieve and monitor separation between research and investment banking personnel.[200]

In approving this proposal, however, we expect that FINRA will continue to monitor the effectiveness of the rule proposal and modify the rule, or issue further guidance as promised, should it prove to be unworkable or fail to provide the same level of protection to investors as provided NASD Rule 2711.[201]

For the reasons stated above, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to section 19(b)(2) of the Act,[202] that the proposed rule change (SR–FINRA–2014–047), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

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[185] *See, e.g.,* Exchange Act Release No. 48252 (Jul. 29, 2003); 68 FR 45875 (Aug. 4, 2003).

[186] NASD Rule 2711(b)(2) and proposed FINRA Rule 2241(b)(2)(A).

[187] *E.g.,* NASD Rule 2711(b)(1) and proposed FINRA Rule 2241(b)(2)(C).

[188] NASD Rule 2711(d) and proposed FINRA Rule 2241(b)(2)(E)–(F).

[189] *E.g.,* NASD Rule 2711(c)(5)–(6) and proposed FINRA Rule 2241(b)(2)(L)–(M).

[190] NASD Rule 2711(e) and proposed FINRA Rule 2241(b)(2)(K).

[191] NASD Rule 2711(h) and proposed FINRA Rule 2241(c) and (d).

[192] Proposed FINRA Rule 2241(b)(2)(B).

[193] Proposed FINRA Rule 2241(b)(2)(G) and Notice (''Among the structural safeguards, FINRA believes separation between investment banking and research is of particular importance. As such, while the proposed rule change does not mandate physical separation between the research and investment banking departments (or other person who might seek to influence research analysts), FINRA would expect such physical separation except in extraordinary circumstances where the costs are unreasonable due to a firm's size and resource limitations. In those instances, a firm must implement written policies and procedures, including information barriers, to effectively achieve and monitor separation between research and investment banking personnel.'')

[194] Proposed FINRA Rule 2241(c)(1)(A).

[195] Proposed FINRA Rule 2241(b)(2)(B).

[196] Proposed FINRA Rule 2241(b)(2)(G) and Notice (''Among the structural safeguards, FINRA believes separation between investment banking and research is of particular importance. As such, while the proposed rule change does not mandate physical separation between the research and investment banking departments (or other person who might seek to influence research analysts), FINRA would expect such physical separation except in extraordinary circumstances where the costs are unreasonable due to a firm's size and resource limitations. In those instances, a firm must implement written policies and procedures, including information barriers, to effectively achieve and monitor separation between research and investment banking personnel.'')

[197] Proposed FINRA Rule 2241(c)(1)(A).

[198] WilmerHale Equity Two.

[199] *Id.*

[200] Notice.

[201] We note that, as one commenter suggested, the interpretation of what constitutes ''reasonableness'' may prove difficult for FINRA and member alike. *See* JMP.

[202] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[203]

Brent J. Fields,

Secretary.

[FR Doc. 2015–17971 Filed 7–21–15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75464; File No. SR–OC–2015–02]

Self-Regulatory Organizations; OneChicago, LLC; Notice of Filing of Proposed Rule Change Relating to Decimal Pricing for Spread Transactions

July 16, 2015.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (the ''Act''),[1] notice is hereby given that on July 1, 2015, OneChicago, LLC (''OneChicago,'' ''OCX,'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. OneChicago has also filed this rule change with the Commodity Futures Trading Commission (''CFTC''). OneChicago filed a written certification with the CFTC under Section 5c(c) of the Commodity Exchange Act (''CEA'') on July 1, 2015.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

OneChicago is proposing to amend OCX Rule 905 (Form of Specifications Supplement) to add spreads to the types of transactions to which four (4) decimal pricing applies.[2] This expansion will allow these trades to be more efficiently priced because the interest rate component of Single Stock Futures (''SSFs'') spreads can be more accurately expressed in sub-penny increments. Currently, the minimum price fluctuation is set at $0.01 for non-block and non-EFP trades, and $0.0001 for block and EFP trades. In other words, block and EFP trades are already traded in four decimals. Upon amending Rule 905, outright SSF trades (non-spread, non-block, and non-EFP trades) will continue to trade with minimum fluctuations of $0.01, while spread, block, and EFP transactions will trade in minimum fluctuations of $0.0001.

OneChicago is concurrently issuing NTM 2015–23. The NTM informs market participants that OneChicago is amending OCX Rule 905 and that the Exchange is reducing the minimum price fluctuation for spread transactions to $0.0001.

The text of the proposed rule change is attached as *Exhibit 4* to the filing submitted by the Exchange but is not attached to the published notice of the filing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OneChicago 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 self-regulatory organization has prepared a summary 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

OneChicago is proposing to amend OCX Rule 905 (Form of Specifications Supplement) to decrease the minimum fluctuation for spreads to $0.0001 from $0.01. In 2011, OneChicago similarly amended the pricing of block and EFP transactions to allow for four decimal point trade prices.[3] This expansion allowed these trades to be more efficiently priced because the interest rate component of these trades is more accurately expressed in sub-penny increments.[4]

OneChicago is now adding spreads to the types of trades to which four decimal pricing applies. OneChicago believes that this change will also allow spreads to be more efficiently priced, consistent with how blocks and EFPs are currently priced. The additional precision will aid in aligning these trades with the appropriate implied interest rate desired by market participants.

2. Statutory Basis

OneChicago believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5)[6] in particular. The proposed rule change furthers the objectives of Section 6(b)(5) because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons facilitating transactions, and will remove impediments to and help perfect the mechanism of a free and open market.

The proposed rule change will allow all market participants to price their spread trades more accurately. Since the price difference between the buy and the sell in a spread trade reflects the interest rate component of the trade, the pricing of this component in four decimal places allows market participants to tailor their trade prices to their desired interest rate levels.

The Exchange believes that the proposed rule change and associated NTM are equitable and not unfairly discriminatory because they would apply equally to all market participants. The ability to trade spreads in four decimal places will not be limited to any class of market participant.

B. Self-Regulatory Organization's Statement on Burden on Competition

OneChicago does not believe that the rule change and associated NTM will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, in that the rule change and associated NTM simply allow an additional type of transaction to be priced in four decimal places. This change will allow all market participants to more accurately price the interest rate component of their spread transactions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[203] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(7).

[2] A spread transaction involves buying (selling) a stated number of contracts of a particular expiry month and simultaneously selling (buying) the same number of those contracts of a different expiry month.

[3] *See* Securities Exchange Act Release No. 65053 (August 8, 2011) (SR–OC–2011–01). Block spreads, which are simply block-sized calendar spreads, have been trading in four decimal places since this rule change in 2011. OneChicago is now adding regular calendar spreads (of any size) to those transaction types that are traded in four decimal places. On July 20, 2015, block spreads will no longer be distinguished as a separate trade type on the Exchange.

[4] The difference in price between the front month and back month of a spread generally reflects the interest rate component of the trade.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The rule amendment and NTM will become operative on July 20, 2015.

At any time within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.[7]

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–OC–2015–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OC–2015–02. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OC–2015–02, and should be submitted on or before August 12, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–17896 Filed 7–21–15; 8:45 am]

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[7] 15 U.S.C. 78s(b)(1).

[8] 17 CFR 200.30–3(a)(73).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75463; File No. SR–DTC–2015–008]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the DTC Settlement Service Guide To Allow Participants To Elect To Receive Certain New Transactional and Settlement Balance Files and Effect a Related Amendment to the DTC Fee Schedule

July 16, 2015.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'') and Rule 19b–4[2] thereunder, notice is hereby given that on July 1, 2015, The Depository Trust Company (''DTC'') 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 primarily by DTC. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A)[3] of the Act, and Rule 19b–4(f)(2)[4] and (f)(4)(i)[5] thereunder. The proposed rule change was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change[6] would: (i) Amend the Guide so that each Participant would be able to elect to receive either one or both of two new files containing its: (A) transactional information (''Transactional Information'')[7] in one file (''Transactional Information File''), and (B) settlement balance information (''Settlement Balance Information'')[8] in the other file (''Settlement Balance Information File'') (each a ''File'', and collectively, ''Files''), and (ii) amend the DTC Fee Schedule (''Fee Schedule'') to add Participant fees relating to the Files, as more fully described below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule filing is to amend: (i) The Guide so that Participants would be able to elect to receive one or both of the Files and (ii) the Fee Schedule to add Participant fees relating to the Files, as set forth below.

Background

Transactional Information and Settlement Balance Information are available to Participants in real-time via DTC's Settlement User Interface (''Interface'').[9] Participants that wish to access Transactional Information and Settlement Balance Information outside of the Interface may incur expense in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] 17 CFR 240.19b–4(f)(4)(i).

[6] Each term not otherwise defined herein has its respective meaning as set forth in the DTC Rules (the ''Rules''), *available at http://www.dtcc.com/legal/rules-and-procedures.aspx,* and the DTC Settlement Service Guide (''Guide''), *available at http://www.dtcc.com/~/media/Files/Downloads/legal/service-guides/Settlement.pdf.*

[7] Transactional Information for this purpose is defined as information relating to the Participant's daily settlement transaction activity, as provided by DTC from time to time.

[8] Settlement Balance Information for this purpose is defined as the Participant's Net Debit Balance or Net Credit Balance, as applicable (''DTC Net Settlement Balance''). Where a Participant is a common member of DTC and National Securities Clearing Corporation (''NSCC''), Settlement Balance Information would include the net of the Participant's DTC Net Settlement Balance and its NSCC net settlement balance (*i.e.,* the net amount of its gross settlement debits and credits at NSCC).

[9] The Interface allows for Participant input and inquiry into the DTC Settlement System.

order to extract the information from the Interface and incorporate it into their own file formats.[10]

Proposal

In order to enhance the ability of Participants to efficiently access Transactional Information and Settlement Balance Information on a cost effective basis, the proposed rule change would revise the Guide to allow Participants to elect to receive one or both Files, for a monthly fee per File.[11] The Transactional Information File would be provided daily. The Settlement Balance Information File would be provided via a feed on an intraday basis, with final Settlement Balance Information provided at end-of-day.

The Fee Guide would be amended to add the following Participant fees for access to the Files:

TRANSACTIONAL INFORMATION AND SETTLEMENT BALANCE INFORMATION FILES

Description	Amount ($)	Conditions
Transactional Information File..	200.00	Per month.
Settlement Balance Information File..	400.00	Per month.

Implementation Date

The effective date of the proposed rule change would be July 1, 2015.

2. Statutory Basis

The proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions by enhancing access to information for Participants. The proposed fees as set forth above would apply equally for Participants that elect to receive Files. Therefore, DTC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC, in particular: (i) Section 17A(b)(3)(F)[12] of the Act, which requires that the rules of the clearing agency be designed, *inter alia,* to promote the prompt and accurate clearance and settlement of securities transactions, and (ii) Section 17A(b)(3)(D)[13] of the Act, which requires that the rules of the clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its Participants, respectively.

(B) Clearing Agency's Statement on Burden on Competition

DTC does not believe that the proposed rule change would have any impact, or impose any burden, on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. DTC will notify the Commission of any written comments received by DTC.

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)[14] of the Act and paragraph (f) of Rule 19b–4[15] 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.

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–DTC–2015–008 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–DTC–2015–008. 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 DTC and on DTCC's Web site (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–DTC–2015–008 and should be submitted on or before August 12, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–17897 Filed 7–21–15; 8:45 am]

BILLING CODE 8011–01–P

[10] Based on staff in the Division of Trading and Markets's conversation with DTC's counsel on July 15, 2015, DTC's counsel has confirmed that Participants do not currently have to pay any additional fees to DTC to manually extract the data from the Interface, but Participants may need to devote their own resources to manually extract the data from the Interface into a file format.

[11] Based on staff in the Division of Trading and Markets's conversation with DTC's counsel on July 15, 2015, DTC's counsel has confirmed that providing Transactional Information and Settlement Balance Information in a file format is a new service.

[12] 15 U.S.C. 78q–1(b)(3)(F).

[13] 15 U.S.C. 78q–1(b)(3)(D).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75468; File No. SR–NYSEArca–2015–25]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the iShares iBonds Dec 2021 AMT-Free Muni Bond ETF and iShares iBonds Dec 2022 AMT-Free Muni Bond ETF Under NYSE Arca Equities Rule 5.2(j)(3)

July 16, 2015.

I. Introduction

On March 31, 2015, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [2] and Rule 19b–4 thereunder,[3] a proposed rule change to list and trade shares (''Shares'') of the following series of the iShares Trust: iShares iBonds Dec 2021 AMT-Free Muni Bond ETF and iShares iBonds Dec 2022 AMT-Free Muni Bond ETF (each a ''Fund'' and, collectively, the ''Funds'') under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02. On April 14, 2015, the Exchange filed Amendment No. 1 to the proposed rule change, which superseded the original filing. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on April 21, 2015.[4] On June 2, 2015, the Commission designated a longer period to act upon the proposed rule change.[5] The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

II. The Exchange's Description of the Proposal [6]

NYSE Arca proposes to list and trade Shares of the Funds under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02, which governs the listing and trading of Investment Company Units (''Units'') based on fixed income securities indexes. The Funds are two series of the iShares Trust (''Trust'').[7] Blackrock Fund Advisors (''BFA'') will be the investment adviser for the Funds (''Adviser''). BlackRock Investments, LLC is the Funds' distributor.

A. iShares iBonds Dec 2021 AMT-Free Muni Bond ETF

The iShares iBonds Dec 2021 AMT-Free Muni Bond ETF will seek to track the investment results of the S&P AMT-Free Municipal Series December 2021 Index™ (''2021 Index''), which measures the performance of investment-grade, non-callable U.S. municipal bonds maturing after December 31, 2020 and before December 2, 2021.[8] As of February 10, 2015, there were 4,217 issues in the 2021 Index.

The 2021 Index includes municipal bonds primarily from issuers that are state or local governments or agencies such that the interest on the bonds is exempt from U.S. federal income taxes and the federal alternative minimum tax (''AMT''). Each bond must have a rating of at least BBB− by Standard & Poor's Ratings Services (''S&P''), Baa3 by Moody's Investors Service, Inc. (''Moody's''), or BBB− by Fitch Ratings, Inc. (''Fitch'') and must have a minimum maturity par amount of $2 million to be eligible for inclusion in the 2021 Index. To remain in the 2021 Index, bonds must maintain a minimum par amount greater than or equal to $2 million as of each rebalancing date. All bonds in the 2021 Index will mature after December 31, 2020 and before December 2, 2021. When a bond matures in the 2021 Index, an amount representing its value at maturity will be included in the 2021 Index throughout the remaining life of the 2021 Index, and any such amount will be assumed to earn a rate equal to the performance of the Standard & Poor's Financial Services LLC's Weekly High Grade Index, municipal tax-exempt notes that are not subject to federal AMT. The 2021 Index is a market value weighted index and is rebalanced after the market close on the last business day of each month.

The Exchange submitted this proposed rule change because the 2021 Index does not meet all of the generic listing requirements of Commentary .02(a) to NYSE Arca Equities Rule 5.2(j)(3) applicable to the listing of Units based on fixed income securities indexes. The Exchange represents that the 2021 Index meets all such requirements except for those set forth in Commentary .02(a)(2), which requires that components that in the aggregate account for at least 75% of the weight of the index each have a minimum original principal amount outstanding of $100 million or more. As of February 10, 2015, components of the 2021 Index that satisfied the $100 million or more minimum original principal amount outstanding requirement constituted only 6.8% of the weight of the index.

In general, the Fund will invest at least 80% of its assets in the securities of the 2021 Index, except during the last months of the Fund's operations, and may invest the remainder of its assets in cash, cash equivalents, and municipal bonds not included in the 2021 Index, but which BFA believes will help the Fund track the 2021 Index. In the last months of operation, as the bonds held by the Fund mature, the proceeds will not be reinvested in bonds but instead will be held in cash and cash equivalents. These cash equivalents may not be included in the 2021 Index. Around December 1, 2021, the Fund will wind up and terminate, and its net assets will be distributed to then-current shareholders.

B. iShares iBonds Dec 2022 AMT-Free Muni Bond ETF

The iShares iBonds Dec 2022 AMT-Free Muni Bond ETF will seek to track

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[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 74730 (April 15, 2015), 80 FR 22234 (''Notice'').

[5] *See* Securities Exchange Act Release No. 75093, 80 FR 32425 (June 8, 2015). Specifically, to allow sufficient time to consider the proposal, the Commission designated July 20, 2015 as the date by which to approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change.

[6] Additional information regarding, among other things, the Shares, the Funds, investment objectives, investments, investment strategies, investment methodology, a discussion of the correlation of municipal bond instruments with common characteristics and supporting data, creation and redemption procedures, availability of information, trading rules and halts, and surveillance procedures can be found in the Notice and in the Registration Statements. *See* Notice, *supra* note 4, and Registration Statements, *infra* note 7 (defining ''Registration Statements''), respectively. *See also* Exhibit 3 to the Notice.

[7] With respect to the iShares iBonds Dec 2021 AMT-Free Muni Bond ETF, *see* Post-Effective Amendment No. 1,380 to the Trust's registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (''1933 Act'') and the Investment Company Act of 1940 (''1940 Act'') (15 U.S.C. 80a–1), dated March 26, 2015 (File Nos. 333–92935 and 811–09729), and, with respect to the iShares iBonds Dec 2022 AMT-Free Muni Bond ETF, see Post-Effective Amendment No. 1,381 to the Trust's registration statement on Form N–1A under the 1933 Act and 1940 Act, dated March 26, 2015 (File Nos. 333–92935 and 811–09729) (each a ''Registration Statement'' and, collectively, the ''Registration Statements''). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 27608 (December 21, 2006) (File No. 812–13208).

[8] The 2021 Index and the S&P AMT-Free Municipal Series 2022 Index™ (''2022 Index'') are products of S&P Dow Jones Indices LLC, a subsidiary of McGraw Hill Financial, Inc. (''Index Provider''), which is independent of the Funds and BFA. The Index Provider determines the composition and relative weightings of the securities in the 2021 Index and 2022 Index and publishes information regarding the market value of the 2021 Index and 2022 Index. The Index Provider is not a broker-dealer or affiliated with a broker-dealer and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the 2021 Index and 2022 Index.

the investment results of the 2022 Index, which measures the performance of investment-grade, non-callable U.S. municipal bonds maturing after December 31, 2021 and before December 2, 2022. As of February 10, 2015, there were 3,473 issues in the 2022 Index.

The 2022 Index includes municipal bonds primarily from issuers that are state or local governments or agencies such that the interest on the bonds is exempt from U.S. federal income taxes and the federal AMT. Each bond must have a rating of at least BBB− by S&P, Baa3 by Moody's, or BBB− by Fitch Ratings, Inc. and must have a minimum maturity par amount of $2 million to be eligible for inclusion in the 2022 Index. To remain in the 2022 Index, bonds must maintain a minimum par amount greater than or equal to $2 million as of each rebalancing date. All bonds in the 2022 Index will mature in after December 31, 2021 and before December 2, 2022. When a bond matures in the 2022 Index, an amount representing its value at maturity will be included in the 2022 Index throughout the remaining life of the 2022 Index, and any such amount will be assumed to earn a rate equal to the performance of the Standard & Poor's Financial Services LLC's Weekly High Grade Index, which consists of Moody's Investment Grade-1 municipal tax-exempt notes that are not subject to federal AMT. The 2022 Index is a market value weighted index and is rebalanced after the market close on the last business day of each month.

The Exchange submitted this proposed rule change because the 2022 Index does not meet all of the generic listing requirements of Commentary .02(a) to NYSE Arca Equities Rule 5.2(j)(3) applicable to the listing of Units based on fixed income securities indexes. The Exchange represents that the 2022 Index meets all such requirements except for those set forth in Commentary .02(a)(2), which requires that components that in the aggregate account for at least 75% of the weight of the index each have a minimum original principal amount outstanding of $100 million or more. As of February 10, 2015, components of the 2022 Index that satisfied the $100 million or more minimum original principal amount outstanding requirement constituted only 5.8% of the weight of the index.

In general, the Fund will invest at least 80% of its assets in components of the 2022 Index, except during the last months of the Fund's operations, and may invest the remainder of its assets in cash, cash equivalents, and municipal bonds not included in the 2022 Index but which BFA believes will help the Fund track the 2022 Index. In the last months of operation, as the bonds held by the Fund mature, the proceeds will not be reinvested in bonds but instead will be held in cash and cash equivalents. These cash equivalents may not be included in the 2022 Index. Around December 1, 2022, the Fund will wind up and terminate, and its net assets will be distributed to then-current shareholders.

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[10] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,[11] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotation and last sale information for the Shares of each Fund will be available via the Consolidated Tape Association high speed line. The 2021 Index and 2022 Index values, calculated and widely disseminated at least once daily, as well as the components of the 2021 Index and 2022 Index and their percentage weighting, will be available from major market data vendors. The IIV for Shares of a Fund will be disseminated by one or more major market data vendors, updated at least every 15 seconds during the Exchange's Core Trading Session, which is between 9:30 a.m. to 4:00 p.m. Eastern time, as required by NYSE Arca Equities Rule 5.2(j)(3), Commentary .02(c). The NAV of a Fund normally will be determined once daily Monday through Friday, generally as of the regularly scheduled close of business of the New York Stock Exchange (''NYSE'') (normally 4:00 p.m., Eastern time) on each day that the NYSE is open for trading. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. The Funds' Web site, *www.ishares.com,* will also include the prospectus for the Funds and additional data relating to NAV and other applicable quantitative information. Additionally, the portfolio of securities held by the Funds will be disclosed on the Funds' Web site. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share of each Fund will be calculated daily and that the NAV per Share will be made available to all market participants at the same time. The Exchange further represents that quotation information for investment company securities (excluding ETFs) may be obtained through nationally recognized pricing services through subscription agreements or from brokers and dealers who make markets in such securities, and that price information regarding municipal bonds, AMT-free tax-exempt municipal notes, variable rate demand notes and obligations, tender option bonds and municipal commercial paper is available from third party pricing services and major market data vendors. The Commission also believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange states that the Index Provider is not a broker-dealer or affiliated with a broker-dealer and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the 2021 Index and 2022 Index. Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. With respect to trading halts, if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading in the Shares until such time as

[9] 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).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78k–1(a)(1)(C)(iii).

the NAV is available to all market participants. In addition, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Funds. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. The Exchange represents that if the IIV, the 2021 Index value or the 2022 Index value are not being disseminated as required, the Exchange may halt trading in the overlying shares during the day in which the interruption to the dissemination of the IIV, the 2021 Index value or the 2022 Index value occurs. If the interruption to the dissemination of the IIV, the 2021 Index value or the 2022 Index value persists past the trading day in which it occurred, the Exchange will halt trading. Moreover, trading in the Shares will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Equities Rule 7.34, which sets forth circumstances under which Shares may be halted. The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[12] FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares with other markets or other entities that are members of the Intermarket Surveillance Group (''ISG''), and FINRA may obtain trading information regarding trading in the Shares from such markets or entities. FINRA also can access data obtained from the Municipal Securities Rulemaking Board relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by a Fund reported to FINRA's Trade Reporting and Compliance Engine. In addition, the Exchange may obtain information regarding trading in the Shares from markets or other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

Based on the Exchange's representations, the Commission believes that both the 2021 Index and 2022 Index are sufficiently broad-based and liquid to deter potential manipulation. As of February 10, 2015, there were 4,217 issues in the 2021 Index and 3,473 issues in the 2022 Index. In addition, the total dollar amount outstanding of issues in the 2021 Index was approximately $38.9 billion and the average dollar amount outstanding of issues in the 2021 Index was approximately $9.2 million; and the total dollar amount outstanding of issues in the 2022 Index was approximately $30.5 billion, and the average dollar amount outstanding of issues in the 2022 Index was approximately $8.8 million. Further, the most heavily weighted component represents 0.57% of the weight of the 2021 Index, and the five most heavily weight components represent 2.51% of the 2021 Index; and the most heavily weighted component represents 0.55% of the weight of the 2022 Index, and the five most heavily weight components represent 2.67% of the 2022 Index.[13]

In support of this proposal, the Exchange has also made the following representations:

(1) The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

(2) Except for Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3), the 2021 Index and 2022 Index currently satisfy all of the generic listing standards under NYSE Arca Equities Rule 5.2(j)(3).

(3) The continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to Units shall apply to the Shares.

(4) The Shares will comply with all other requirements applicable to Units including, but not limited to, requirements relating to the dissemination of key information such as the value of the 2021 Index and 2022 Index, respectively, and the IIV, rules governing the trading of equity securities, trading hours, trading halts, surveillance, and the Information Bulletin to Equity Trading Permit Holders (each as described in more detail herein and in the Notice and Registration Statements, as applicable), as set forth in Exchange rules applicable to Units and prior Commission orders approving the generic listing rules applicable to the listing and trading of Units.

(5) Trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws, and these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

(6) For initial and/or continued listing, the Funds will be in compliance with Rule 10A–3 [14] under the Act, as provided by NYSE Arca Equities Rule 5.3.

(7) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(8) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in a Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated; (d) how information regarding the IIV is disseminated; (e) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(9) A minimum of 100,000 Shares for each Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment

[12] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[13] Commentary .02(a)(4) to NYSE Arca Equities Rule 5.2(j)(3) provides that no component fixed-income security (excluding Treasury Securities and GSE Securities, as defined therein) shall represent more than 30% of the weight of the index or portfolio, and the five most heavily weighted component fixed-income securities in the index or portfolio shall not in the aggregate account for more than 65% of the weight of the index or portfolio.

[14] 17 CFR 240 10A–3.

No. 1, is consistent with Section 6(b)(5) of the Act [15] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change (SR–NYSEArca–2015–25), as modified by Amendment No. 1, is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–17894 Filed 7–21–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75473; File No. SR–C2–2015–020]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to AIM

July 16, 2015.

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 July 14, 2015, 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 and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change proposes to amend the Exchange's rules related to its Automated Improvement Mechanism (''AIM''). The text of the proposed rule change is provided below.

(additions are *italicized;* deletions are [bracketed])

* * * * *

C2 Options Exchange, Incorporated

Rules

* * * * *

Rule 6.51. Automated Improvement Mechanism (''AIM'')

Notwithstanding the provisions of Rule 6.50, a Participant that represents agency orders may electronically execute an order it represents as agent (''Agency Order'') against principal interest or against a solicited order provided it submits the Agency Order for execution into the AIM auction (''Auction'') pursuant to this Rule.

(a)–(b) No change.

. . . Interpretations and Policies:

.01–.02 No change.

.03 Initially, and for at least a Pilot Period expiring on July 18, 201[5]*6,* there will be no minimum size requirement for orders to be eligible for the Auction. During this Pilot Period, the Exchange will submit certain data, periodically as required by the Commission, to provide supporting evidence that, among other things, there is meaningful competition for all size orders and that there is an active and liquid market functioning on the Exchange outside of the Auction mechanism. Any *raw* data which is submitted to the Commission will be provided on a confidential basis.

.04–.09 No change.

* * * * *

The text of the proposed rule change is also available on the Exchange's website (*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

In December 2009, the Securities and Exchange Commission (the ''Commission'') approved adoption of C2's rules, including the AIM auction process.[3] AIM exposes certain orders electronically to an auction process to provide these orders with the opportunity to receive an execution at an improved price. The AIM auction is available only for orders that a Trading Permit Holder represents as agent (''Agency Order'') and for which a second order of the same size as the Agency Order (and on the opposite side of the market) is also submitted (effectively stopping the Agency Order at a given price).[4]

The Commission approved on a pilot basis the component of AIM that there is no minimum size requirement for orders to be eligible for the auction. In connection with the pilot programs, the Exchange has submitted to the Commission reports providing detailed AIM auction and order execution data. The Exchange will provide the Commission six months of additional AIM auction and order execution data for the period of January 1, 2015 to June 30, 2015 no later than January 18, 2016. The raw data provided will be submitted on a confidential basis. In addition, the Exchange will submit tables summarizing AIM price improvement statistics for each month of the January 1, 2015 to June 30, 2015 period. The summary tables will be made available to the public. Five one-year extensions to the pilot program have previously become effective.[5] The proposed rule change merely extends the duration of the pilot program until July 18, 2016. Extending the pilot for an additional year will allow the Commission more time to consider the impact of the pilot program on AIM order executions.

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,

[15] 15 U.S.C. 78f(b)(5).

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61152 (December 10, 2009), 74 FR 66699 (December 16, 2009) (SR–C2–2011–015) [sic].

[4] The Exchange first activated AIM on October 17, 2011 for P.M.-settled options on the S&P 500 Index (SPXpm), which are no longer listed on the Exchange. Currently, AIM is not activated for any classes on C2.

[5] *See* Securities Exchange Act Release Nos. 63238 (November 3, 2010), 75 FR 68844 (November 9, 2010) (SR–C2–2010–008); 64929 (July 20, 2011), 76 FR 44635 (July 26, 2011) (SR–C2–2011–015); 67303 (June 28, 2012), 77 FR 39777 (July 5, 2012) (SR–C2–2012–021); 69868 (June 27, 2013), 78 FR 40235 (July 3, 2013) (SR–C2–2013–023); and 72569 (July 9, 2014), 79 FR 41337 [sic] (July 15, 2014) (SR–C2–2014–014).

[6] 15 U.S.C. 78f(b).

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 the Section 6(b)(5)[8] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change protects investors and the public interest by allowing for an extension of the AIM pilot program, and thus allowing additional time for the Commission to evaluate the AIM pilot program. The AIM pilot program will continue to allow smaller orders to receive the opportunity for price improvement pursuant to the AIM auction. The additional data provided will help the Commission determine if there is evidence of meaningful competition for all size orders, significant price improvement for orders going through the AIM and an active and liquid market functioning on the Exchange outside of the AIM Auction.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change imposes any burden on intramarket competition because it applies to all Trading Permit Holders. All Trading Permit Holders that submit orders into an AIM auction are still subject to the same requirements. In addition, the Exchange does not believe the proposed rule change will impose any burden on intermarket competition, as it merely extends the duration of an existing pilot program, which is available to all market participants through Trading Permit Holders. AIM will continue to function in the same manner as it currently functions for an extended period of time.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (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) of the Act[9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10]

A proposed rule change filed under Rule 19b-4(f)(6)[11] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),[12] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay. The Exchange noted that waiver of the 30-day operative delay will allow the Exchange to extend the pilot program prior to its expiration on July 18, 2015. In addition, the Exchange believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it will allow for the least amount of market disruption, as the pilot program will continue as it currently does maintaining the status quo.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding any potential investor confusion that could result from a temporary interruption in the pilot program. Therefore, the Commission designates the proposed rule change to be operative on July 18, 2015.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is 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–C2–2015–020 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–C2–2015–020. 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

[7] 15 U.S.C. 78f(b)(5).

[8] Id.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2015–020, and should be submitted on or before August 12, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–17891 Filed 7–21–15; 08:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75454; File No. SR–MSRB–2015–05]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Consisting of an Amendment to MSRB Rule G–45, on Reporting of Information on Municipal Fund Securities

July 15, 2015.

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 June 30, 2015, the Municipal Securities Rulemaking Board (the ''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the MSRB. 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 MSRB filed with the Commission a proposed rule change consisting of an amendment to MSRB Rule G–45, on reporting of information on municipal fund securities (''proposed rule change''). The proposed rule change would delay by 60 days, until October 28, 2015, the date on which the first submissions must be made pursuant to Rule G–45. The first submissions on Form G–45 currently are due August 29, 2015. The MSRB proposes an immediate effectiveness for the proposed rule change. The proposed rule change would extend by 60 days the due date under a previously approved rule for the first submissions on Form G–45.

The text of the proposed rule change is available on the MSRB's Web site at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2015-Filings.aspx,* at the MSRB's principal office, 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 MSRB 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 MSRB 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 MSRB proposes to extend by 60 days until October 28, 2015 the date the first submissions are due under Rule G–45 on Form G–45. On February 21, 2014, the Commission approved the adoption of Rule G–45, on reporting of municipal fund securities, and electronic Form G–45, as well as associated amendments to Rules G–8, on books and records, and G–9, on preservation of records.[3] The effective date for that rule change was February 24, 2015. The first submissions under Rule G–45 are due August 29, 2015, which is 60 days from the end of the first reporting period of January 1–June 30, 2015. The purpose of Rule G–45 is to enable the MSRB to collect reliable information about 529 college savings plans (''529 plans'') solely for regulatory purposes and to analyze that information to better understand the market and the manner in which assets are invested.

After the SEC's approval of Rule G–45 and Form G–45, MSRB staff formed an industry User Group to develop the Form G–45 User's Manual (the ''manual''), which the rule specifies would include technical specifications for the Form, such as data entry. User Group members include representatives from twelve different industry organizations ranging from organizations that are involved in the distribution of multiple 529 plans to those that participate in the distribution of interests in only one plan. The range of expertise of User Group members includes data services provision and program management.

The User Group recommended that underwriters be afforded two methods of submitting data to the MSRB on Form G–45—manual submissions through the MSRB's Electronic Municipal Market Access Web site (''EMMA®'')[4] dataport web user interface and automated submissions through a computer-to-computer (''B2B'') interface. MSRB staff was responsive to those recommendations, and developed the two interfaces.

In February 2015, the MSRB released the manual and opened a beta test environment to assist underwriters with their submissions. Since that time, underwriters and industry trade groups have discussed with MSRB staff the challenges that underwriters are facing with programming the data for submission to the Board on Form G–45. Their concerns center on the ability to program automated B2B submissions, particularly information about investment options in 529 plans.

529 plans typically offer numerous investment options with multiple underlying mutual funds. To gather adequate information about 529 plans, Form G–45 requires detailed data about the various investment options available in 529 plans. The MSRB understands that the programming of such information for a Form G–45 submission is particularly challenging for underwriters because the required data must be collected from multiple computer systems. While the programmers for underwriters may be challenged by meeting the unextended deadline for the first filings on Form G–45, after the first B2B filing, the process would be automated and is expected to become more routine.

To help ensure that the MSRB receives reliable, complete and accurate filings on Form G–45 and to mitigate the burdens imposed on underwriters that are making their first submission under Rule G–45, the MSRB submits this proposed rule change to extend the date that the first submissions on Form G–45 are due by 60 days, until October 28, 2015. The proposed rule change would double the time allowed for

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 71598 (Feb. 21, 2014), 79 FR 11161 (Feb. 27, 2014) (SR–MSRB–2013–04).

[4] EMMA is a registered trademark of the MSRB.

underwriters to make their first submissions. The MSRB believes that the extension will provide underwriters with sufficient time to submit complete and accurate filings.[5] Subsequent Form G–45 filings would remain due 60 days from the end of each semi-annual reporting period.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,[6] which provides that the MSRB's rules shall:

> 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 municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

In response to industry concerns about the ability to submit reliable, accurate and complete data on a timely basis, the proposed rule change would extend the date that the first submissions are due under a previously approved rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 15B(b)(2)(C) of the Act[7] requires that MSRB rules be designed not to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the Act. The proposed rule change would extend the date that the first submissions on Form G–45 are due by 60 days from August 29, 2015 until October 28, 2015.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)[8] of the Act and Rule 19b–4(f)(6)[9] thereunder, the MSRB has designated the proposed rule change as one that effects a change that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative until 30 days after the date of filing.[10] However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.[12] The MSRB has requested that the Commission designate the proposed rule change operative upon filing,[13] as specified in Rule 19b–4(f)(6)(iii),[14] which would make the proposed rule change operative on June 30, 2015. The MSRB has stated that an earlier operative date would provide underwriters with certainty regarding the due date of their first submission on Form G–45.[15]

The Commission hereby grants the MSRB's request and believes that designating the proposed rule change operative upon filing is consistent with the protection of investors and the public interest.[16] According to the MSRB, Rule G–45 is designed to enable the MSRB to collect reliable information about 529 plans solely for regulatory purposes and to analyze that information to better understand the market and the manner in which assets are invested.[17] The Commission believes that designating the proposed rule change operative upon filing is consistent with the protection of investors and the public interest because it will provide underwriters with certainty regarding the due date of their initial Form G–45 submission, as well as help ensure that the MSRB receives reliable, complete and accurate filings on Form G–45. In addition, the proposed rule change is not making any substantive changes to MSRB rules; it is only extending the deadline under Rule G–45 for initial submissions of Form G–45 by 60 days, until October 28, 2015. Therefore, the Commission hereby designates the proposed rule change operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–MSRB–2015–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–MSRB–2015–05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements

[5] Representatives of industry trade associations have suggested that the MSRB implement a one-year pilot period for submissions. According to those associations, this would allow underwriters sufficient time to work through any difficulties in the programming and data collection while not being subject to potential enforcement actions. The MSRB, however, believes that filings on Form G–45 must remain fully subject to MSRB rules and all other applicable federal securities laws, rules and regulations, and that a full year would be an excessive delay in the MSRB's gathering of reliable information about 529 plans.

[6] 15 U.S.C. 78*o*–4(b)(2)(C).

[7] *Id.*

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] *Id.*

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change, along with a brief description and text of such proposed rule change, at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The MSRB satisfied this requirement on June 23, 2015.

[13] *See* SR–MSRB–2015–05.

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] *See supra* note 13.

[16] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] *See supra* Section II.A.I.

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 MSRB. 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–MSRB–2015–05 and should be submitted on or before August 12, 2015.

For the Commission, pursuant to delegated authority.[18]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–17899 Filed 7–21–15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75475; File No. SR–NYSEArca–2015–63]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Change in the Size of a Creation Unit Applicable to Shares of the PIMCO Total Return Active Exchange-Traded Fund

July 16, 2015.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 10, 2015, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to reflect a change in the size of a Creation Unit applicable to shares of the PIMCO Total Return Active Exchange-Traded Fund from 100,000 Shares to at least 50,000 Shares. The Fund is currently listed and traded on the Exchange under NYSE Arca Equities Rule 8.600. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission has approved a proposed rule change relating to listing and trading on the Exchange of shares (''Shares'') of the PIMCO Total Return Active Exchange-Traded Fund (''Fund'') under NYSE Arca Equities Rule 8.600,[4] which governs the listing and trading of Managed Fund Shares.[5] The Shares are offered by PIMCO ETF Trust (the ''Trust''), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[6] The investment manager to the Fund is Pacific Investment Management Company LLC (''PIMCO'' or the ''Adviser''). The Fund's Shares are currently listed and traded on the Exchange under NYSE Arca Equities Rule 8.600.[7]

According to the Registration Statement and the Prior Release, Shares of the Fund that trade in the secondary market are created at net asset value (''NAV'') by Authorized Participants only in block-size Creation Units of 100,000 Shares or multiples thereof.

The Exchange proposes to reflect a change in the size of a Creation Unit from 100,000 Shares to at least 50,000 Shares.[8] The size of a Creation Unit will be subject to change. The Exchange believes that the change to the size of a Creation Unit will not adversely impact investors or Exchange trading. A reduction in the size of a Creation Unit may provide potential benefits to investors by facilitating additional creation and redemption activity in the Shares, thereby potentially resulting in increased secondary market trading activity, tighter bid/ask spreads and narrower premiums or discounts to NAV.[9]

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 65988 (December 16, 2011), 76 FR 79741 (December 22, 2011) (SR–NYSEArca-2011–95) (notice of filing of proposed rule change relating to listing and trading of Shares of the Fund on the Exchange) (''Prior Notice''); 66321 (February 3, 2012), 77 FR 6850 (February 9, 2012) (SR–NYSEArca-2011–95) (order approving listing and trading of Shares of the Fund on the Exchange) (''Prior Order'' and, together with the Prior Notice, the ''Prior Release''). *See also* Securities Exchange Act Release No. 72666 (July 24, 2014), 79 FR 44224 (July 30, 2014) (SR–NYSEArca-2013–122) (order approving proposed rule change relating to use of derivatives by the Fund).

[5] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[6] The Trust is registered under the Investment Company Act of 1940 (''1940 Act''). On October 27, 2014, the Trust filed with the Commission the most recent post-effective amendment to its registration statement under the Securities Act of 1933 (15 U.S.C. 77a) (''1933 Act'') and under the 1940 Act relating to the Fund (File Nos. 333–155395 and 811–22250) (the ''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. A change to the name of the Fund from PIMCO Total Return Exchange-Traded Fund to PIMCO Total Return Active Exchange-Traded Fund was reflected in such amendment to the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 28993 (November 10, 2009) (File No. 812–13571) (''Exemptive Order'').

[7] The Trust implemented a change in the name of the Fund from PIMCO Total Return Exchange-Traded Fund to PIMCO Total Return Active Exchange-Traded Fund on October 31, 2014.

[8] The change to size of a Creation Unit will be effective upon filing with the Commission of an amendment to the Trust's Registration Statement on Form N–1A, and shareholders will be notified of such change by means of such amendment.

[9] The Exchange notes that the Commission has approved the listing and trading of other issues of Managed Fund Shares that have applied a minimum Creation Unit size of 50,000 shares or

Continued

The Adviser represents that the proposed change to reduce the size of a Creation Unit, as described above, is consistent with the Fund's investment objective, and will further assist the Adviser to achieve such investment objective. Except for the change noted above, all other representations made in the Prior Release remain unchanged.[10] The Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600. The Adviser represents that the investment objective of the Fund is not changing.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[11] that an exchange have rules that are 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, in general, to protect investors and the public interest.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that the change to the size of a Creation Unit to at least 50,000 Shares will not adversely impact investors or Exchange trading. In addition, a reduction in the size of a Creation Unit may provide potential benefits to investors by facilitating additional creation and redemption activity in the Shares, thereby potentially resulting in increased secondary market trading activity, tighter bid/ask spreads and narrower premiums or discounts to NAV.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange believes the proposed rule change, because of the potential increase in secondary market trading activity that may result from a decrease in the Creation Unit size for Shares of the Fund, will enhance competition among issues of exchange-traded funds that invest in fixed income securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–Arca–2015–63 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2015–63. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca-2015–63, and should be submitted on or before August 12, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–17890 Filed 7–21–15; 8:45 am]

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greater. *See, e.g.,* Securities Exchange Act Release Nos. 65458 (September 30, 2011), 76 FR 62112 (October 6, 2011) (SR–NYSEArca–2011–54) (order approving listing and trading of WisdomTree Dreyfus Australia and New Zealand Debt Fund); 66112 (January 5, 2012), 77 FR 1761 (January 11, 2012) (SR–NYSEArca–2011–80) (order approving listing and trading of Rockledge SectorSAM ETF).

[10] *See* note 4, *supra.* All terms referenced but not defined herein are defined in the Prior Release.

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75470; File No. SR–Phlx–2015–63]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Exchange Rule 1080(n), Price Improvement XL (''PIXL℠'') to Extend, Until July 18, 2016, a Pilot Program

July 16, 2105.

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 July 14, 2015, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 1080(n), Price Improvement XL (''PIXL℠'') to extend, through July 18, 2016, a pilot program (the ''pilot'') concerning (i) the early conclusion of the PIXL Auction (as described below), and (ii) permitting orders of fewer than 50 contracts into the PIXL Auction. The current pilot is scheduled to expire July 18, 2015.[3]

Proposed new text is *italicized.* Deleted text is [bracketed].

* * * * *

NASDAQ OMX PHLX LLC Rules

Options Rules

Rule 1080. Phlx XL and Phlx XL II

(a)–(m) No change.

(n) Price Improvement XL (''PIXL'')

A member may electronically submit for execution an order it represents as agent on behalf of a public customer, broker-dealer, or any other entity (''PIXL Order'') against principal interest or against any other order (except as provided in sub-paragraph (n)(i)(F) below) it represents as agent (an ''Initiating Order'') provided it submits the PIXL Order for electronic execution into the PIXL Auction (''Auction'') pursuant to this Rule. The contract size specified in Rule 1080(n) as applicable to PIXL Orders shall apply to Mini Options.

(i) Auction Eligibility Requirements. All options traded on the Exchange are eligible for PIXL. A member (the ''Initiating Member'') may initiate an Auction provided all of the following are met:

(A) No change.

(B) No change.

(C) If the PIXL Order is a Complex Order and of a conforming ratio, as defined in Commentary.08(a)(i) and (a)(ix) to Rule 1080, the Initiating Member must stop the entire PIXL order at a price that is better than the best net price (debit or credit) (i) available on the Complex Order book regardless of the Complex Order book size; and (ii) achievable from the best Phlx bids and offers for the individual options (an ''improved net price''), provided in either case that such price is equal to or better than the PIXL Order's limit price. Complex Orders consisting of a ratio other than a conforming ratio will not be accepted. This sub-paragraph (C) shall apply to all Complex Orders submitted into PIXL. This sub-paragraph (C), where applied to Complex Orders where the smallest leg is less than 50 contracts in size, shall be effective for a pilot period scheduled to expire July 18, 201[5]*6.*

(D)–(G) No change.

(ii) Auction Process. Only one Auction may be conducted at a time in any given series or strategy. Once commenced, an Auction may not be cancelled and shall proceed as follows:

(A) No change.

(B) Conclusion of Auction. The PIXL Auction shall conclude at the earlier to occur of (1) through (4) below, with the PIXL Order executing pursuant to paragraph (C)(1) through (3) below.

(1)–(4) No change.

(5) Sub-paragraphs (B)(2), (B)(3) and (B)(4) above shall be effective for a pilot period scheduled to expire July 18, 201[5]*6.*

(C) No change.

(D) An unrelated market or marketable limit order (against the PBBO) on the opposite side of the market from the PIXL Order received during the Auction will not cause the Auction to end early and will execute against interest outside of the Auction. In the case of a Complex PIXL Auction, an unrelated market or marketable limit Complex Order on the opposite side of the market from the Complex PIXL Order as well as orders for the individual components of the Complex 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 in sub-paragraph (E) below. This sub-paragraph shall be effective for a pilot period scheduled to expire on July 18, 201[5]*6.*

(E)–(J) No change.

(iii)–(vi) No change.

(vii) Initially, and for at least a Pilot Period expiring on July 18, 201[5]*6,* there will be no minimum size requirement for orders to be eligible for the Auction. During this Pilot Period, the Exchange will submit certain data, periodically as required by the Commission, to provide supporting evidence that, among other things, there is meaningful competition for all size orders and that there is an active and liquid market functioning on the Exchange outside of the Auction mechanism. Any *raw* data which is submitted to the Commission will be provided on a confidential basis.

* * * * *

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 extend the pilot through July 18, 2016.

Background

The Exchange adopted PIXL in October 2010 as a price-improvement mechanism on the Exchange.[4] PIXL is a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The extension of the pilot relates to several subparagraphs of Rule 1080(n) in respect of PIXL and Complex Order PIXL, as discussed below.

[4] *See* Securities Exchange Act Release Nos. 63027 (October 1, 2010), 75 FR 62160 (October 7, 2010) (SR–Phlx–2010–108) (Order Granting Approval to a Proposed Rule Change Relating to a Proposed Price Improvement System, Price Improvement XL); 65043 (August 5, 2011), 76 FR 49824 (August 11, 2011) (SR–Phlx–2011–104) (Extending Pilot for Price Improvement System, Price Improvement XL); 67399 (July 11, 2012), 77 FR 42048 (July 17, 2012)

Continued

component of the Exchange's fully automated options trading system, PHLX XL® that allows an Exchange member (an ''Initiating Member'') to electronically submit for execution an order it represents as agent on behalf of a public customer, broker dealer, or any other entity (''PIXL Order'') against principal interest or against any other order it represents as agent (an ''Initiating Order'') provided it submits the PIXL Order for electronic execution into the PIXL Auction (''Auction'') pursuant to the Rule.

An Initiating Member may initiate a PIXL Auction by submitting a PIXL Order, which is not a Complex Order, in one of three ways:

- First, the Initiating Member could submit a PIXL Order specifying a single price at which it seeks to execute the PIXL Order (a ''stop price'').
- Second, an Initiating Member could submit a PIXL Order specifying that it is willing to automatically match as principal or as agent on behalf of an Initiating Order the price and size of all trading interest and responses to the PIXL Auction Notification (''PAN,'' as described below) (''auto-match''), in which case the PIXL Order will be stopped at the National Best Bid/Offer (''NBBO'') on the Initiating Order side.
- Third, an Initiating Member could submit a PIXL Order specifying that it is willing to either: (i) Stop the entire order at a single stop price and auto-match PAN responses, as described below, together with trading interest, at a price or prices that improve the stop price to a specified price above or below which the Initiating Member will not trade (a ''Not Worse Than'' or ''NWT'' price); (ii) stop the entire order at a single stop price and auto-match all PAN responses and trading interest at or better than the stop price; or (iii) stop the entire order at the NBBO on the Initiating Order side, and auto-match PAN responses and trading interest are at a price or prices that improve the stop price up to the NWT price. In all cases, if the PHLX Best Bid/Offer (''PBBO'') on the same side of the market as the PIXL Order represents a limit order on the book, the stop price must be at least one minimum price improvement increment better than the booked limit order's limit price.

In addition, an Initiating Member may initiate a PIXL Auction by submitting a Complex Order which is of a conforming ratio, as defined in Commentary .08(a)(i) and (a)(ix) to Rule 1080. When submitting a Complex Order, the Initiating Member must stop the PIXL order at a price that is better than the best net price (debit or credit) (i) available on the Complex Order book regardless of the Complex Order book size; and (ii) achievable from the best PHLX bids and offers for the individual options (an ''improved net price''), provided in either case that such price is equal to or better than the PIXL Order's limit price.

After the PIXL Order is entered, a PAN is broadcast and a one-second blind Auction ensues. Anyone may respond to the PAN by sending orders or quotes. At the conclusion of the Auction, the PIXL Order will be allocated at the best price(s).

Once the Initiating Member has submitted a PIXL Order for processing, such PIXL Order may not be modified or cancelled. Under any of the above circumstances, the Initiating Member's stop price or NWT price may be improved to the benefit of the PIXL Order during the Auction, but may not be cancelled.

After a PIXL Order has been submitted, a member organization submitting the order has no ability to control the timing of the execution. The execution is carried out by the Exchange's PHLX XL automated options trading system and pricing is determined solely by the other orders and quotes that are present in the Auction.

The Pilot

Three components of the PIXL system were approved by the Commission on a pilot basis: (1) Paragraphs (n)(i)(A)(2),[5] (n)(i)(B)(2), and (n)(i)(C) of Rule 1080, relating to auction eligibility requirements; (2) paragraphs (n)(ii)(B)(5) and (n)(ii)(D) of Rule 1080, relating to the early conclusion of the PIXL Auction; and (3) paragraph (n)(vii) of Rule 1080, stating that there shall be no minimum size requirement of orders entered into PIXL. The pilot was extended until July 18, 2015.[6] The Exchange notes that during the pilot period it has been required to submit, and has been submitting, certain data periodically as required by the Commission, to provide supporting evidence that, among other things, there is meaningful competition for all size orders and that there is an active and liquid market functioning on the Exchange outside of the Auction mechanism.[7]

In further support of this proposed rule change, the Exchange would continue to submit to the Commission detailed data from, and analysis of, the PIXL pilot. Further, the Exchange will provide certain additional data requested by the Commission regarding trading in the PIXL Auction for the six (6) month period from January 1, 2015 through June 30, 2015. The Exchange agrees to provide this data by January 18, 2016 and to make the summary of the data provided to the Commission publicly available. The Exchange continues to believe that there remains meaningful competition for all size orders and that there is an active and liquid market functioning on the Exchange outside of the PIXL Auction and that there is significant price improvement for orders entered into the PIXL Auction. The Exchange believes the additional data will substantiate the Exchange's belief and provide further evidence in support of permanent approval of the PIXL Pilot.

The Exchange proposes to extend the pilot through July 18, 2016. The Exchange believes that the proposed extension should afford the Commission additional time to evaluate the pilot.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general and with Section 6(b)(5) of the Act,[9] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers,

(SR–Phlx–2012–94) (Extending Pilot for Price Improvement System, Price Improvement XL); 69845 (June 25, 2013), 78 FR 39429 (July 1, 2013) (SR–Phlx–2013–46) (Order Granting Approval To Proposed Rule Change, as Modified by Amendment No. 1, Regarding Complex Order PIXL); 69989 (July 16, 2013), 78 FR 43950 (July 22, 2013) (SR–Phlx–2013–74) (Extending Pilot for Price Improvement System, Price Improvement XL); and 72619 (July 16, 2014), 79 FR 42613 (July 22, 2014) (Extending Pilot for Price Improvement System, Price Improvement XL).

[5] On March 9, 2012, the Exchange filed a proposed rule change to clarify Exchange Rule 1080(n)(i)(A)(2). *See* Securities Exchange Act Release No. 66583 (March 13, 2012), 77 FR 16108 (March 19, 2012) (SR–Phlx–2012–032) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Price Improvement System, Price Improvement XL). The amendment reflected the correct price—at or better than the NBBO—at which an Initiating Member must guarantee the execution of a PIXL Order that the Initiating Member submits into a PIXL Auction.

[6] *See supra* note 4.

[7] *See* Exchange Rule 1080(n)(vii).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

or to regulate by virtue of any authority conferred by the Act matters not related to the purposes of the Act or the administration of the Exchange.

The Exchange believes that the proposed rule change is also consistent with Section 6(b)(8) of the Act [10] in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Specifically, the Exchange believes that PIXL, including the rules to which the pilot applies, results in increased liquidity available at improved prices, with competitive final pricing out of the Initiating Member's complete control. The Exchange believes that PIXL promotes and fosters competition and affords the opportunity for price improvement to more options contracts. The extension proposal allows additional time for the Commission to evaluate the pilot.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposal extends existing pilots that apply to all Exchange members, and enables the Exchange to be competitive in respect of other option exchanges that have similar programs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) [13] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay. The Exchange noted that the pilot is scheduled to expire July 18, 2015. According to the Exchange, a waiver of the operative delay will allow uninterrupted application of the PIXL pilot and thereby ensure fair competition with other exchanges that have similar programs.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the PIXL pilot to continue uninterrupted, thereby avoiding any potential investor confusion that could result from a temporary interruption in the pilot. Therefore, the Commission designates the proposed rule change to be operative on July 18, 2015.[15]

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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2015–63 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number *SR–Phlx–2015–63.* This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number *SR–Phlx–2015–63* and should be submitted on or before August 12, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–17892 Filed 7–21–15; 8:45 am]

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[10] 15 U.S.C. 78f(b)(8).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75461; File No. SR–NYSEArca–2015–44]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment Nos. 1, 2, and 3 and Order Approving on an Accelerated Basis a Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3, To List and Trade Shares of the SPDR® SSgA Flexible Allocation ETF Under NYSE Arca Equities Rule 8.600

July 15, 2015.

I. Introduction

On May 15, 2015, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the SPDR® SSgA Flexible Allocation ETF (''Fund'') under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on June 4, 2015.[3] On June 30, 2015, the Exchange filed Amendment No. 1 to the proposal.[4] On July 10, 2015, the Exchange filed Amendment No. 2 to the proposal.[5] The Exchange also filed Amendment No. 3 to the proposal on July 13, 2015.[6] The Commission received no comments on the proposal. The Commission is publishing this notice to solicit comments on Amendment Nos. 1, 2, and 3 from interested persons, and is approving the proposed rule change, as modified by Amendment Nos. 1, 2, and 3, on an accelerated basis.

II. The Exchange's Description of the Proposal [7]

NYSE Arca proposes to list and trade shares of the Fund under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares.[8] The Shares will be offered by SSgA Active ETF Trust (''Trust''), which is organized as a Massachusetts business trust and is registered with the Commission as an open-end management investment company.[9] SSgA Funds Management, Inc. will serve as the investment adviser to the Fund (''Adviser'').[10] State Street Global Markets, LLC will be the principal underwriter and distributor of the Fund's Shares. State Street Bank and Trust Company will serve as administrator, custodian and transfer agent for the Fund (''Custodian'').

The Adviser is not a registered broker-dealer but is affiliated with a broker-dealer and has implemented a ''fire wall'' with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio.[11]

A. Principal Investments of the Fund

The Fund will seek to provide long-term total return. In seeking long-term total return, the Adviser will target a return that exceeds one-month London Interbank Offered Rate (''LIBOR'') by at least 4% every year over a five-year investment timeframe. According to the Exchange, the Fund will be actively managed and will not seek to replicate the performance of a specified index.

Under normal circumstances,[12] the Fund will invest substantially all of its

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 75071 (May 29, 2015), 80 FR 31934.

[4] Amendment No. 1 replaces SR–NYSEArca–2015–44 as originally filed and supersedes such filing in its entirety. In Amendment No. 1, the Exchange clarifies that: (1) Under normal circumstances, the SSgA Flexible Allocation Portfolio (''Portfolio'') will invest at least 80% of its net assets in exchange-traded products (''ETPs''), futures contracts based on the Chicago Board Options Exchange Volatility Index (''VIX Futures''), and equity options; (2) up to 20% of the Portfolio's net assets may be invested in the various investments described as ''Non-Principal Investments;'' (3) the Portfolio may invest in equities, including exchange-listed or over-the-counter common stock and preferred securities of domestic and foreign corporations, as Non-Principal Investments; (4) the restricted securities that may be held as Non-Principal Investments may be either fixed income or equity securities; (5) the derivatives that the Portfolio invests in may be based on equity or fixed income securities and/or equity or fixed income indices, currencies, and interest rates; (6) not more than 10% of the options that the Portfolio invests in will trade in markets that are not members of the Intermarket Surveillance Group (''ISG'') or are not parties to a comprehensive surveillance sharing agreement (''CSSA'') with the Exchange; and (7) to the extent the SSgA Active ETF Trust effects the creation or redemption of Shares in cash, such transactions will be effected in materially the same manner for all authorized participants. Amendment No. 1 also removes from the proposal a description of the circumstances in which the SSgA Active ETF Trust reserves the right to permit or require the substitution of the cash to replace any of the components of the portfolio of securities designated as consideration for the purchase of a ''Creation Unit.'' The Fund will offer and issue Shares only in ''Creation Units,'' aggregations of 50,000 Shares. *See* Amendment No. 1, at 17. All the amendments to the proposed rule change are available at: *http://www.sec.gov/comments/sr-nysearca-2015-44/nysearca201544.shtml.*

[5] In Amendment No. 2, the Exchange clarifies that: (1) Not more than 10% of the net assets of the Fund will consist of equity securities that trade in markets that are not members of the ISG or are not parties to a CSSA with the Exchange; (2) the Fund will not invest in leveraged or inverse leveraged exchange-traded funds (''ETFs'') or leveraged or inverse leveraged exchange-traded notes (''ETNs''); and (3) over-the-counter-traded derivative assets, excluding forward foreign currency contracts, normally will be valued on the basis of quotes obtained from a third-party broker-dealer who makes markets in such securities or on the basis of quotes obtained from a third-party pricing service.

[6] Amendment No. 3 clarifies that equity securities held as ''Non-Principal Investments'' are separate from the ETPs categorized as ''Principal Investments.''

[7] Additional information regarding, among other things, the Shares, the Fund, its investment objective, its investments, its investment strategies, its investment methodology, its investment restrictions, its fees, its creation and redemption procedures, availability of information, trading rules and halts, and surveillance procedures can be found in Amendment No. 1 and in the Registration Statement. *See* Amendment No. 1, *supra* note 4, and Registration Statement, *infra* note 9, respectively.

[8] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies.

[9] The Trust is registered under the 1940 Act. On December 18, 2013, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (''Securities Act''), and under the 1940 Act relating to the Fund (File Nos. 333–173276 and 811–22542) (''Registration Statement''). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 29524 (December 13, 2010) (File No. 812–13487).

[10] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[11] *See* Amendment No. 1, *supra* note 4, at 5. In the event (a) the Adviser or any sub-adviser becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. *See id.* at 5–6.

[12] The term ''under normal circumstances'' includes, but is not limited to, the absence of

assets in the Portfolio, a separate series of the SSgA Master Trust with an identical investment objective as the Fund. As a result, the Fund will invest indirectly in all of the securities and assets owned by the Portfolio.[13] The investment practices of the Portfolio are the same in all material respects to those of the Fund.

The Adviser will seek to gain exposure to a wide range of asset classes, including real estate; equity and fixed income securities, including high yield debt securities; commodities; instruments that seek to track movements in volatility indices; and cash and cash equivalents or money market instruments. Under normal circumstances, the Portfolio will invest at least 80% of its net assets in ETPs,[14] VIX Futures, and equity options (including options on ETPs).

B. Non-Principal Investments

While under normal circumstances, the Adviser will invest at least 80% of the Portfolio's net assets as described in the Principal Investments section, above, the Adviser may invest up to 20% of the Portfolio's net assets in other securities and financial instruments, as described below.

The Portfolio may hold in the following types of assets:

- Equities securities other than ETPs mentioned above,[15] including exchange-listed or over-the-counter (''OTC'') common stock and preferred securities of domestic and foreign corporations; real estate investment trusts; and the securities of other investment companies.
- Fixed income securities, including U.S. government and U.S. government agency securities; repurchase agreements and reverse repurchase agreements; bonds, including sovereign debt and U.S. registered, dollar-denominated bonds of foreign corporations, governments, agencies and supra-national entities; convertible securities; short term instruments, including money market instruments; inflation-protected public obligations, commonly known as ''TIPS,'' of the U.S. Treasury, as well as TIPS of major governments and emerging market countries; and variable and floating rate securities, including variable rate demand notes and variable rate demand obligations.
- Cash and cash equivalents.
- Restricted securities, including equity and fixed income restricted securities.
- The following types of derivatives: Exchange-listed and non-exchange listed options (other than the equity options mentioned above), swaps, forward contracts, and futures contracts (other than the VIX Futures mentioned above). The derivatives that the Portfolio invests in may be based on equity or fixed income securities and/or equity or fixed income indices, currencies, and interest rates.

The Portfolio also may conduct foreign currency transactions on a spot (*i.e.,* cash) basis and engage in short sales ''against the box.'' [16]

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[17] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[18] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,[19] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Shares and underlying equity securities traded on a national securities exchange will be available via the Consolidated Tape Association high speed line. The Exchange represents that the intra-day, closing and settlement prices of underlying equity securities traded on a national securities exchange, as well as exchange-traded futures and foreign exchange-traded common stocks and preferred securities, will be readily available from the exchanges trading such assets as well as automated quotation systems, published or other public sources, or on-line information services. Intra-day and closing price information for exchange-listed options and futures will be available from the applicable exchange and from major market data vendors. In addition, price information for U.S. exchange-listed options is available from the Options Price Reporting Authority. Quotation information from brokers and dealers or pricing services will be available for fixed income securities, spot, and forward currency transactions; and equity securities traded in the OTC market (*e.g.,* restricted securities and non-exchange listed securities of investment companies). Price information regarding OTC-traded derivative instruments, as well as equity securities traded in the OTC market, is available from major market data vendors. Pricing information regarding each asset class in which the Fund or Portfolio will invest will generally be available through nationally recognized data service providers through subscription arrangements.

The Commission also believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. On

extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance. *See id.* at 6, n.8.

[13] According to the Exchange, the Fund is intended to be managed in a ''master-feeder'' structure, under which the Fund will invest substantially all of its assets in a corresponding Portfolio (*i.e.* a ''master fund''), which is a separate 1940 Act-registered mutual fund that has an identical investment objective. As a result, the Fund (*i.e.,* the ''feeder fund'') will have an indirect interest in all of the securities and other assets owned by the Portfolio. Because of this indirect interest, the Fund's investment returns should be the same as those of the Portfolio, adjusted for the expenses of the Fund. In extraordinary instances, the Fund reserves the right to make direct investments in securities. The Adviser will manage the investments of the Portfolio. Under the master-feeder arrangement, and pursuant to the investment advisory agreement between the Adviser and the Trust, investment advisory fees charged at the Portfolio level will be deducted from the advisory fees charged at the Fund level. In extraordinary instances, the Fund reserves the right to make direct investments in securities to meet its investment objectives directly. *See id.* at 6, n.9.

[14] ETPs include ETFs registered under the 1940 Act, exchange-traded commodity trusts and exchange-traded notes. The Portfolio may also invest in ETPs that are qualified publicly traded partnerships (''QPTPs'').

[15] *See* Amendment No. 3, *supra* note 6.

[16] In a short sale against the box, the Fund agrees to sell at a future date a security that it either contemporaneously owns or has the right to acquire at no extra cost.

[17] 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).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78k–1(a)(1)(C)(iii).

each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for the Fund's calculation of NAV at the end of the business day.[20]

The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, the Indicative Optimized Portfolio Value (''IOPV'') of the Fund, which is the Portfolio Indicative Value as defined in NYSE Arca Equities Rule 8.600 (c)(3), will be widely disseminated at least every 15 seconds during the Exchange's Core Trading Session by one or more major market data vendors. The Custodian, through the National Securities Clearing Corporation, will make available on each Business Day, immediately prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern Time (''E.T.'')), the list of the names and the required number of shares of each Deposit Security or the required amount of Deposit Cash, as applicable, to be included in the current Fund Deposit (based on information at the end of the previous Business Day) for the Fund. The NAV of the Portfolio will be calculated by the Custodian and determined at the close of the regular trading session on the New York Stock Exchange (ordinarily 4:00 p.m. E.T.) on each day that such exchange is open. The Fund's Web site will include a form of the prospectus for the Fund that may be downloaded and additional information relating to NAV and other applicable information.

The Exchange represents that trading in the Shares will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.[21] Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares may be halted.

The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees.[22] The Exchange represents that the Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer and has implemented a ''fire wall'' with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio.[23]

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. The Exchange states that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[24] On behalf of the Exchange, FINRA will communicate as needed regarding trading in the Shares, underlying U.S. exchange-traded equity securities, exchange-traded options, futures, and foreign exchange-traded common stocks and preferred securities with other markets and other entities that are members of ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and underlying U.S. exchange-traded equity securities, exchange-traded options, futures, and common stocks and preferred securities of foreign corporations from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and U.S. exchange-traded equity securities, exchange-traded options, futures, and common stocks and preferred securities of foreign corporations from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA.[25] FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine.

The Exchange represents that it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.[26] In support of this proposal, the Exchange has also made the following representations:

(1) The Shares of the Fund will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) Trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws, and these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

(4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in a Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IOPV will not be calculated or publicly disseminated; (d) how information regarding the IOPV and the Disclosed Portfolio is disseminated; (e) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 [27] under the Act, as provided by NYSE Arca Equities Rule 5.3.

(6) While the Fund may invest in inverse ETFs, the Fund will not invest

[20] Under accounting procedures followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[21] These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. *See* Amendment No. 1, *supra* note 4, at 22.

[22] *See id.* at 24.

[23] *See* note 11, *supra,* and accompanying text.

[24] *See* Amendment No. 1, *supra* note 4, at 23. FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[25] For a list of the current members of ISG, *see www.isgportal.org.*

[26] *See* Amendment No. 1, *supra* note 4, at 22–23.

[27] 17 CFR 240 10A–3.

in leveraged or inverse leveraged ETFs or ETNs (*e.g.,* 2X or 3X).[28]

(7) The Portfolio may invest up to 20% of its assets in derivatives.[29]

(8) The Portfolio may invest up to 25% of its total assets in one or more ETPs that are QPTPs and whose principal activities are the buying and selling of commodities or options, futures, or forwards with respect to commodities.[30]

(9) The Portfolio may invest up to 10% of its net assets in high yield debt securities.[31]

(10) Not more than 10% of the net assets of the Fund will consist of equity securities that trade in markets that are not members of the ISG or are not parties to CSSA with the Exchange.[32]

(11) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser, consistent with Commission guidance. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets.[33]

(12) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.[34]

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1, 2, and 3, is consistent with Section 6(b)(5) of the Act [35] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Solicitation of Comments on Amendment Nos. 1, 2 and 3

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment Nos. 1, 2, and 3 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2015–44 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2015–44. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2015–44 and should be submitted on or before August 12, 2015.

V. Accelerated Approval of Proposed Rule Change as Modified by Amendment Nos. 1, 2, and 3

The Commission finds good cause to approve the proposed rule change, as modified by Amendment Nos. 1, 2, and 3, prior to the 30th day after the date of publication of notice of the amendment in the **Federal Register**. The Exchange submitted Amendment Nos. 1, 2, and 3 to, among other things, provide clarifying details about the investments the Portfolio would be permitted to hold and the valuation of OTC-traded derivative assets, and to limit the percentage of the Portfolio that may be comprised of options that are listed on markets that are not members of the ISG or with which the Exchange does not have a CSSA.[36]

This information is useful for evaluating the likelihood of market participants engaging in effective arbitrage and the Exchange's ability to detect improper trading activity that impacts the price of the Shares. Accordingly, the Commission believes that Amendment Nos. 1, 2, and 3 are consistent with the provisions of Section 6(b)(5) of the Act,[37] and therefore finds good cause, pursuant to Section 19(b)(2) of the Act,[38] for approving the proposed rule change, as modified by Amendment Nos. 1, 2, and 3, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change (SR–NYSEArca–2015–44), as modified by Amendment Nos. 1, 2, and 3, is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–17898 Filed 7–21–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75467; File No. SR–NYSEARCA–2015–58]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change for New Equity Trading Rules Relating to Trading Halts, Short Sales, Limit Up-Limit Down, and Odd Lots and Mixed Lots To Reflect the Implementation of Pillar, the Exchange's New Trading Technology Platform

July 16, 2015.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 1, 2015, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the

[28] *See* Amendment No. 2, *supra* note 5.

[29] *See* Amendment No. 1, *supra* note 4, at 12, n.24.

[30] *See id.* at 9.

[31] *See id.* at 11.

[32] *See id.* at 10.

[33] *See id.* at 14.

[34] *See id.* at 23.

[35] 15 U.S.C. 78f(b)(5).

[36] *See* Amendment No. 1, *supra* note 4.

[37] 15 U.S.C. 78f(b)(5).

[38] 15 U.S.C. 78s(b)(2).

[39] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes new equity trading rules relating to Trading Halts, Short Sales, Limit Up-Limit Down, and Odd Lots and Mixed Lots to reflect the implementation of Pillar, the Exchange's new trading technology platform. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On April 30, 2015, the Exchange filed its first rule filing relating to the implementation of Pillar, which is an integrated trading technology platform designed to use a single specification for connecting to the equities and options markets operated by NYSE Arca and its affiliates, New York Stock Exchange LLC (''NYSE'') and NYSE MKT LLC (''NYSE MKT'').[4] The Pillar I Filing proposed to adopt new rules relating to Trading Sessions, Order Ranking and Display, and Order Execution. On June 26, 2015, the Exchange filed the second rule filing relating to the implementation of Pillar to adopt new rules relating to Orders and Modifiers and the Retail Liquidity Program.[5]

This filing is the third set of proposed rule changes to support Pillar implementation and is intended to be read together with the Pillar I Filing and Pillar II Filing. As described in the Pillar I Filing, new rules to govern trading on Pillar would have the same numbering as current rules, but with the modifier ''P'' appended to the rule number. For example, Rule 7.18, governing UTP Regulatory Halts, would remain unchanged and continue to apply to any trading in symbols on the current trading platform. Proposed Rule 7.18P would govern Trading Halts for trading in symbols migrated to the Pillar platform. In addition, the proposed new rules to support Pillar in this filing would use the terms and definitions that were proposed in the Pillar I Filing and Pillar II Filing.[6]

In this filing, the Exchange proposes new Pillar rules relating to:

- Definition of ''Official Closing Price'' (NYSE Arca Equities Rule 1.1 (''Rule 1.1''));
- Clearly Erroneous Executions (NYSE Arca Equities Rule 7.10P (''Rule 7.10P''));
- Limit Up—Limit Down Plan and Trading Pauses in Individual Securities Due to Extraordinary Market Volatility (NYSE Arca Equities Rule 7.11P (''Rule 7.11P''));[7]
- Short Sales (NYSE Arca Equities Rule 7.16P (''Rule 7.16P''));
- Trading Halts (NYSE Arca Equities Rule 7.18P (''Rule 7.18P'')); and
- Odd and Mixed Lots (NYSE Arca Equities Rule 7.38P (''Rule 7.38P'')).

The Exchange also proposes to amend existing definitions in Rule 1.1.

Rule 1.1 Definitions

Rule 1.1 sets forth definitions, and in the Pillar I Filing, the Exchange proposes to amend existing definitions and to add new definitions that would be applicable in Pillar only.[8] The definitions intended for Pillar include the designation ''P.''[9] In this filing, the Exchange proposes to:

- Amend Rule 1.1 to delete the definitions for ''UTP Plan'' and ''OTC/UTC Participant,'' and amend definitions of ''UTP Listing Market'' and ''UTP Regulatory Halt,'' which would be applicable both for the current trading platform and for Pillar;
- Add a new definition for the term ''UTP Security,'' which would be applicable both for the current trading platform and for Pillar; and Add a new definition for the term ''Official Closing Price,'' which would be for Pillar only.

Current Rule 1.1(ii) defines the term ''UTP Plan'' to mean the Nasdaq Unlisted Trading Privileges Plan, as from time to time amended according to its provisions. Because the term ''UTP Plan'' is no longer used in Exchange rules, the Exchange proposes to delete this definition.[10] The Exchange further proposes adding a new definition, which would be set forth in Rule 1.1(ii), as amended, to define the term ''UTP Security.'' As proposed, the term UTP Security would mean a security that is listed on a national securities exchange other than the Exchange and that trades on the NYSE Arca Marketplace pursuant to unlisted trading privileges (''UTP'').

Current Rule 1.1(jj) defines the term ''UTP Listing Market'' for a Nasdaq Security as having the same meaning assigned to it in the Nasdaq Unlisted Trading Privileges Plan, as amended, or for any other security shall mean the primary listing market for the security other than the Exchange. The Exchange proposes to streamline this definition and make non-substantive amendments to eliminate the references to Nasdaq Securities, which is no longer a defined term on the Exchange,[11] and to the Nasdaq Unlisted Trading Privileges Plan, and instead refer more generally to securities that trade on a UTP basis by using the new defined term ''UTP Security.'' As proposed, the term ''UTP Listing Market'' would mean the primary listing market for a UTP Security.

Current Rule 1.1(kk) defines the term ''UTP Regulatory Halt'' to mean a trade suspension or halt called by the UTP Listing Market for the purpose of dissemination of material news. The Exchange proposes non-substantive amendments to this definition to refer to any circumstance when the Exchange would be required to halt trading in a UTP Security. As proposed, a ''UTP

[4] *See* Securities Exchange Act Release No. 74951 (May 13, 2015), 80 FR 28721 (May 19, 2015) (SR–NYSEArca–2015–38) (Notice) (''Pillar I Filing''). In the Pillar I Filing, the Exchange described its proposed implementation of Pillar, including that it would be submitting more than one rule filing to correspond to the anticipated phased migration to Pillar.

[5] *See* SR–NYSEArca–2015–56 (''Pillar II Filing'').

[6] Capitalized terms not proposed to be defined in this filing are the defined terms set forth in the Pillar I Filing, Pillar II Filing, or in Exchange rules.

[7] Rule 7.11 and proposed Rule 7.11P implement the Plan to Address Extraordinary Market Volatility pursuant to Rule 608 of Regulation NMS (''LULD Plan''). *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631) (Order approving the LULD Plan).

[8] *See* Pillar I Filing, *supra* note 4.

[9] As discussed in the Pillar I Filing, *supra* note 4, the Exchange proposes to append the letter ''P'' for definitions that would be applicable for symbols trading on the Pillar trading platform only.

[10] The Exchange proposes to make a conforming change to delete the definition of ''OTC/UTP Participant'' in Rule 1.1(hh) and replace it with ''Reserved.'' The term ''OTC/UTP Participant'' is not used in any current Exchange rules.

[11] *See* Securities Exchange Act Release No. 75289 (June 24, 2015) (SR–NYSE–2015–54) (Notice of filing to amend Rule 1.1).

Regulatory Halt'' would mean a trade suspension, halt, or pause called by the UTP Listing Market in a UTP Security that requires all market centers to halt trading in that security. The Exchange believes the proposed definition would better define circumstances when the Exchange would be required to halt trading in a UTP Security and would remove the limitation that a UTP Regulatory Halt only refer to halts for the purposes of dissemination of material news.

The Exchange proposes to adopt a new definition in Pillar to define the term ''Official Closing Price,'' which would be set forth in proposed Rule 1.1(ggP). As proposed, the term ''Official Closing Price'' would mean the reference price to determine the closing price in a security for purposes of Rule 7 Equities Trading. In Pillar rules, the term ''Official Closing Price'' would be used in proposed Rule 7.16P (for Exchange-listed securities only) and for Market Order Trading Collars pursuant to proposed Rule 7.31P(a)(1)(B) (for both Exchange-listed and UTP Securities).[12]

Proposed Rule 1.1(ggP)(1) would describe how the Official Closing Price would be determined for securities listed on the Exchange. As proposed, the Official Closing Price would be the price established in a Closing Auction of one round lot or more on a trading day. Because there may be circumstances when there is insufficient trading interest to have a closing auction trade of one round lot or more, the Exchange proposes to specify what price the Exchange would use as its Official Closing Price when there is no auction or a closing trade of less than a round lot. As proposed, if there is no Closing Auction or if a Closing Auction trade is less than a round lot on a trading day, the Official Closing Price would be the most recent consolidated last sale eligible trade during Core Trading Hours on that trading day. The rule would further provide that if there were no consolidated last sale eligible trades during Core Trading Hours on that trading day, the Official Price would be the prior trading day's Official Closing Price.

The Exchange believes that in the absence of a Closing Auction of a round lot or more, the last consolidated last sale eligible trade during Core Trading Hours best approximates the market's determination of the price of such securities. The Exchange proposes to use only those trades that occur during Core Trading Hours because the lower liquidity during the Early and Late Trading Sessions may mean that trades occurring during those sessions may not be as representative of the price of the security. The Exchange also proposes to use only last sale eligible trades to ensure that the referenced trade is a round lot or more, and therefore indicative of the security's price and not an anomalous trade.

For example, assume on Monday, there is no closing auction in symbol ABC, an Exchange-listed security and the most recent consolidated last sale eligible trade was at 3:00 p.m. Eastern Time that day for $10.00. Because there was no Closing Auction, the Official Closing Price on Monday would be $10.00. Assume on Tuesday, there is no Closing Auction or consolidated last sale eligible trades in ABC during Core Trading Hours. Accordingly, the Exchange would use the prior day's Official Closing Price, which was $10.00, so Tuesday's Official Closing Price would also be $10.00. Assume on Wednesday there is again no Closing Auction or consolidated last sale eligible trades during Core Trading Hours. The Wednesday Official Closing Price would be based on Tuesday's Official Closing Price, which was $10.00. This evaluation would continue on each trading day.

Proposed Rule 1.1(ggP)(2) would describe how the Exchange would determine the Official Closing Price for securities listed on an exchange other than the Exchange. The Official Closing Price would be relevant for purposes of the value that the Exchange would use to begin calculating Market Order Trading Collars pursuant to proposed Rule 7.31P(a)(1)(B). As proposed, the Official Closing Price would be the official closing price disseminated by the primary listing market for that security via a public data feed on a trading day.[13] If the primary listing market does not disseminate an official closing price on a trading day, the Official Closing Price would be the most recent consolidated last sale eligible trade during Core Trading Hours on that trading day. If there were no consolidated last sale eligible trades during Core Trading Hours on that trading day, the Official Closing Price would be the prior day's Official Closing Price.

The Exchange also proposes that an Official Closing Price may be adjusted to reflect corporate actions or a correction to a closing price, as disseminated by the primary listing market for the security. The proposed rule would provide specificity in Pillar rules regarding what the Exchange would consider an Official Closing Price for securities that do not have a Closing Auction or for which the primary listing market does not disseminate an official closing price.

Proposed New Rule 7.18P—Halts

The Exchange proposes new Rule 7.18P to describe halts on the Pillar trading platform, and more specifically, how orders would be processed during halts, suspensions, or pauses in any security as well as halts related to Derivative Securities Products.[14] The proposed rule would consolidate into a single rule text from current Rules 7.18, 7.11(b)(6), and 7.34(a)(4) and (5).[15]

Current Rule 7.18 sets forth requirements relating to UTP Regulatory Halts. Current Rule 7.11(b)(6) sets forth how the Exchange processes new and existing orders during a trading pause issued by another primary listing market. Current Rule 7.34(a)(4) sets forth requirements for trading halts in Derivative Securities Products traded pursuant to UTP on the NYSE Arca Marketplace and current Rule 7.34(a)(5) sets forth requirements for trading halts in Derivative Securities Products listed on the Exchange.

• Current Rule 7.34(a)(4)(A) provides that if a security described in NYSE Arca Equities Rules 5.1(b)(13), 5.1(b)(18), 5.2(j)(3), 8.100, 8.200, 8.201, 8.202, 8.203, 8.204, 8.300, 8.400, 8.500, 8.600 and 8.700 (for purposes of this Rule 7.34, a ''Derivative Securities Product'') begins trading on the NYSE Arca Marketplace in the Opening Session and subsequently a temporary interruption occurs in the calculation or wide dissemination of the Intraday Indicative Value (''IIV'') or the value of the underlying index, as applicable, to such Derivative Securities Product, by a major market data vendor, NYSE Arca

[12] *See* Pillar II Filing, *supra* note 5.

[13] Both the Consolidated Tape System and the UTP Plan Trade Data Feed provide for sale conditions that are input by the primary listing market to indicate whether a trade is a Market Center Official Close (''M''), a Market Center Closing Trade (''6''), or a Corrected Closing Price (''9''). *See* Consolidated Tape System CTS Participant Communications Interface Specifications, Version 2.7a, at 88, available at: *https://www.ctaplan.com/* and The UTP Plan Trade Data Feed Direct Subscriber Interface Specification, Version 14.2, at 6–16, available at *http://www.nasdaqtrader.com/content/technicalsupport/specifications/utp/utdfspecification.pdf.*

[14] In the Pillar I Filing, the Exchange proposes to define the term ''Derivative Securities Product'' in Rule 1.1(bbb) as a security that meets the definition of ''derivative securities product'' in Rule 19b–4(e) under the Securities Exchange Act of 1934 and a ''UTP Derivative Securities Product'' as a Derivative Securities Product that trades on the Exchange pursuant to unlisted trading privileges. *See* Pillar I Filing, *supra* note 4.

[15] As noted in the Pillar I Filing, *id.,* the Exchange has not proposed to include the text set forth in current Rule 7.34(a)(4) and (5) in proposed Rule 7.34P.

may continue to trade the Derivative Securities Product for the remainder of the Opening Session.

• Current Rule 7.34(a)(4)(B) provides that during the Core Trading Session, if a temporary interruption occurs in the calculation or wide dissemination of the applicable IIV or value of the underlying index by a major market data vendor and the listing market halts trading in the Derivative Securities Product, NYSE Arca, upon notification by the listing market of such halt due to such temporary interruption, also shall immediately halt trading in the Derivative Securities Product on the NYSE Arca Marketplace.

• Current Rule 7.34(a)(4)(C) relates to the Late Trading Session and the next business day's Opening Session, and provides that if the IIV or the value of the underlying index continues not to be calculated or widely available after the close of the Core Trading Session, NYSE Arca may trade the Derivative Securities Product in the Late Trading Session only if the listing market traded such securities until the close of its regular trading session without a halt. The rule further provides that if the IIV or the value of the underlying index continues not to be calculated or widely available as of the commencement of the Opening Session on the next business day, NYSE Arca shall not commence trading of the Derivative Securities Product in the Opening Session that day. If an interruption in the calculation or wide dissemination of the IIV or the value of the underlying index continues, NYSE Arca may resume trading in the Derivative Securities Product only if calculation and wide dissemination of the IIV or the value of the underlying index resumes or trading in the Derivative Securities Product resumes in the listing market.

• Current Rule 7.34(a)(5) sets forth that with respect to Derivative Securities Products listed on the NYSE Arca Marketplace for which a Net Asset Value (''NAV'') (and in the case of Managed Fund Shares under NYSE Arca Equities Rule 8.600 and Managed Trust Securities under NYSE Arca Equities Rule 8.700, a Disclosed Portfolio) is disseminated, if the Exchange becomes aware that the NAV (or in the case of Managed Fund Shares, the Disclosed Portfolio) is not being disseminated to all market participants at the same time, it will halt trading in the affected Derivative Securities Product on the NYSE Arca Marketplace until such time as the NAV (or in the case of Managed Fund Shares, the Disclosed Portfolio, as applicable) is available to all market participants.

Rule 7.18P(a): Proposed Rule 7.18P(a) would be based on current Rule 7.18, but with non-substantive differences to streamline the rule to reflect the proposed definition of a UTP Regulatory Halt, described above, and to address when the Exchange may reopen a security that is subject to a trading pause under the LULD Plan or a halt pursuant to Rule 7.12 (Trading Halts Due to Extraordinary Market Volatility).[16]

As proposed, the first sentence of new Rule 7.18P(a) would provide that if the UTP Listing Market declares a UTP Regulatory Halt, the Corporation [17] would halt or suspend trading in that security until it receives notification from the UTP Listing Market that the halt or suspension is no longer in effect or as provided for in Rules 7.11P and 7.12. This proposed text is based on the first sentence of Rule 7.18 with non-substantive differences to refer to when a UTP Listing Market ''declares'' a UTP Regulatory Halt, rather than ''determines that an UTP Regulatory Halt is appropriate,'' and consistent with the proposed new definition of UTP Regulatory Halt, to add references to Rules 7.11P and 7.12.

The Exchange proposes a substantive difference in Pillar to add in Rule 7.18P(a) that, during Core Trading Hours, the Exchange would halt trading during a UTP Regulatory Halt until it receives the first Price Band in a UTP Security. As proposed, notwithstanding that the Exchange may have received notification from the primary listing market to reopen a security or have authority under the LULD Plan or Rule 7.12 to reopen trading in a UTP Security, the Exchange proposes that, during Core Trading Hours, the Exchange would wait until after it receives the first Price Band in that security before it begins trading. By waiting until it receives the first Price Band, the Exchange would not begin trading in a UTP Security before the protections of the LULD Plan are available.

The second sentence of proposed Rule 7.18P(a) would be based on the second sentence of current Rule 7.18, without any substantive differences. Because proposed Rule 7.18P would cover halts other than regulatory halts for the purpose of dissemination of material news, the Exchange proposes a non-substantive difference to specify that the second sentence of proposed Rule 7.18P would be applicable only for halts based on dissemination of material news. Accordingly, the second sentence of proposed Rule 7.18P(a) would provide that if a UTP Regulatory Halt were issued for the purpose of dissemination of material news, the Corporation would assume that adequate publication or dissemination has occurred upon the expiration of one hour after initial publication in a national news dissemination service of the information that gave rise to an UTP Regulatory Halt and may, at its discretion, reopen trading at that time, notwithstanding notification from the UTP Listing Market that the halt or suspension is no longer in effect.

Rule 7.18P(b): Proposed Rule 7.18P(b) would describe order processing during a UTP Regulatory Halt. The Exchange proposes a substantive difference in Pillar that the Exchange would not conduct any Trading Halt Auctions in UTP Securities. Accordingly, Rule 7.18P(b) would provide that the NYSE Arca Marketplace would not conduct a Trading Halt Auction in a UTP Security.

Proposed Rule 7.18P(b) would further provide how the Exchange would process new and existing orders in a UTP Security during a UTP Regulatory Halt, and is based on rule text from current Rule 7.11(b)(6) regarding how the Exchange processes new and existing orders in UTP Securities during a trading pause triggered under the LULD Plan:

• Proposed Rule 7.18P(b)(1) would provide that the Exchange would cancel any unexecuted portion of Market Orders, which is based on rule text in current Rule 7.11(b)(6)(ii). The Exchange proposes a substantive difference in Pillar from current Rule 7.11(b)(6)(ii) because Pegged Orders would not be cancelled during a UTP Regulatory Halt. Rather, such orders would remain on the NYSE Arca Book and once the Exchange resumes trading the UTP Security, Pegged Orders would be assigned working prices based on the new PBBO and be eligible to trade.

• Proposed Rule 7.18P(b)(2) would provide that the Exchange would maintain all other resting orders in the NYSE Arca Book, which other than Pegged Orders, is how the Exchange currently functions and is based on rule text in current Rule 7.11(b)(6)(i).

• Proposed Rule 7.18P(b)(3) would provide that the Exchange would accept and process all cancellations, which is based on current Rule 7.11(b)(6)(iii).

[16] *See* proposed Rule 7.11P(a)(2) (providing that the Exchange would be subject to the applicable requirements of the LULD Plan, including section (VII)(B) of the LULD Plan relating to the reopening of trading following a trading pause) and Rule 7.12(c)(ii).

[17] The term ''Corporation'' is defined in Rule 1.1(k) as NYSE Arca Equities, Inc., as described in the NYSE Arca Equities, Inc.'s Certificate of Incorporation and Bylaws.

• Proposed Rule 7.18P(b)(4) would be new functionality for Pillar, and would provide that the Exchange would process a request to cancel and replace as a cancellation without replacing the order. Accordingly, if a User seeks to replace an order, the Exchange would reject that request because it would be a new order, consistent with proposed Rule 7.18P(6), described below, but the Exchange would also cancel the resting order because that would meet the intent of the User to replace an order by cancelling the resting order.

• Proposed Rule Rule 7.18P(b)(5) would provide that the Exchange would accept and route new Market Orders, Auction-Only Orders, Primary MOO/LOO Orders, Primary Only Day Orders, and Primary Only MOC/LOC Order to the primary listing market.

The proposed handling of Market Orders and Primary Only Orders in Pillar is based on current Rule 7.11(b)(6)(iv) and (v), which provides that the Exchange accepts and routes new Market Orders, PO Orders, and PO+ Orders to the primary market. The Exchange proposes non-substantive differences to use the term ''primary listing market'' instead of ''primary market'' and to refer to the specific Primary Only Orders, as defined in the Pillar II Filing, that would be eligible to be routed.[18] Because the Exchange does not process IOC orders in auctions, the Exchange would not route Primary Only IOC Orders.

The proposed treatment of Auction-Only Orders during a UTP Regulatory Halt in new Rule 7.18P(b)(5) would be new in Pillar. The proposed processing of Auction-Only Orders during a UTP Regulatory Halt would be consistent with the proposed treatment of such orders in Pillar. As set forth in the Pillar I Filing, the Exchange proposes that before the Core Trading Session begins (and for Market Orders, until the first primary listing market print of any size or 10 a.m. Eastern Time, whichever is earlier), it would route Market Orders and Auction-Only Orders for securities that are not eligible for an auction on the Exchange to the primary listing market, even if such orders do not include a Primary Only designation.[19] In addition, in the Pillar II Filing, the Exchange proposes to accept Auction-Only Orders in non-auction eligible securities.[20]

• Proposed Rule 7.18P(b)(6) would provide that the Exchange would reject all other incoming orders until the security begins trading on the NYSE Arca Marketplace pursuant to proposed Rule 7.18P(a). This proposed rule text is based on current Rule 7.11(b)(6)(vi), which provides that the Exchange rejects all other orders until the stock has reopened, with a proposed substantive difference to reflect that the time when a stock would be reopened would be based on proposed Rule 7.18P(a), described above.

Rule 7.18P(c): Proposed Rule 7.18P(c) would set forth how the Exchange would process new and existing orders for securities listed on the Exchange during a halt, suspension or pause. In Pillar, because Exchange-listed securities would be eligible to participate in a Trading Halt Auction, the Exchange proposes to process orders in Exchange-listed securities differently than how it would process orders in UTP Securities.[21]

• Proposed Rule 7.18P(c)(1) would provide that the Exchange would cancel any unexecuted portion of Market Orders, which is how the Exchange currently functions. The Exchange proposes a substantive difference in Pillar from current functionality because Pegged Orders would not be cancelled.

• Proposed Rule 7.18P(c)(2) would provide that the Exchange would maintain all other resting orders in the NYSE Arca Book, which other than Pegged Orders, is how the Exchange currently functions. The Exchange proposes to further provide in Pillar that, during a halt, suspension, or pause in Exchange-listed securities, the Exchange would assign Limit Orders on the NYSE Arca Book a working price and display price that is equal to the limit price of the such orders. For example, if an Arca Only Order or ALO Order in an Exchange-listed security has a working price different from its limit price, during a trading halt, suspension, or pause, such order would be re-priced to its limit price. The Exchange proposes to re-price such orders to their limit price so that they may participate in the Trading Halt Auction at their limit price.

Consistent with the proposed processing of Pegged Orders, in Pillar, Primary Pegged Orders would remain on the NYSE Arca Book and be eligible to participate in the Trading Halt Auction at their limit price. Market Pegged Orders would remain undisplayed on the NYSE Arca Book, would not be eligible to participate in the Trading Halt Auction, but would be available to be assigned a new working price and be eligible to trade once there is a PBBO against which to peg following the Trading Halt Auction.

• Proposed Rule 7.18P(c)(3) would provide that the Exchange would accept and process all cancellations, which is based on current functionality.

• Proposed Rule 7.18P(c)(4) would provide that the Exchange would reject incoming Limit Orders designated IOC, Cross Orders, Tracking Orders, Market Pegged Orders, and Retail Orders. In addition, because the Exchange would not accept new Tracking Orders, Market Pegged Orders, or Retail Orders in Exchange-listed securities during a halt, suspension, or pause, the Exchange would process a request to cancel and replace a Tracking Order, Market Pegged Order, or Retail Order as a cancellation without replacing the order.[22]

• Proposed Rule 7.18P(c)(5) would provide that the Exchange would accept all other incoming orders until the security has reopened, which represents current functionality.

Rule 7.18P(d): Proposed Rule 7.18P(d) would set forth halts in Derivative Securities Products and is based on current Rule 7.34(a)(4) and (5) without any substantive differences. Proposed Rule 7.18P(d)(1) would be based on current Rule 7.34(a)(4) and would set forth requirements for trading halts in UTP Derivative Securities Products and proposed Rule 7.18P(d)(2) would be based on current Rule 7.34(a)(5) and would set forth requirements for trading halts halts in Derivative Securities Products listed on the Exchange. Proposed Rule 7.18P(d) would have the following non-substantive differences from current Rule 7.34(a)(4) and (a)(5):

• To use the terms ''Derivative Securities Product'' and ''UTP Derivative Securities Product,'' which are new defined terms the Exchange has proposed to be set forth in Rule 1.1(bbb).[23] Accordingly, unlike current Rule 7.34(a)(4), the Exchange would not

[18] *See* Pillar II Filing, *supra* note 5 at proposed Rule 7.31P(f).

[19] *See* Pillar I Filing, *supra* note 4 at proposed Rule 7.34P(c)(1)(D). *See also* Pillar II Filing, *supra* note 5 at proposed Rule 7.31P(c).

[20] *See* Pillar II Filing, *supra* note 5 at proposed Rule 7.31P(c).

[21] The Exchange does not have a rule addressing how it processes new and existing orders during a halt, suspension, or pause in an Exchange-listed security.

[22] Because Limit Orders designated IOC and Cross Orders would not rest on the NYSE Arca Book, a cancel and replace message submitted for such an order would not be related to a resting order, and thus would be rejected. For all other order types, during a halt, suspension or pause in an Exchange-listed security, the Exchange would accept and process a request to cancel and replace an order, which would be consistent with proposed Rule 7.18P(c)(3), pursuant to which the Exchange would accept and process all cancellations, and proposed Rule 7.18P(c)(5), pursuant to which the Exchange would accept all other incoming orders until the security has reopened.

[23] *See* Pillar I Filing, *supra* note 4.

define these terms in proposed Rule 7.18P.

• To use the terms ''Early Trading Session'' instead of ''Opening Session'' and ''primary listing market'' instead of ''listing market.''

Proposed New Rule 7.16P—Short Sales

Rule 7.16 sets forth requirements relating to short sales. The Exchange proposes to adopt new Rule 7.16P to address short sales in Pillar. As proposed, new Rule 7.16P would be based on the same rule numbering as current Rule 7.16, but with proposed substantive differences to the rule text that correlates to current Rule 7.16(f). Specifically, in Pillar, because of proposed substantive differences to how certain orders and modifiers would operate, the Exchange proposes different handling of certain orders in Pillar to comply with the requirements of Rule 201 of Regulation SHO (''Rule 201'').[24]

Rule 7.16P(a)–(e): Current Rule 7.16(a)–(e) sets forth various requirements relating to Regulation SHO, 17 CFR 242.200 *et seq*. Proposed Rule 7.16P(a)–(e) would be based on current Rule 7.16(a)–(e) with minor non-substantive differences to replace the term ''shall'' with ''will'' in paragraphs (a), (d), and (e) of proposed Rule 7.16P and replace the term ''shall'' with ''may'' in paragraph (b) of proposed Rule 7.16P.

Rule 7.16P(f)(1)–(4): Current Rule 7.16(f) sets forth Exchange requirements in compliance with the Short Sale Price Test under Rule 201.[25] Proposed Rule 7.16P(f) would be based on current Rule 7.16(f), with a non-substantive difference to renumber paragraph (f) with sub-paragraphs (1), (2), (3), etc., instead of (i), (ii), (iii), etc.

Proposed Rules 7.16P(f)(1)–(4) would be based on the rule text in current Rules 7.16(f)(i) (Definitions), 7.17(f)(ii) (Short Sale Price Test), 7.16(f)(iii) (Determination of Trigger Price), and Rule 7.16(f)(iv) (Duration of Short Sale Price Test), with minor non-substantive differences to replace the term ''shall'' with ''will,'' add the short-hand definition of ''NBB,'' replace references to ''national best bid'' with references to ''NBB,'' and update cross-references based on the proposed different sub-numbering for paragraph (f) of proposed Rule 7.16P.

The Exchange proposes substantive differences in Rules 7.16P(f)(2) and (f)(3) from current Rules 7.16(f)(ii) and (f)(iii) regarding which price the Exchange would use in Pillar to determine a Trigger Price. Current Rule 7.16(f)(ii) provides that except as provided in subparagraphs (vi) and (vii) of Rule 7.16(f), Corporation systems shall not execute or display a short sale order with respect to a covered security at a price that is less than or equal to the current national best bid if the price of that security decreases by 10% or more, as determined by the listing market for the security, from the security's closing price on the listing market as of the end of regular trading hours on the prior day (''Trigger Price''). Rule 7.16(f)(iii)(B) further provides that if a covered security did not trade on the Corporation on the prior trading day (due to a trading halt, trading suspension, or otherwise), the Corporation's determination of the Trigger Price will be based on the last sale price on the Corporation for that security on the most recent day on which the security traded.

As discussed above, the Exchange proposes to adopt a new definition in Pillar for the term ''Official Closing Price.'' The Exchange proposes to use this term in proposed Rule 7.16P(f)(2) for purposes of determining the Trigger Price in Exchange-listed securities, which would be a substantive difference from current Rule 7.16(f)(ii), which uses the security's closing price on the listing market. By using the proposed definition of ''Official Closing Price,'' if there is no closing auction of a round lot or more, the Exchange would use the most recent consolidated last sale price to determine the Trigger Price, rather than the last price of the security on the Exchange. While this would be a substantive difference for Pillar, the proposal is consistent with NYSE Rule 440B(c)(3), which provides that under specified circumstances, the NYSE may use the consolidated last sale price for a security on the most recent day on which the security traded for purposes of determining a Trigger Price. Similar to the NYSE, the Exchange believes that in the absence of a closing auction of a round lot or more, using the consolidated last sale price available as of the end of Core Trading Hours on the prior day (or most recent day when there is a consolidated last sale price) best approximates the market's determination of the appropriate price of such securities.[26]

Using the term ''Official Closing Price'' in proposed Rule 7.16(f)(2), which would incorporate scenarios when there is no closing auction on the Exchange, would obviate the need to include text from current Rule 7.16(f)(iii)(B) in proposed Rule 7.16P. Specifically, the proposed definition of ''Official Closing Price,'' which defines how the Exchange would determine an Official Closing Price in the absence of a Closing Auction or consolidated last sale eligible trade on the prior trading day, would cover the scenario described in current Rule 7.16(f)(iii)(B), *i.e.,* if a security does not trade on the Corporation on the prior trading day.

The Exchange's proposed modification in Pillar to how it would determine the Trigger Price is consistent with Rule 201.[27] Rule 201 provides that the listing market is responsible for determining the closing price of a covered security, but does not require that the Exchange use the closing price from an auction on the Exchange or a last sale on the primary listing market for determining that price.[28] The proposed use of the new defined term of ''Official Closing Price'' would provide for a closer approximation of the most recent trading price of a security for purposes of determining the Trigger Price because it would include consolidated last sale prices, and not just last sale prices on the Exchange.

Rule 7.16P(f)(5): Current Rule 7.16(f)(v) sets forth how short sale orders are processed during a Short Sale Period. Proposed Rule 7.16P(f)(5)(A)–(J) would set forth how the Exchange would process short sale orders during a Short Sale Period in Pillar and includes proposed substantive differences from the current rule.

• Proposed Rule 7.16P(f)(5)(A) would set forth how the Exchange would re-price orders in Pillar and is based on current Rule 7.16(f)(v)(C), which provides that marketable short sale orders will be re-priced by the Corporation one minimum price increment above the current national best bid (the ''Permitted Price'') and defines the Permitted Price for securities priced $1.00 or more or under a $1.00.

The first sentence of proposed Rule 7.16P(f)(5)(A) would be based on the first sentence of Rule 7.16(f)(v)(C) with non-substantive differences to define the orders that would be re-priced as ''short sale orders with a working price

[24] 17 CFR 242.201.

[25] Capitalized terms are based on the defined terms in Rule 7.16.

[26] *See* Securities Exchange Act Release No. 68724 (Jan. 24, 2013), 78 FR 6389, 6390 (Jan. 30, 2013) (SR–NYSE–2013–03) (Notice of Filing to amend NYSE Rule 440B to use the consolidated last sale price for purposes of determining the Trigger Price in specified circumstances).

[27] 17 CFR 242.201.

[28] 17 CFR 242.201(b)(1)(i). *See also* Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, at Question 3.1 (providing guidance that when there is a trading halt or suspension and therefore no closing price, the primary listing market could use the last sale as the prior day's closing price). *See also* NYSE Rule 440B(c)(3).

and/or display price equal to the NBB,'' rather than refer to such orders as ''marketable short sale orders.'' The proposed rule would further provide that such orders would have the working and/or display price adjusted one minimum price increment above the current NBB (''Permitted Price'') and use the term ''NBB'' instead of ''national best bid.''

The Exchange proposes to use Pillar terminology to refer to the price at which an order is eligible to trade (working price) or be displayed (display price) [29] so that the proposed rule would cover orders and modifiers that may have a working price that is different from the display price (*e.g.,* an Arca Only Order).[30] Accordingly, pursuant to proposed Rule 7.16P(f)(5)(A), the Exchange would re-price short sale orders so that they would neither trade at the NBB (*i.e.,* reference to the working price being re-priced) or be displayed at the NBB (*i.e.,* reference to the display price being re-priced), unless the order is a permissible short sale order. This proposed rule text would therefore cover all orders and modifiers at the Exchange in Pillar, unless otherwise provided for in paragraphs (f)(5)(B)–(J) of proposed Rule 7.16P.

The second and third sentences of proposed Rule 7.16P(f)(5)(A) would be based on the second and third sentences of current Rule 7.16(f)(v)(C) with minor non-substantive differences to use the term ''NBB'' instead of ''national best bid'' and use the term ''adjust'' instead of ''reprice.''

• Proposed Rule 7.16P(f)(5)(B) would set forth the reject option for sell short orders that would be required to be re-priced during a Short Sale Price Test. The proposed rule is based on current Rule 7.16(f)(v)(A), which provides that an ETP Holder may mark individual short sale orders to be rejected back if entered while a symbol is subject to the short sale price test.

In Pillar, the Exchange is proposing a substantive difference to provide that the reject instruction would apply not only to orders on arrival, but also to resting orders. As proposed, if the ETP Holder chooses the reject option, a resting order that would be required to be adjusted to a Permitted Price while a symbol is subject to the Short Sale Price Test would instead cancel. Allowing ETP Holders to elect that their resting interest be cancelled if it would be required to re-price is consistent with the intent of the current rule, which is to reject an order rather than re-price. In addition, the Exchange proposes a minor non-substantive difference to use the term ''adjust'' rather than ''re-price.''

• Proposed Rule 7.16P(f)(5)(C) would provide how the Exchange would process sell short Priority 1, Priority 2 odd lot orders, and Priority 3 orders during a Short Sale Price Test. This proposed rule text is based on current Rule 7.16(f)(v)(D)(i) relating to short sale orders that are not displayed on entry, which provides that Market Orders and Passive Liquidity orders will be re-priced at a Permitted Price and will continuously re-price at a Permitted Price as the national best bid moves both up and down.

The Exchange proposes to use Pillar terminology to refer to Priority categories to ensure that all sell short orders that would be subject to re-pricing both up and down during a Short Sale Period would be subject to the rule. As proposed, Market Orders, orders and reserve interest ranked Priority 3—Non-Display Orders, and odd lot orders ranked Priority 2—Display Orders would have a working price adjusted to a Permitted Price and would continuously adjust to a Permitted Price as the NBB moves both up and down. The rule would further provide that reserve interest that replenishes the displayed quantity of a Reserve Order would be replenished at a Permitted Price. The Exchange proposes non-substantive differences to use the term ''adjust'' instead of ''reprice,'' and ''NBB'' instead of ''national best bid.''

In Pillar, the Exchange is proposing a substantive difference to treat odd lot orders ranked Priority 2—Display Orders in the same manner as Market Orders and other non-displayed orders. As discussed in the Pillar I Filing, the Exchange proposes that odd lot orders that are ranked Priority 2—Display Orders would be considered ''displayed'' for purposes of ranking because such orders are available via the Exchange's proprietary data feeds.[31] However, because Rule 201 refers to displayed in the context of an order displayed via the public data feeds, for purposes of proposed Rule 7.16P, the Exchange proposes to process all sell short odd lot orders the same as sell short orders that are ranked Priority 3—Non-Display Orders in that such orders would be re-priced as the NBB moves both up and down. The Exchange would extend this treatment to all odd lot sell short orders, regardless of whether they were previously included in a displayed quote that was at a price above the then current NBB and the NBB moves into the price of the odd lot order and therefore eligible to remain displayed at the price of the NBB under proposed Rule 7.16P(f)(6).

The last sentence of proposed Rule 7.16P(f)(5)(C) would provide that reserve interest that replenishes the displayed quantity of a Reserve Order would be replenished at a Permitted Price. This represents current functionality regarding reserve interest pursuant to current Rule 7.16(f)(v)(C) in that all marketable orders other than those specified in the rule are re-priced to one MPV above the current NBB, which includes reserve interest that replenishes the display quantity of a Reserve Order. The Exchange proposes to specify this requirement separately in proposed Rule 7.16P(f)(5)(C) in order to promote clarity regarding at what price reserve interest would replenish any depleted display quantity of a Reserve Order. Because the reserve interest would already be re-priced to a Permitted Price, the Exchange would replenish display quantity at the Permitted Price, even if the previously displayed quantity were eligible to be displayed at the NBB pursuant to proposed Rule 7.16P(f)(6).

• Proposed Rule 7.16P(f)(5)(D) would set forth how the Exchange would process sell short Pegged Orders and MPL Orders during a Short Sale Price Test. The proposed rule is based on current Rule 7.16(f)(v)(B), which provides that MPL Orders will continue to be priced at the mid-point of the national best bid and national best offer, including situations where the midpoint is not one minimum price increment above the national best bid. The Exchange proposes to add Pegged Orders to this paragraph to describe new functionality in Pillar that the Exchange would not reject or cancel Pegged Orders during a Short Sale Period.[32]

As proposed, during a Short Sale Period, both Pegged Orders and MPL

[29] *See* Pillar I Filing, *supra* note 4 at proposed Rule 7.36P(a)(1) and (3).

[30] *See* Pillar II Filing, *supra,* note 5. By referring to both the display price and the working price of an order being adjusted to a Permitted Price in proposed Rule 7.16P(f)(5)(A), the Exchange does not believe it needs to separately provide for how Arca Only Orders would be re-priced in Pillar, and therefore rule text currently in Rule 7.16(f)(v)(D)(ii), which provides that PNP Blind Orders will be re-priced at a Permitted Price and are displayed once they are re-priced, and therefore will re-price down when the national best bid moves down but will not move up in price if the national best bid moves up and will instead remain at the price displayed, would not be included in proposed Rule 7.16P(f)(5). Because an Arca Only Order has a display price, if such display price is a Permitted Price pursuant to proposed Rule 7.16P(f)(6), the Arca Only Order would not need to be adjusted to a price higher than that display price, which is provided for in the current rule. If the working price of an Arca Only Order is undisplayed, it would be adjusted pursuant to proposed Rule 7.16P(f)(5)(C) as an order that is ranked Priority 3—Non-Display Order.

[31] *See* Pillar I Filing, *supra* note 4.

[32] *See* Pillar II Filing, *supra* note 5.

Orders would use the NBBO instead of the PBBO as the reference price for determining the working price of such orders. Proposed Rule 7.16P(f)(5)(C) would further provide that the working price of MPL Orders would be the mid-point of the NBBO, including situations where the midpoint is less than one minimum price increment above the NBB. This rule text is based on current Rule 7.16(f)(v)(B) with minor non-substantive differences to use Pillar terms by referring to the ''working price'' rather than refer to the order being ''priced'' and describing the price of an MPL Order in a less than one MPV market as a midpoint being ''less than one minimum price increment'' rather than ''not one minimum price increment.''

For Primary Pegged Orders, being pegged to the NBBO during a Short Sale Price Test would eliminate the possibility for a sell short Primary Pegged Order to be displayed at the NBB unless it was previously displayed at a price above the then NBB, consistent with proposed Rule 7.16P(f)(6), discussed below. As described in the Pillar II Filing, pursuant to proposed Rule 7.31P(h)(2)(A), if the PBBO becomes locked or crossed, a resting Primary Pegged Order would wait for the PBBO that is not locked or crossed before the working price would be adjusted, but would remain eligible to trade at its then displayed price.[33] In addition, the Exchange would reject an arriving Primary Pegged Order if the PBBO is locked or crossed. During a Short Sale Period, by using the NBBO instead of the PBBO, the Exchange would reject newly arriving sell short Primary Pegged Orders if the NBBO is locked or crossed, and therefore such orders would not be displayed at the NBB. For resting Primary Pegged Orders, if the NBBO becomes locked or crossed, a resting sell short Primary Pegged Order pegged to the then NBO would remain at its previously displayed price, which would be permitted pursuant to proposed Rule 7.16P(f)(6), and would not be re-priced until there is an NBBO that is not locked or crossed.[34]

For Market Pegged Orders, because such orders are ranked Priority 3—Non-Display Orders, a sell short Market Pegged Order that is pegged to the NBBO during a Short Sale Price Test would be adjusted to a Permitted Price pursuant to proposed Rule 7.16P(f)(5)(C). For example, assume a sell short Market Pegged Order is pegged to the PBB, with no offset. If a Short Sale Price Test is triggered in that security, the Market Pegged Order would begin pegging to the NBB and its working price would be adjusted to a Permitted Price. Accordingly, the Market Pegged Order, which would be undisplayed, would never be permitted to trade at the NBB.

- Proposed Rule 7.16P(f)(5)(E) would set forth how the Exchange would process sell short Tracking Orders during a Short Sale Price Test, which would be new in Pillar.[35] As proposed, during a Short Sale Price Test, the working price of a sell short Tracking Order, which is based on the PBO, would not be adjusted. However, such order would not be eligible to trade at or below the NBB. Accordingly, if the PBO were equal to or lower than the NBB, a sell short Tracking Order would not be eligible to trade until such time that the PBO is equal to a Permitted Price or higher.
- Proposed Rule 7.16P(f)(5)(F) would set forth how the Exchange would process sell short IOC Orders during a Short Sale Price Test. The proposed rule is based on current Rule 7.16(f)(v)(E), which provides that IOC orders requiring that all or part of the order be executed immediately will be executed to the extent possible at a Permitted Price and higher and then cancelled, and will not be re-priced. The Exchange proposes non-substantive differences in proposed Rule 7.16P(f)(5)(F) to use the term ''traded'' instead of ''executed'' and use proposed Pillar terminology to state that the working price would not be adjusted instead of saying ''will not be re-priced.''
- Proposed Rule 7.16P(f)(5)(G) would set forth how the Exchange would process sell short Day ISOs during a Short Sale Price Test. The proposed rule is based on current Rule 7.16(f)(v)(F), which provides that PNP ISO Orders are rejected if the price is at or below the current national best bid. The Exchange proposes non-substantive differences in proposed Rule 7.16(P)(5)(G) to refer to this order as a ''Day ISO'' instead of a ''PNP ISO Order,'' reference the ''limit price'' and not just the ''price,'' and use the term ''NBB'' instead of ''national best bid.''
- Proposed Rule 7.16P(f)(5)(H) would set forth how the Exchange would process Cross Orders for which the sell side is a short sale order and are received during a Short Sale Price Test. Currently, Cross Orders, which are an IOC Order, are subject to Rule 7.16(f)(v)(E) and if the proposed cross price is not at a Permitted Price or higher, the Cross Order is not re-priced but would instead cancel. Proposed Rule 7.16P(f)(5)(H) would provide that Cross Orders with a cross price at or below the NBB would be rejected. Accordingly, Cross Orders in Pillar would be processed the same as provided for in Rule 7.16(f)(v)(E).[36]
- Proposed Rule 7.16P(f)(5)(I) would provide how the Exchange would process sell short orders for which a Short Sale Price Test is triggered after the order is routed. The proposed rule text represents new functionality for Pillar. As proposed, if a Short Sale Price Test is triggered after an order has routed, any returned quantity of the order and the order it joins on the NYSE Arca Book would be adjusted to a Permitted Price. The Exchange proposes to re-price the resting quantity, even if it were eligible to remain displayed at the NBB price pursuant to proposed Rule 7.16P(f)(6), to conform to the general requirement in Pillar that the returned quantity of a partially routed order would join the resting quantity.[37] If the returned quantity would be required to be re-priced to a Permitted Price, then the resting quantity that it joins would similarly be re-priced to a Permitted Price and the order would rest on the NYSE Arca Book at a single price rather than two prices.

Proposed Rule 7.16P(f)(5)(I) would further provide that if the order that was routed was a Reserve Order, the returned quantity of the order would first join the reserve interest at a Permitted Price and be assigned a new working time before being evaluated for replenishing the display quantity of the Reserve Order. This proposed functionality would ensure that the

[33] *See* Pillar II Filing, *supra* note. 5.

[34] For example, assume that during a Short Sale Period, a sell short Primary Pegged Order is pegged to the NBO of 10.00 and there is an NBB of 9.99. If the NBB moves up and locks the NBO, pursuant to proposed Rule 7.16P(f)(6), the sell short Primary Pegged Order would have been displayed at a price that was above then then current NBB and would be eligible to remain displayed at 10.00. If, alternately, the sell short Primary Pegged Order was pegged to an NBO of 10.00 when there is an NBB of 9.99, and then the NBO moves down to lock the 9.99 NBB, the Primary Pegged Order would not have its working price adjusted from 10.00 to 9.99, and therefore would remain displayed and eligible to trade at a Permitted Price of 10.00.

[35] As undisplayed orders, Tracking Orders are currently priced to a Permitted Price, consistent with Rule 7.16(f)(v)(D).

[36] Proposed Rule 7.16P(f)(5)(H) would also describe how the Exchange would process Limit IOC Routable Cross Orders, which is a new form of Cross Order proposed in Pillar that would be eligible to trade at prices other than its cross price. *See* Pillar II Filing, *supra* note 5 at proposed Rule 7.31P(g)(2). If a Limit IOC Routable Cross Order has a sell short order and the cross price is not at a Permitted Price or higher, the entire order would be rejected and it would not trade at prices other than the cross price.

[37] *See* Pillar I Filing, *supra* note 4 at proposed Rule 7.36P(f)(1)(B).

returned quantity of the Reserve Order would be priced at a Permitted Price and would not join any previously displayed quantity that might be eligible to remain displayed at a price equal to or below the NBB pursuant to proposed Rule 7.16P(f)(6). The Exchange proposes to include this level of detail regarding how sell short Reserve Orders would be processed in order to provide transparency in the Exchange's rules regarding how orders operate during a Short Sale Period.

• Proposed Rule 7.16P(f)(5)(J) would provide how orders with a Proactive if Locked/Crossed Modifier would operate during a Short Sale Period and is based on current Rule 7.16(f)(v)(G), which provides that proactive if locked modifiers will be ignored for short sale orders. The Exchange proposes a non-substantive difference to rename the modifier as a ''Proactive if Locked/Crossed Modifier,'' consistent with the proposed name of the modifier in Pillar.[38]

Proposed Rule 7.16P(f)(6) would provide for the execution of permissible orders during the Short Sale Period. The proposed rule text is based on current Rule 7.16(f)(vi), which provides that during the Short Sale Period, Corporation systems will execute and display a short sale order without regard to price if, at the time of initial display of the short sale order, the order was at a price above the then current national best bid. Except as specifically noted in subparagraph (v), short sale orders that are entered into the Corporation prior to the Short Sale Period but are not displayed will be re-priced to a Permitted Price. The Exchange proposes minor non-substantive differences to replace the reference to ''national best bid'' with a reference to ''NBB,'' update the cross reference from subparagraph (f)(v) to subparagraph (f)(5), and replace the term ''re-priced'' with the term ''adjusted.''

Proposed Rule 7.16P(f)(7) would provide for short exempt orders. The proposed rule text is based on current Rule 7.16(f)(vii) with no differences.

Proposed New Rule 7.11P—LULD

Rule 7.11 sets forth rule provisions relating to the LULD Plan and trading pauses in individual securities due to extraordinary market activity. The Exchange proposes new Rule 7.11P for Pillar to address the same topic. As proposed, new Rule 7.11P would be based on the same rule numbering as current Rule 7.11, but with proposed substantive differences to the paragraph that correlates to current Rule 7.11(a)(6). Specifically, in Pillar, the Exchange would expand the number of order types that would be eligible for optional re-pricing instructions.

Rule 7.11P(a)(1)–(4): Current Rule 7.11 is a pilot rule in effect during a pilot period to coincide with the pilot period for the LULD Plan. Proposed Rule 7.11P(a)(1)–(4) for Pillar would be based on current Rule 7.11(a)(1)–(4) with minor non-substantive differences to replace the term ''shall'' with ''will'' and ''execute'' with ''trade.''

Rule 7.11P(a)(5): Current Rule 7.11(a)(5) provides that Exchange systems shall cancel buy (sell) interest that is priced or could be executed above (below) the Upper (Lower) Price Band, except as specified in Rule 7.11(a)(6). Accordingly, cancelling orders that are priced or could be executed through the bands is the default functionality on the Exchange. Rule 7.11(a)(5) further provides that incoming marketable interest, including market orders, IOC orders, and limit orders, shall be executed, or if applicable, routed to an away market, to the fullest extent possible, subject to Rules 7.31(a)(1)–(3) (Trading Collars for market orders) and 7.31(b)(2) (price check for limit orders), at prices at or within the Price Bands. Any unexecuted portion of such incoming marketable interest that cannot be executed at prices at or within the Price Bands shall be cancelled and the ETP Holder shall be notified of the reason for the cancellation.

The Exchange proposes to maintain the current default to cancel orders that would be priced or traded through the Price Bands. Proposed Rule 7.11P(a)(5) would therefore provide that Exchange systems would cancel buy (sell) interest that is priced or could be traded above (below) the Upper (Lower) Price Band, except as specified in proposed Rule 7.11P(a)(6). This proposed rule text is based on current Rule 7.11(a)(5) with non-substantive difference to change the term ''shall'' to ''will'' and ''executed'' to ''traded.''

Proposed Rule 7.11P(a)(5)(A) would further provide that incoming marketable interest, including Market Orders, Limit Orders, and Limit Orders designated IOC would be traded, or if applicable, routed to an Away Market, to the fullest extent possible, subject to Rules 7.31P(a)(1)(B) (Trading Collars for Market Orders) and 7.31P(a)(2)(B) (price check for Limit Orders), at prices at or within the Price Bands. Any unexecuted quantity of such incoming marketable interest that cannot be traded at prices at or within the Price Bands would be cancelled and the ETP Holder would be notified of the reason for the cancellation. This proposed rule text is based on current Rule 7.11(a)(5)(A) with non-substantive differences to capitalize ''Away Market,'' ''Market Order,'' ''Limit Order,'' and ''Limit Orders designated IOC,'' use the term ''will'' instead of ''shall,'' use the term ''traded'' instead of ''executed,'' and update cross references to proposed Rule 7.31P.

The Exchange also proposes to add proposed Rule 7.11P(a)(5)(B), which would provide that Cross Orders with a cross price above the Upper Price Band or below the Lower Price Band would be rejected. This would be new rule text in Pillar. Cross Orders, which are IOC, are currently subject to current Rule 7.11(a)(5), which provides that IOC Orders execute to the fullest extent possible at prices at or within the Price Bands, and any unexecuted portion that cannot be executed at prices at or within the Price Bands shall be cancelled. Accordingly, if the cross price of a Cross Order cannot be executed at prices at or within the Price Bands, the Cross Order will be cancelled. Proposed Rule 7.11P(a)(5)(B) is based on this rule text, but would also address how the Exchange would process in Pillar the proposed new Limit IOC Routable Cross Orders, which are eligible to trade at prices other than their cross price.[39] In Pillar, both the Limit IOC Cross Order and the Limit IOC Routable Cross Order would cancel if the cross price were outside the Price Bands, and therefore the proposed Limit IOC Routable Cross Order would not trade with any interest on the NYSE Arca Book or route to Away Market interest that is within the Price Bands.

Rule 7.11(a)(6): Current Rule 7.11(a)(6) sets forth the discretionary instruction to re-price eligible Limit Orders and provides that for specified limit orders, ETP Holders may enter an instruction for the Exchange to re-price a buy (sell) order that is priced above (below) the Upper (Lower) Price Band to the Upper (Lower) Price Band rather than cancel the order, provided, however, that if a Discretionary Order includes a discretionary price that is priced above (below) the Upper (Lower) Price Band, the Exchange shall cancel such order.

• Current Rule 7.11(a)(6)(A) further provides that instructions to re-price eligible orders shall be applicable to both incoming and resting orders and if the Price Bands move and the original limit price of a re-priced order if at or within the Price Bands, Exchange

[38] *See* Pillar I Filing, *supra* note 5 at proposed Rule 7.31P(i)(1).

[39] *See* Pillar II Filing, *supra* note 5 at proposed Rule 7.31P(g)(2).

systems shall re-price such limit order to its original limit price.

• Current Rule 7.11(a)(6)(B) provides that each time an eligible order is re-priced, it shall receive a new time priority.

• Current Rule 7.11(a)(6)(C) sets forth the order types eligible for re-pricing instructions, which are Adding Liquidity Only Orders, Discretionary Orders, Inside Limit Orders, Limit Orders, PNP ISO, PNP Orders, Proactive if Locked Reserve Orders, Reserve Orders, Primary Until 9:45 Orders, Primary After 3:55 Orders, and Primary Sweep Orders.

• Finally, current Rule 7.11(a)(6)(D) provides that for an order type eligible for re-pricing instructions under Rule 7.11(a)(6)(C) that is also a short sell order, during a Short Sale Price Test, as set forth in Rule 7.16(f), a short sale order priced below the Lower Price Band shall be re-priced to the higher of the Lower Price Band or the Permitted Price, as defined in Rule 7.16(f)(ii), and that Sell short orders that are not eligible for re-pricing instructions will be treated as any other order pursuant to Rule 7.11(a)(5).

In Pillar, the Exchange proposes substantive differences to expand the number of order types eligible for re-pricing instructions. In addition, rather than specifying which order types would be eligible for re-pricing instructions, the Exchange would enumerate which order types would not be eligible for re-pricing instructions. Accordingly, as proposed, Rule 7.11P(a)(6) would provide that ETP Holders may enter an instruction for the working price of a Limit Order to buy (sell) with a limit price above (below) the Upper (Lower) Price Band to be adjusted to a price that is equal to the Upper (Lower) Price Band rather than cancel the order. The proposed rule text is based on current Rule 7.11(a)(6) with both substantive differences to reference that Limit Orders are eligible for re-pricing instructions and non-substantive differences to use Pillar terminology.[40] The Exchange proposes to reference the working price of an order to be clear that for order types that may have a working price that is more aggressive than the display price, it would be the working price that would be adjusted. For example, an Arca Only Order or ALO Order to buy that would have a working price equal to the PBO, if the PBO were above the Upper Price Band, the working price would be adjusted to be equal to the Upper Price Band.

Proposed Rule 7.11P(a)(6)(A) would be new rule text that enumerates which orders would not be eligible for re-pricing instructions in Pillar.[41] As proposed, re-pricing instructions would not be available for Market Orders, Auction-Only Orders, Q Orders, Primary Only Orders, or any Limit Order that includes an IOC modifier, including Cross Orders. The rule would also provide that instructions to re-price included with a Primary Until 9:45 Order or Primary After 3:55 Order would only be enforced when such orders are entered on or resting on the NYSE Arca Book.[42] The Exchange believes that proposed Rule 7.11P(a)(6)(A) would provide additional clarity in Exchange rules regarding which orders would be eligible for re-pricing instructions, and if eligible, when they would be re-priced.

Proposed Rule 7.11P(a)(6)(B) would provide that instructions to re-price eligible Limit Orders would be applicable to both incoming and resting orders and that if the Price Bands move and the original limit price of a re-priced order is at or within the Price Bands, such a Limit Order would be adjusted to its limit price. This proposed rule text is based on current Rule 7.11(a)(6)(A) with non-substantive differences to refer to ''Limit Orders'' instead of ''orders'' and to use the term ''adjust'' rather than ''reprice.''

Proposed Rule 7.11P(a)(6)(C) would set forth proposed new functionality in Pillar regarding how MPL Orders would be processed. Currently, MPL Orders are not eligible for re-pricing instructions, and therefore would cancel if they would trade outside the Price Bands. In Pillar, MPL Orders would be eligible for re-pricing instructions. If such instruction were included on an MPL Order, such order would not cancel if the midpoint of the PBBO were outside the Price Bands, but nor would it re-price. Accordingly, as proposed, Rule 7.11P(a)(6)(C) would provide that an MPL Order that has an instruction to re-price would not cancel, but would not be re-priced or eligible to trade if the midpoint of the PBBO is below the Lower Price Band or above the Upper Price Band. The Exchange believes that the proposed functionality would provide more options for ETP Holders entering MPL Orders so that such orders would not be cancelled if they would trade through a Price Band, but also to honor the intent of the order to trade only at the midpoint of the PBBO.

Proposed Rule 7.11P(a)(6)(D) would be based on current Rule 7.11(a)(6)(D) relating to Sell Short Orders with non-substantive differences to update cross references to proposed Rule 7.16P instead of Rule 7.16. In addition, to reflect the proposed substantive difference of which orders would be eligible for re-pricing instructions in Pillar, the Exchange proposes a non-substantive difference to the first sentence of the proposed rule so that it begins with ''[i]f an eligible order includes repricing instructions and is also a sell short order,'' instead of the current first sentence of Rule 7.11(a)(6)(D), which states, ''[f]or an order type eligible for repricing instructions under (6)(C) above that is also a short sell order.''

Finally, the Exchange would not be including in Rule 7.11P(a)(6) rule text currently set forth in Rule 7.11(a)(6)(A) regarding time priority. As discussed in greater detail in the Pillar I Filing, pursuant to proposed Rule 7.36P(f)(2), an order would be assigned a new working time any time the working price of the order changes and orders re-priced pursuant to proposed Rule 7.11P(a)(6) would be subject to this requirement.[43] Therefore, the Exchange would not restate this same requirement in proposed Rule 7.11P.

Rule 7.11P(a)(7)–(8): Current Rule 7.11(a)(7) provides that Exchange systems shall not route buy (sell) interest to an away market displaying a sell (buy) quote that is above (below) the Upper (Lower) Price Band, provided that the Exchange shall route Primary Only Orders (Rule 7.31(x)), Primary Until 9:45 Orders (Rule 7.31(oo)), Primary After 3:55 Orders (Rule 7.31(pp)), and Primary Sweep Orders (Rule 7.31(kk)) to the primary listing market regardless of price. Proposed Rule 7.11P(a)(7) would be based on current Rule 7.11(a)(7) with non-substantive differences to use the term ''will'' instead of ''shall,'' use the term ''orders'' instead of ''interest,'' capitalize the term ''Away Market,'' use the term ''primary listing market'' instead of ''primary market'', remove rule cite cross references, and delete reference to Primary Sweep Orders.[44]

[40] The Exchange will not reference Discretionary Orders in proposed Rule 7.11P(a)(6) because the Exchange will not be offering Discretionary Orders in Pillar. *See* Pillar II Filing, *supra* note 5.

[41] Because in Pillar the Exchange would enumerate which orders are not eligible for re-pricing instructions rather than list orders that would be eligible for re-pricing instructions, the Exchange would not include rule text based on current Rule 7.11(a)(6)(C) in the Pillar rule.

[42] This proposed rule text in Rule 7.11P(a)(6)(A) regarding Primary Until 9:45 Orders and Primary After 3:55 Orders is consistent with current Rule 7.11(a)(7) and proposed Rule 7.11P(a)(7), which provide that the Exchange routes these orders to the primary listing market regardless of price.

[43] *See* Pillar I Filing, *supra* note 4.

[44] The Exchange eliminated Primary Sweep Orders in 2015. *See* Securities Exchange Act

Current Rule 7.11(a)(8) provides that the Exchange may declare a Trading Pause for an NMS Stock listed on the Exchange when (i) the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS Stock is not in a Limit State; and (ii) trading in that NMS Stock deviates from normal trading characteristics. Proposed Rule 7.11P(a)(8) would be based on current Rule 7.11(a)(8) without any differences.

Rule 7.11P(b): Current Rule 7.11(b) sets forth how Trading Pauses operate on the Exchange. Because the LULD Plan has been fully implemented across all Tier 1 and Tier 2 NMS Stocks, the Exchange no longer pauses trading in securities as provided for in current Rules 7.11(b)(1) and (3)–(5). However, the Exchange proposes to maintain this rule text while the LULD Plan is a pilot. Accordingly, proposed Rule 7.11P(b)(1)–(5) would be based on current Rule 7.11(b)(1)–(5) with non-substantive differences to replace the term ''will'' with ''shall,'' replace time references from Pacific Time to Eastern Time, and replace a cross-reference from Rule 7.35 to Rule 7.35P.

Current Rule 7.11(b)(6) provides for how the Exchange processes new and existing orders during a trading pause issued by another primary listing market. As described above, proposed Rule 7.18P(b) would set forth in Pillar how the Exchange would process new and existing orders during a UTP Regulatory Halt, which would include a trading pause issued by another primary listing market. Accordingly, the Exchange would not include rule text from current Rule 7.11(b)(6) in the proposed Rule 7.11P(b).

Proposed New Rule 7.38P—Odd Lots and Mixed Lots

Rule 7.38 sets forth requirements relating to odd lots and mixed lots, which are terms defined in Rule 7.6. The Exchange proposes new Rule 7.38P to address odd lots and mixed lots in Pillar, including circumstances when odd lot orders would be treated differently than round lot orders.

Proposed Rule 7.38P(a) would provide that Rules 7.31P and 7.44P would specify whether an order may be entered as an odd lot or mixed lot. Unlike current Rule 7.38, the Exchange proposes that in Pillar, whether an order would be eligible to be entered as an odd lot or mixed lot would be covered in proposed Rules 7.31P and 7.44P.[45] Accordingly, rule text set forth in current Rules 7.38(a)(1) and (2) would not be included in proposed Rule 7.38P(a).[46]

Proposed Rule 7.38P(b) would provide that round lot, mixed lot, and odd lots would be treated in the same manner in the NYSE Arca Marketplace. This rule text is based on current Rule 7.38(b), without any differences.

The Exchange proposes that the general rule in Rule 7.38P(b) would be subject to specific requirements in certain cases, as set forth in proposed Rules 7.38P(b)(1) and (b)(2).

- Proposed Rule 7.38P(b)(1) would provide that the working price of an odd lot order would be adjusted both on arrival and when resting on the NYSE Arca Book based on the limit price of the order. If the limit price of such odd lot order to buy (sell) is at or below (above) the PBO (PBB), it would have a working price equal to the limit price. If the limit price of such odd lot order to buy (sell) is above (below) the PBO (PBB), it would have a working price equal to the PBO (PBB). The proposed rule text uses Pillar terminology to describe how the Exchange would price odd-lot orders that are not displayed as part of the BBO so that they would not trade through the PBBO.[47]
- Proposed Rule 7.38P(b)(2) would set forth the working time that would be assigned to the returned quantity of an order that create [sic] a new BBO when it joins resting quantity of the order. As proposed, the rule would provide that for an order that is partially routed to an Away Market on arrival, if any returned quantity of the order joins resting odd-lot quantity of the original order and the returned and resting quantity, either alone or together with other odd-lot orders, would be displayed as a new BBO, both the returned and resting quantity would be assigned a new working time.

As set forth in the Pillar I Filing, proposed Rule 7.36P(f)(1)(B) would provide that for an order that is partially routed to an Away Market on arrival, the portion that is not routed would be assigned a working time.[48] If any unexecuted portion of the order returns and joins any remaining resting portion of the original order, the returned portion of the order would be assigned the same working time as the resting portion of the order.

Proposed Rule 7.38P(b)(2) would provide for an exception to this general requirement and is intended to prevent the Exchange from displaying a new BBO that would lock or cross an Away Market PBBO. Without this exception, if the returned quantity joined the resting quantity's working time and is then displayed as a new BBO, it would be considered to have an earlier working time than an updated PBBO, even though the new BBO may be displayed after the PBBO was updated. By assigning a new working time to the new displayed BBO, the Exchange would evaluate it for routing as if it were a newly arriving order.

For example, assume the PBBO is 9.98 x 10.00 and the 10.00 PBO is on an Away Market for 100 shares. The Exchange receives a Limit Order to buy ''A'' for 120 shares priced at 10.00 and would route 100 shares of A to the Away Market, and 20 shares would be entered on the NYSE Arca Book and assigned a working time. Because 20 shares is an odd lot quantity, the Exchange could enter it onto the NYSE Arca Book without locking the PBO. Assume that the returned quantity of A is 80 shares, and between the time the order was routed and it returns unexecuted, a second Away Market displays an offer of 10.00, which is the new PBO. The returned quantity of A together with the resting quantity of A would equal 100 shares, and therefore would constitute the best ranked non-marketable displayed Limit Order on the Exchange and would become the BB. As proposed, the entire quantity of A would be assigned a new working time, which would be the time the returned quantity returns to the Exchange. The Exchange would then evaluate whether the order should be routed, and in this case, because it would create a new BB that would lock

Release No. 74796 (April 23, 2015), 80 FR 12537 (March 9, 2015) (SR–NYSEArca–2015–08) (Approval order).

[45] *See* Pillar II Filing, *supra* note 5 at proposed Rules 7.31P(d)(1)(A) (Reserve Orders must be entered in round lots, and therefore cannot be entered as odd lots or mixed lots); 7.31P(c)(3)(E) (MPL–IOC Orders must be entered with a minimum of one round lot, and therefore may not be entered in odd lots); 7.31P(d)(4) (Tracking Orders must be in entered in round lots, and therefore cannot be entered as odd lots or mixed lots); 7.31P(e)(2) (Arca Only ALO Orders must have a minimum of one displayed round lot on entry, and therefore cannot be entered as an odd lot); 7.31P(h)(2)(A) (Primary Pegged Orders must be entered with a minimum of one round a [sic] lot); and 7.31P(j)(1) (Q Orders must be entered with a minimum of one round lot displayed, and therefore cannot be entered as an odd lot). Proposed Rule 7.44P(1)(3) would provide that Retail Orders may be entered as an odd lot, round lot, or mixed lot.

[46] Current Rule 7.38(a)(1) provides that all orders submitted by Users to the NYSE Arca Marketplace must be Market Orders or Limit Orders and the following orders may not be entered in odd lots: Reserve Orders, MPL–IOC Orders, Tracking Orders, or Q Orders. Current Rule 7.38(a)(2) provides that Mixed lot orders submitted by Users to the NYSE Arca Marketplace may be any order type supported by the NYSE Arca Marketplace, unless inconsistent with the order type descriptions found in Rule 7.31.

[47] *See, e.g.,* Pillar II Filing, *supra* note 5 at proposed Rule 7.31P(d)(2)(A) (describing the working price assigned to Limit Non-Displayed Orders).

[48] *Id.* The display price of an odd lot order may differ from the working price of the order.

an existing PBO, the Exchange would route the 100 shares to the new PBO. The Exchange would only have to assign a new working time if the returning quantity would join resting odd-lot interest that would result in a new BBO. If the resting quantity of the order were a round lot or more, and therefore already displayed as the best ranked non-marketable interest, the returned quantity could join that resting interest at the working time of the resting interest pursuant to proposed Rule 7.36P(f)(1)(B).

Proposed New Rule 7.10P—Clearly Erroneous Executions

The Exchange proposes to adopt new Rule 7.10P for Pillar in order to reflect terminology changes proposed in the Pillar I Filing and to replace obsolete terms. As proposed, new Rule 7.10P would have the same rule text and paragraph numbering as Rule 7.10 and would not have any substantive differences from Rule 7.10. The Exchange proposes the following non-substantive differences for proposed Rule 7.10P.

- To replace the term ''shall'' with ''will'' throughout the rule and replace the term ''shall mean'' in proposed Rule 7.10P(i) with ''means.''
- To use the terms ''Early Trading Session'' instead of ''Opening Session'' and ''Late Trading Session'' instead of ''Late Session'' in proposed Rules 7.10P(c)(1) and 7.10P(c)(3), which would reflect the new terms proposed in the Pillar I Filing in proposed Rule 7.34P and are based on current Rule 7.10(c)(1) and 7.10(c)(3).
- To replace the term ''ie.'' with the term ''*e.g.,*'' in proposed Rule 7.10P(c)(2).
- To capitalize the term ''Cross Order'' and delete an obsolete reference to the Portfolio Crossing Service [49] in proposed Rule 7.10P(e)(1), which is based on current Rule 7.10(e)(1).
- To replace the term ''NYSE Arca Equities'' with ''Exchange'' as the modifier for Chief Regulatory Officer in proposed Rule 7.10P(e)(3), which is based on current Rule 7.10(e)(3). The Chief Regulatory Officer is an officer of NYSE Arca, which is the Exchange, and not its wholly-owned subsidiary NYSE Arca Equities. Therefore, changing the term to ''Exchange'' more accurately reflects the entity for which the Chief Regulatory Officer is an officer.
- To replace the term ''3:00 ET'' with the term ''3:00 p.m. Eastern Time'' in proposed Rule 7.10P(e)(3), which is based on current Rule 7.10(e)(3) and is consistent with the proposed manner to describe time in the Pillar I Filing.
- To replace the term ''Member'' with ''ETP Holder'' in proposed Rule 7.10P(i), which is based on current Rule 7.10(i).

The Exchange also proposes non-substantive differences to update cross references in the Rule from Rule 7.10 to Rule 7.10P.

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As discussed in the Pillar I Filing, because of the technology changes associated with the migration to the Pillar trading platform, the Exchange will announce by Trader Update when rules with a ''P'' modifier will become operative and for which symbols. The Exchange believes that keeping existing rules pending the full migration of Pillar is necessary because they would continue to govern trading on the current trading platform pending the full migration.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[50] in general, and furthers the objectives of Section 6(b)(5),[51] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the rules proposed in this filing, together with the rules proposed in the Pillar I Filing and the Pillar II Filing, would remove impediments to and perfect the mechanism of a free and open market because they would promote transparency by using consistent terminology for rules governing equities trading, thereby ensuring that members, regulators, and the public can more easily navigate the Exchange's rulebook and better understand how equity trading would be conducted on the Pillar trading platform. Adding new rules with the modifier ''P'' to denote those rules that would be operative for the Pillar trading platform would remove impediments to and perfect the mechanism of a free and open market by providing transparency of which rules govern trading once a symbol has been migrated to the Pillar platform. In addition, the proposed use of new Pillar terminology would promote consistency in the Exchange's rulebook regarding how the Exchange would process new and existing orders during a trading halt, how sell short orders would be processed during a Short Sale Period, how orders would be processed consistent with the requirements of the LULD Plan, and when odd-lot orders would be treated differently than round-lot orders.

The Exchange believes that the proposed amendments to existing definitions in Rule 1.1 would remove impediments to and perfect the mechanism of a fair and orderly market because they would not make any substantive changes to Exchange rules, but rather are designed to reduce confusion by eliminating obsolete references and terms and therefore streamline the Exchange's rules. The Exchange further believes that the proposed new definition for the term ''Official Closing Price'' would remove impediments to and perfect the mechanism of a fair and orderly market because the proposed definition would promote transparency regarding the reference price the Exchange would use in Pillar for purposes of calculating Trading Collars, pursuant to proposed Rule 7.31P(a)(1)(B), and for purposes of determining a Trigger Price pursuant to proposed Rule 7.16P(f)(2).

For determining the Official Closing Price, the Exchange believes that in the absence of a Closing Auction of a round lot or more, the most recent consolidated last sale eligible trade during Core Trading Hours best approximates the market's determination of the appropriate price of such securities. In addition, using only those trades that occur during Core Trading Hours that are last sale eligible would remove impediments to and perfect the mechanism of a fair and orderly market because the lower liquidity during the Early and Late Trading Sessions may mean that trades occurring during those sessions may not be as representative of the price of the security and odd-lot trades may indicate an anomalous trade.

The Exchange believes that proposed Rule 7.18P would remove impediments to and perfect the mechanism of a fair and orderly market because it would set forth in a single rule the requirements for trading halts on the Exchange in both UTP Securities and Exchange-listed securities, which are currently set forth in Rules 7.11(b)(6), 7.18, and 7.34(a)(4) and (a)(5). The Exchange

[49] The Exchange eliminated the Portfolio Crossing Service in 2014. *See* Securities Exchange Act Release No. 72942 (Aug. 28, 2014), 79 FR 52784 (Sept. 4, 2014) (SR–NYSEArca–2014–75) (Approval order for filing that eliminated specified order types, modifiers, and related references).

[50] 15 U.S.C. 78f(b).

[51] 15 U.S.C. 78f(b)(5).

believes that the proposed substantive differences for Rule 7.18P as compared to the current rules would remove impediments to and perfect the mechanism of a fair and orderly market for the following reasons:

• Waiting until receipt of a Price Band in a UTP Security before resuming trading following a UTP Regulatory Halt would assure that the Exchange would not begin trading in a UTP Security before the protections of the LULD Plan would be available. In addition, not holding a Trading Halt Auction on the Exchange in a UTP Security, together with rejecting new orders and routing Primary Only Orders received during a UTP Regulatory Halt to the primary listing market, would protect investors and the public by promoting price discovery and liquidity on the primary listing market for its re-opening auction.

• Processing new and existing orders for UTP Securities differently from new and existing orders in Exchange-listed securities during a halt, suspension, or trading pause would complement the proposal not to conduct a Trading Halt Auction in a UTP Security, as discussed above. For Exchange-listed securities, because the Exchange would be conducting a Trading Halt Auction, the Exchange would accept new orders that would be eligible to participate in such auction. In addition, to facilitate such auction, the Exchange would not cancel resting Pegged Orders and would adjust the working price of resting Limit Orders (including Pegged Orders) to their limit price so that such orders could participate in a Trading Halt Auction at their limit prices. The Exchange believes such proposed processing of new and existing orders would promote liquidity and price discovery for Trading Halt Auctions in Exchange-listed securities.

With respect to Short Sales, the Exchange believes that proposed Rule 7.16P would remove impediments to and perfect the mechanism of a fair and orderly market because it would use Pillar terminology to describe how the Exchange would process sell short orders during a Short Sale Period, consistent with Rule 201 of Regulation SHO. More specifically, the Exchange believes that using the new term ''Official Closing Price'' for determining the Trigger Price of a security in Rule 7.16P(f)(2) is consistent with Rule 201(b)(1)(i) of Regulation SHO, which requires that the listing market determine the closing price of a covered security, but does not require that the Exchange use the closing auction on the Exchange to determine that closing price. The Exchange believes that using the Official Closing Price would provide for a closer approximation of determining the Trigger Price because in the absence of a closing auction of a round lot or more, it would include consolidated last sale prices, and not just last sale prices on the Exchange, which is consistent with how other markets operate.[52]

The Exchange believes that how it would process sell short orders during a Short Sale Period, set forth in proposed Rule 7.16P(f)(5), would remove impediments to and perfect the mechanism of a fair and orderly market because the proposed processing would assure that sell short orders would neither trade at the NBB or be displayed at the NBB, unless an order is eligible for an exemption pursuant to proposed Rule 7.16P(f)(6) or (f)(7). More specifically, the Exchange believes that the proposal to expand the existing reject option for sell short orders that would be required to be re-priced to apply also to resting orders would remove impediments to and perfect the mechanism of a fair and orderly market because it would be consistent with the intent of the instruction, which is to not have such orders re-price. The Exchange further believes that the proposed processing in Pillar of odd-lot orders that are ranked Priority 2, Pegged Orders, Cross Orders, and Tracking Orders would remove impediments to and perfect the mechanism of a fair and orderly market and is consistent with Rule 201 of Regulation SHO because the proposed processing would assure that such orders would not trade at the NBB or be displayed at the NBB as the NBB moves both up and down.

With respect to proposed Rule 7.11P, the Exchange believes that the proposed substantive difference to expand the number of Limit Orders eligible for re-pricing instructions would be consistent with the LULD Plan, and therefore would remove impediments to and perfect the mechanism of a fair and orderly market, because the proposed re-pricing of such orders would assure that such orders would not trade at or be displayed at prices outside of the Price Bands. The Exchange further believes that expanding the number of orders eligible for re-pricing instructions would provide ETP Holders with more options regarding how orders would be processed in compliance with the LULD Plan. With respect to MPL Orders, the Exchange believes that proposed Rule 7.11P(a)(6)(C) would remove impediments to and perfect the mechanism of a fair and orderly market because the proposal would provide ETP Holders with the choice for such orders not to be cancelled, and instead remain on the NYSE Arca Book until such time that the working price would be at a price eligible to trade consistent with the LULD Plan. The Exchange further believes that using Pillar terminology to describe how orders would be re-priced would promote consistency in Exchange rules, making them easier to navigate.

With respect to proposed Rule 7.38P, the Exchange believes that the proposed rule would promote consistency in the Exchange's rule book by using Pillar terminology to describe how the Exchange would price odd lot orders so that they would not trade through the PBBO. The Exchange further believes that proposed Rule 7.38P(b)(2) would remove impediments to and perfect the mechanism of a fair and orderly market because it would promote transparency in Exchange rules regarding the working time that would be assigned to an order that has been partially routed and if when it returns, would be displayed as a new BBO. The proposed assignment of the working time of the returned order would assure that such new BBO, which would be comprised of the returned quantity together with the resting odd-lot quantity, would be evaluated for whether it would lock or cross a protected quotation.

Finally, the Exchange believes that proposed Rule 7.10P, regarding clearly erroneous executions, would remove impediments to and perfect the mechanism of a fair and orderly market because it would use Pillar terminology, without any substantive differences from current Rule 7.10.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather to adopt new rules to support the Exchange's new Pillar trading platform. As discussed in detail above, the Exchange proposes new rules for Pillar to address trading halts, Short Sales, the LULD Plan, and odd lots, which would be based on current rules with both substantive and non-substantive differences. The proposed substantive differences would promote competition because the Exchange would be offering functionality that is consistent with the proposed new orders and modifiers, as discussed in the Pillar II Filing, in a manner consistent with Rule 201 of Regulation SHO and the LULD Plan and to assure that odd lot orders would not

[52] *See supra* notes 26 and 28.

trade through the PBBO. With respect to trading halts, the Exchange believes that proposed Rule 7.18P would promote price discovery and liquidity on the primary listing market for re-opening auctions following a halt, suspension, or trading pause, thereby supporting competition. The proposed non-substantive differences would be to use new Pillar terminology, which would promote consistent use of terminology to support the Pillar trading platform making the Exchange's rules easier to navigate.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEARCA–2015–58 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2015–58. 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 will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2015–58 and should be submitted on or before August 12, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[53]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–17895 Filed 7–21–15; 8:45 am]

BILLING CODE 8011–01–P

[53] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75472; File No. SR–FINRA–2014–048]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Adopt FINRA Rule 2242 (Debt Research Analysts and Debt Research Reports)

July 16, 2015.

I. Introduction

On November 14, 2014, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule to adopt new FINRA Rule 2242 (Debt Research Analysts and Debt Research Reports) to address conflicts of interest relating to the publication and distribution of debt research reports. The proposal was published for comment in the **Federal Register** on November 24, 2014.[3] The Commission received five comments on the proposal.[4] On February 19, 2015, FINRA filed Amendment No. 1 responding to the comments received to the proposal as well as to propose amendments in response to these comments. The proposal, as amended by Amendment No. 1, was published for comment in the **Federal Register** on March 18, 2015.[5] On February 20, 2015, the Commission issued an order instituting proceedings pursuant to section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposal. The order was published for comment in the **Federal Register** on February 26, 2015.[7] The Commission received a further four comments regarding the proceedings or in response

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 73623 (Nov. 18, 2014); 79 FR 69905 (Nov. 24, 2014) (''Notice''). On January 6, 2015, FINRA consented to extending the time period for the Commission to either approve or disapprove the proposed rule change, or to institute proceedings to determine whether to approve or disapprove the proposed rule change, to February 20, 2015.

[4] *See* Letter from Kevin Zambrowicz, Associate General Counsel & Managing Director and Sean Davy, Managing Director, SIFMA, dated Dec. 15, 2014 (''SIFMA''), Letter from Hugh D. Berkson, President-Elect, Public Investors Arbitration Bar Association, dated Dec. 15, 2014 (''PIABA Debt''), Letter from Yoon-Young Lee, WilmerHale, dated Dec. 16, 2014 (''WilmerHale Debt One''), Letter from William Beatty, President and Washington (State) Securities Administrator, North American Securities Administrators Association, Inc., dated Dec. 19, 2014 (''NASAA Debt One''), and Letter from Kurt N. Schacht, CFA, Managing Director, Standards and Financial Market Integrity and Linda L. Rittenhouse, Director, Capital Markets Policy, CFA Institute, dated Feb. 9, 2015 (''CFA Institute One'').

[5] Exchange Act Release No. 74490 (Mar. 12, 2015); 80 FR 14198 (Mar. 18, 2015) (''Amendment Notice'').

[6] 15 U.S.C. 78s(b)(2)(B).

[7] Exchange Act Release No. 74340 (Feb. 20, 2015); 80 FR 10538 (Feb. 26, 2015). Specifically, the Commission instituted proceedings to allow for additional analysis of the proposed rule change's consistency with section 15A(b)(9) of the Act, which requires that FINRA's rules be designed to, among other things, promote just and equitable principles of trade, 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. *See id.*

to Amendment No. 1,[8] to which FINRA responded via letter on May 5, 2015.[9]

This order approves the proposed rule change.

II. Description of the Proposed Rule Change

As described more fully in the Notice, FINRA proposed to adopt FINRA Rule 2242 to address conflicts of interest relating to the publication and distribution of debt research reports. Proposed FINRA Rule 2242 would adopt a tiered approach that FINRA believed, in general, would provide retail debt research recipients with extensive protections similar to those provided to recipients of equity research under current and proposed FINRA rules,[10] with modifications to reflect differences in the trading of debt securities.

As stated above, the Commission received five comments on the proposal. All of the relevant commenters expressed general support for the proposal. Of the four comments received in regards to the proceedings or Amendment No. 1, one was supportive of the proposal as amended by Amendment No. 1 with certain specific comments,[11] one stated that Amendment No. 1 addressed their specific comments,[12] one reiterated prior concerns regarding the principles-based nature of the proposal,[13] and one did not seem to be related to the proposed rule change.[14]

A. Definitions

FINRA represented that most of the defined terms closely follow the defined terms for equity research in NASD Rule 2711, as amended by the equity research filing, with minor changes to reflect their application to debt research. The proposed definitions are set forth below.

Under the proposed rule change, the term ''debt research analyst'' would mean an associated person who is primarily responsible for, and any associated person who reports directly or indirectly to a debt research analyst in connection with, the preparation of the substance of a debt research report, whether or not any such person has the job title of ''research analyst.'' [15] The term ''debt research analyst account'' would mean any account in which a debt research analyst or member of the debt research analyst's household has a financial interest, or over which such analyst has discretion or control. It would not, however, include an investment company registered under the Investment Company Act of 1940 over which the debt research analyst or a member of the debt research analyst's household has discretion or control, provided that the debt research analyst or member of a debt research analyst's household has no financial interest in such investment company, other than a performance or management fee. The term also would not include a ''blind trust'' account that is controlled by a person other than the debt research analyst or member of the debt research analyst's household where neither the debt research analyst nor a member of the debt research analyst's household knows of the account's investments or investment transactions.[16]

The proposed rule change would define the term ''debt research report'' as any written (including electronic) communication that includes an analysis of a debt security or an issuer of a debt security and that provides information reasonably sufficient upon which to base an investment decision, excluding communications that solely constitute an equity research report as defined in proposed Rule 2241(a)(11).[17] The proposed definition and exceptions noted below would, in FINRA's view, generally align with the definition of ''research report'' in NASD Rule 2711, while incorporating aspects of the Regulation AC definition of ''research report.'' [18]

Communications that constitute statutory prospectuses that are filed as part of the registration statement would not be included in the definition of a debt research report. Further, communications that constitute private placement memoranda and comparable offering-related documents, other than those that purport to be research, would not be included in the definition of a debt research report. In general, the term debt research report also would not include communications that are limited to the following, if they do not include an analysis of, or recommend or rate, individual debt securities or issuers:

- Discussions of broad-based indices;
- Commentaries on economic, political, or market conditions;
- Commentaries on or analyses of particular types of debt securities or characteristics of debt securities;
- Technical analyses concerning the demand and supply for a sector, index, or industry based on trading volume and price;
- Recommendations regarding increasing or decreasing holdings in particular industries or sectors or types of debt securities; or
- Notices of ratings or price target changes, provided that the member simultaneously directs the readers of the notice to the most recent debt research report on the subject company that includes all current applicable disclosures required by the rule and that such debt research report does not contain materially misleading disclosures, including disclosures that are outdated or no longer applicable.

The term debt research report also, in general, would not include the following communications, even if they include an analysis of an individual debt security or issuer and information

[8] Letter from Stephanie R. Nicholas, WilmerHale, dated Apr. 6, 2015 (''WilmerHale Debt Two''), Letter from Kurt N. Schacht, Managing Director, Standards and Financial Market Integrity, and Linda L. Rittenhouse, Director, Capital Markets Policy, CFA Institute, to Brent J. Fields, Secretary, SEC, dated Apr. 7, 2015 (''CFA Institute Two''), an anonymous comment dated Apr. 8, 2015 (''Anonymous''), and Letter from William Beatty, President and Washington (State) Securities Administrator, North American Securities Administrators Association, Inc., dated Apr. 17, 2015 (''NASAA Debt Two'').

[9] Letter from Philip Shaikun, Vice President and Associate General Counsel, FINRA, dated May 5, 2015 (''FINRA Response'').

[10] *See* Exchange Act Release No. 73622 (Nov. 18, 2014); 79 FR 69939 (Nov. 24, 2014) (SR–FINRA–2014–047) (proposing amendments to current SRO rules relating to equity research).

[11] WilmerHale Debt Two.

[12] CFA Institute Two.

[13] NASAA Debt Two.

[14] Anonymous. The comment, in total, was: ''[I]s this a due diligence report where numbers amounts are fabricated? Is a qualified professional 'valuing' as a way of adjusting the amounts[?] I believe individuals should be leery of using 'debt' excessively when processing accounting matters. Especially with the prevalence of automated software and attitude of today[']s workers.'' *Id.* Neither we nor FINRA see any issues raised by this comment relevant to the proposed rule change. *See* FINRA Response.

[15] *See* proposed FINRA Rule 2242(a)(1).

[16] *See* proposed FINRA Rule 2242(a)(2). The exclusion for a registered investment company over which a research analyst has discretion or control in the proposed definition mirrors proposed changes to the definition of ''research analyst account'' in the equity research rules.

[17] *See* proposed FINRA Rule 2242(a)(3). FINRA explained that the proposed rule change did not need to, similar to the equity proposal, explicitly exclude communications concerning open-end registered investment companies that are not listed or traded on an exchange (''mutual funds'') from the proposed rule as they would not be captured by the rule in the first place. *See* proposed FINRA Rule 2242(a)(4) (defining ''debt securities'' as not including ''equity securities'' as defined in the Act). *See also* Exchange Act Release No. 74488 (Mar. 12, 2015); 80 FR 14174 (Mar. 18, 2015) (explaining the equity proposal as amended).

[18] In aligning the proposed definition with the Regulation AC definition of research report, FINRA pointed out that the proposed definition differs in minor respects from the definition of ''research report'' in NASD Rule 2711. For example, the proposed definition of ''debt research report'' would apply to a communication that includes an analysis of a debt security or an issuer of a debt security, while the definition of ''research report'' in NASD Rule 2711 applies to an analysis of equity securities of individual companies or industries.

reasonably sufficient upon which to base an investment decision:

- Statistical summaries of multiple companies' financial data, including listings of current ratings that do not include an analysis of individual companies' data;
- An analysis prepared for a specific person or a limited group of fewer than 15 persons;
- Periodic reports or other communications prepared for investment company shareholders or discretionary investment account clients that discuss individual debt securities in the context of a fund's or account's past performance or the basis for previously made discretionary investment decisions; or
- Internal communications that are not given to current or prospective customers.

The proposed rule change would define the term ''debt security'' as any ''security'' as defined in section 3(a)(10) of the Exchange Act,[19] except for any ''equity security'' as defined in section 3(a)(11) of the Exchange Act,[20] any ''municipal security'' as defined in section 3(a)(29) of the Exchange Act,[21] any ''security-based swap'' as defined in section 3(a)(68) of the Exchange Act,[22] and any ''U.S. Treasury Security'' as defined in paragraph (p) of FINRA Rule 6710.[23]

The proposed rule change would define the term ''debt trader'' as a person, with respect to transactions in debt securities, who is engaged in proprietary trading or the execution of transactions on an agency basis.[24]

The proposed rule change would provide that the term ''independent third-party debt research report'' means a third-party debt research report, in which the person producing the report both (1) has no affiliation or business or contractual relationship with the distributing member or that member's affiliates that is reasonably likely to inform the content of its research reports, and (2) makes content determinations without any input from the distributing member or that member's affiliates.[25]

The proposed rule change would define the term ''investment banking department'' as any department or division, whether or not identified as such, that performs any investment banking service on behalf of a member.[26] The term ''investment banking services'' would include, without limitation, acting as an underwriter, participating in a selling group in an offering for the issuer or otherwise acting in furtherance of a public offering of the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital or equity lines of credit or serving as placement agent for the issuer or otherwise acting in furtherance of a private offering of the issuer.[27]

The proposed rule change would define the term ''member of a debt research analyst's household'' as any individual whose principal residence is the same as the debt research analyst's principal residence.[28]

The proposed rule change would define ''public appearance'' as any participation in a conference call, seminar, forum (including an interactive electronic forum) or other public speaking activity before fifteen or more persons or before one or more representatives of the media, a radio, television or print media interview, or the writing of a print media article, in which a debt research analyst makes a recommendation or offers an opinion concerning a debt security or an issuer of a debt security.[29]

Under the proposed rule change the term ''qualified institutional buyer'' has the same meaning as under Rule 144A of the Securities Act.[30]

The proposed rule change would define ''research department'' as any department or division, whether or not identified as such, that is principally responsible for preparing the substance of a debt research report on behalf of a member.[31] The proposed rule change would define the term ''subject company'' as the issuer whose debt securities are the subject of a debt research report or a public appearance.[32] Finally, the proposed rule change would define the term ''third-party debt research report'' as a debt research report that is produced by a person or entity other than the member.[33]

B. Identifying and Managing Conflicts of Interest

Similar to the proposed equity research rule, the proposed rule change contains an overarching provision that would require members to establish, maintain, and enforce written policies and procedures reasonably designed to identify and effectively manage conflicts of interest related to the preparation, content, and distribution of debt research reports; public appearances by debt research analysts; and the interaction between debt research analysts and persons outside of the research department, including investment banking, sales and trading and principal trading personnel, subject companies, and customers.[34]

The written policies and procedures would be required to be reasonably designed to promote objective and reliable debt research that reflects the truly held opinions of debt research analysts and to prevent the use of debt research reports or debt research analysts to manipulate or condition the market or favor the interests of the firm or current or prospective customers or class of customers.[35]

The proposed rule change would introduce a distinction between sales and trading personnel and persons engaged in principal trading activities, where, in FINRA's opinion, the conflicts addressed by the proposal are of most concern.

1. Prepublication Review

FINRA proposed that the required policies and procedures would be required to prohibit prepublication review, clearance or approval of debt research by persons involved in investment banking, sales and trading, or principal trading, and either restrict or prohibit such review, clearance, and approval by other non-research personnel other than legal and compliance.[36] The policies and procedures also would be required to prohibit prepublication review of a debt research report by a subject company, other than for verification of facts.[37] The proposed rule change would allow sections of a draft debt research report to be provided to non-investment banking personnel, non-principal trading personnel, non-sales and trading personnel, or to the subject company for factual review, so long as: (1) The sections of the draft debt research report submitted do not contain the research summary, recommendation or rating; (2) A complete draft of the debt research report is provided to legal or compliance personnel before sections of the report are submitted to non-investment banking personnel, non-

[19] 15 U.S.C. 78c(a)(10).
[20] 15 U.S.C. 78c(a)(11).
[21] 15 U.S.C. 78c(a)(29).
[22] 15 U.S.C. 78c(a)(68).
[23] *See* proposed FINRA Rule 2242(a)(4).
[24] *See* proposed FINRA Rule 2242(a)(5).
[25] *See* proposed FINRA Rule 2242(a)(6).
[26] *See* proposed FINRA Rule 2242(a)(8).
[27] *See* proposed FINRA Rule 2242(a)(9).
[28] *See* proposed FINRA Rule 2242(a)(10).
[29] *See* proposed FINRA Rule 2242(a)(11).
[30] *See* proposed FINRA Rule 2242(a)(12).
[31] *See* proposed FINRA Rule 2242(a)(14).
[32] *See* proposed FINRA Rule 2242(a)(15).
[33] *See* proposed FINRA Rule 2242(a)(16).
[34] *See* proposed FINRA Rule 2242(b)(1).
[35] *See* proposed FINRA Rule 2242(b)(2).
[36] *See* proposed FINRA Rule 2242(b)(2)(A) and (B).
[37] *See* proposed FINRA Rule 2242(b)(2)(N).

principal trading personnel, non-sales and trading personnel or the subject company; and (3) If, after submitting sections of the draft debt research report to non-investment banking personnel, non-principal trading personnel, non-sales and trading personnel or the subject company, the research department intends to change the proposed rating or recommendation, it would be required to first provide written justification to, and receive written authorization from, legal or compliance personnel for the change. The member would be required to retain copies of any draft and the final version of such debt research report for three years after publication. [38]

2. Coverage Decisions

With respect to coverage decisions, a member's written policies and procedures would be required under the proposal to restrict or limit input by investment banking, sales and trading and principal trading personnel to ensure that research management independently makes all final decisions regarding the research coverage plan.[39] However, the provision would not preclude personnel from these or any other department from conveying customer interests and coverage needs, so long as final decisions regarding the coverage plan are made by research management.

3. Solicitation and Marketing of Investment Banking Transactions

A member's written policies and procedures also would be required under the proposal to restrict or limit activities by debt research analysts that can reasonably be expected to compromise their objectivity.[40] This would include prohibiting participation in pitches and other solicitations of investment banking services transactions and road shows and other marketing on behalf of issuers related to such transactions. The proposed rule change would adopt Supplementary Material that incorporates an existing FINRA interpretation for the equity research rules that prohibits in pitch materials any information about a member's debt research capacity in a manner that suggests, directly or indirectly, that the member might provide favorable debt research coverage.[41] By way of example, the Supplementary Material explains that FINRA would consider the publication in a pitch book or related materials of an analyst's industry ranking to imply the potential outcome of future research because of the manner in which such rankings are compiled. The Supplementary Material further notes that a member would be permitted to include in the pitch materials the fact of coverage and the name of the debt research analyst, since that information alone does not imply favorable coverage.

The proposed rule change also would prohibit investment banking personnel from directing debt research analysts to engage in sales or marketing efforts related to an investment banking services transaction or any communication with a current or prospective customer about an investment banking services transaction.[42] In addition, the proposed rule change would adopt Supplementary Material to provide that, consistent with this requirement, no debt research analyst may engage in any communication with a current or prospective customer in the presence of investment banking department personnel or company management about an investment banking services transaction.[43]

4. Supervision

A member's written policies and procedures would be required under the proposal to limit the supervision of debt research analysts to persons not engaged in investment banking, sales and trading or principal trading activities.[44] In addition, the member would further be required under the proposal to establish information barriers or other institutional safeguards reasonably designed to ensure that debt research analysts are insulated from the review, pressure or oversight by persons engaged in investment banking services, principal trading or sales and trading activities or others who might be biased in their judgment or supervision.[45]

5. Budget and Compensation

A member's written policies and procedures also would be required under the proposal to limit the determination of a firm's debt research department budget to senior management, excluding senior management engaged in investment banking or principal trading activities, and without regard to specific revenues or results derived from investment banking.[46] However, the proposed rule change would expressly permit all persons to provide input to senior management regarding the demand for and quality of debt research, including product trends and customer interests. It further would allow consideration by senior management of a firm's overall revenues and results in determining the debt research budget and allocation of expenses.

With respect to compensation determinations, a member's written policies and procedures would be required under the proposal to prohibit compensation based on specific investment banking services or trading transactions or contributions to a firm's investment banking or principal trading activities and prohibit investment banking and principal trading personnel from input into the compensation of debt research analysts.[47] Further, the firm's written policies and procedures would be required under the proposal to require that the compensation of a debt research analyst who is primarily responsible for the substance of a research report be reviewed and approved at least annually by a committee that reports to a member's board of directors or, if the member has no board of directors, a senior executive officer of the member.[48] This committee would be required under the proposal to not have representation from investment banking personnel or persons engaged in principal trading activities and would be required to consider certain factors when reviewing a debt research analyst's compensation. Specifically, the proposal would require that the committee consider the debt research analyst's individual performance, including the analyst's productivity and the quality of the debt research analyst's research as well as the overall ratings received from customers and peers (independent of the member's investment banking department and persons engaged in principal trading activities) and other independent ratings services.

Neither investment banking personnel nor persons engaged in principal trading activities would be required under the proposal to give input with respect to the compensation determination for debt research analysts. However, sales and trading personnel would be permitted to give input to debt research management as part of the evaluation process in order to convey customer

[38] *See* proposed FINRA Rule 2242.05 (Submission of Sections of a Draft Research Report for Factual Review).

[39] *See* proposed FINRA Rule 2242(b)(2)(C).

[40] *See* proposed FINRA Rule 2242(b)(2)(L).

[41] *See* proposed FINRA Rule 2242.01 (Efforts to Solicit Investment Banking Business).

[42] *See* proposed FINRA Rule 2242(b)(2)(M).

[43] *See* proposed FINRA Rule 2242.02(a) (Restrictions on Communications with Customers and Internal Personnel).

[44] *See* proposed FINRA Rule 2242(b)(2)(D).

[45] *See* proposed FINRA Rule 2242(b)(2)(H).

[46] *See* proposed FINRA Rule 2242(b)(2)(E).

[47] *See* proposed FINRA Rule 2242(b)(2)(D) and (F).

[48] *See* proposed FINRA Rule 2242(b)(2)(G).

feedback, provided that final compensation determinations are made by research management, subject to review and approval by the compensation committee.[49] The committee, which would not be permitted to have representation from investment banking or persons engaged in principal trading activities, would be required to document the basis for each debt research analyst's compensation, including any input from sales and trading personnel.

6. Personal Trading Restrictions

Under the proposed rule change, a member's written policies and procedures would be required to restrict or limit trading by a ''debt research analyst account'' in securities, derivatives and funds whose performance is materially dependent upon the performance of securities covered by the debt research analyst.[50] The procedures would be required under the proposal to ensure that those accounts, supervisors of debt research analysts, and associated persons with the ability to influence the content of debt research reports do not benefit in their trading from knowledge of the content or timing of debt research reports before the intended recipients of such research have had a reasonable opportunity to act on the information in the report.[51] Furthermore, the procedures would be required under the proposal to generally prohibit a debt research analyst account from purchasing or selling any security or any option or derivative of such security in a manner inconsistent with the debt research analyst's most recently published recommendation, except that the procedures would be permitted to define circumstances of financial hardship (*e.g.,* unanticipated significant change in the personal financial circumstances of the beneficial owner of the research analyst account) in which the firm would permit a debt research analyst account to trade contrary to that recommendation. In determining whether a particular trade is contrary to an existing recommendation, firms would be permitted to take into account the context of a given trade, including the extent of coverage of the subject security. While the proposed rule change does not include a recordkeeping requirement, FINRA stated it expects members to evidence compliance with their policies and procedures and retain any related documentation in accordance with FINRA Rule 4511.

The proposed rule change includes Supplementary Material .10, which would provide that FINRA would not consider a research analyst account to have traded in a manner inconsistent with a research analyst's recommendation where a member has instituted a policy that prohibits any research analyst from holding securities, or options on or derivatives of such securities, of the companies in the research analyst's coverage universe, provided that the member establishes a reasonable plan to liquidate such holdings consistent with the principles in paragraph (b)(2)(J)(i) and such plan is approved by the member's legal or compliance department.[52]

7. Retaliation and Promises of Favorable Research

A member's written policies and procedures would be required to prohibit direct or indirect retaliation or threat of retaliation against debt research analysts by any employee of the firm for publishing research or making a public appearance that may adversely affect the member's current or prospective business interests.[53] The policies and procedures would also be required to prohibit explicit or implicit promises of favorable debt research, specific research content or a specific rating or recommendation as inducement for the receipt of business or compensation.[54]

8. Joint Due Diligence with Investment Banking Personnel

The proposed rule change would establish limitations regarding joint due diligence activities—*i.e.,* due diligence by the debt research analyst in the presence of investment banking department personnel—during a specified time period. Specifically, the proposed rule change states that FINRA would interpret the overarching principle which would, under the proposal, require members to, among other things, establish, maintain, and enforce written policies and procedures that address the interaction between debt research analysts and those outside the research department, including investment banking department personnel, sales and trading personnel, principal trading personnel, subject companies, and customers,[55] to prohibit the performance of joint due diligence prior to the selection of underwriters for the investment banking services transaction.[56]

9. Communications Between Debt Research Analysts and Trading Personnel

The proposed rule change delineates what would be the prohibited and permissible interactions between debt research analysts and sales and trading and principal trading personnel. The proposed rule change would require members to establish, maintain and enforce written policies and procedures reasonably designed to prohibit sales and trading and principal trading personnel from attempting to influence a debt research analyst's opinions or views for the purpose of benefiting the trading position of the firm, a customer or a class of customers.[57] It would further prohibit debt research analysts from identifying or recommending specific potential trading transactions to sales and trading or principal trading personnel that are inconsistent with such debt research analyst's currently published debt research reports or from disclosing the timing of, or material investment conclusions in, a pending debt research report.[58]

The proposed rule change would permit sales and trading and principal trading personnel to communicate customers' interests to a debt research analyst, so long as the debt research analyst does not respond by publishing debt research for the purpose of benefiting the trading position of the firm, a customer or a class of customers.[59] In addition, debt research analysts would be permitted to provide customized analysis, recommendations or trade ideas to sales and trading and principal trading personnel and customers, provided that any such communications are not inconsistent with the analyst's currently published or pending debt research, and that any subsequently published debt research is not for the purpose of benefiting the trading position of the firm, a customer or a class of customers.[60]

The proposed rule change also would permit sales and trading and principal

[49] *See* proposed FINRA Rule 2242(b)(2)(D) and (G).

[50] *See* proposed FINRA Rule 2242(b)(2)(J).

[51] *See* proposed FINRA Rule 2242.07 (Ability to Influence the Content of a Research Report).

[52] *See* proposed FINRA Rule 2242.10.

[53] *See* proposed FINRA Rule 2242(b)(2)(I).

[54] *See* proposed FINRA Rule 2242(b)(2)(K).

[55] *See* proposed FINRA Rule 2242(b)(1)(C).

[56] *See* proposed FINRA Rule 2242.09 (Joint Due Diligence).

[57] *See* proposed FINRA Rule 2242.03(a)(1) (Information Barriers between Research Analysts and Trading Desk Personnel).

[58] *See* proposed FINRA Rule 2242.03(a)(2) (Information Barriers between Research Analysts and Trading Desk Personnel).

[59] *See* proposed FINRA Rule 2242.03(b)(1) (Information Barriers between Research Analysts and Trading Desk Personnel).

[60] *See* proposed FINRA Rule 2242.03(b)(2) (Information Barriers between Research Analysts and Trading Desk Personnel).

trading personnel to seek the views of debt research analysts regarding the creditworthiness of the issuer of a debt security and other information regarding an issuer of a debt security that is reasonably related to the price or performance of the debt security, so long as, with respect to any covered issuer, such information is consistent with the debt research analyst's published debt research report and consistent in nature with the types of communications that a debt research analyst might have with customers. In determining what is consistent with the debt research analyst's published debt research, FINRA stated that a member would be permitted to consider the context, including that the investment objectives or time horizons being discussed differ from those underlying the debt research analyst's published views.[61] Finally, FINRA also stated that debt research analysts would be permitted to seek information from sales and trading and principal trading personnel regarding a particular debt instrument, current prices, spreads, liquidity, and similar market information relevant to the debt research analyst's valuation of a particular debt security.[62]

The proposed rule change clarifies that communications between debt research analysts and sales and trading or principal trading personnel that are not related to sales and trading, principal trading or debt research activities would be permitted to take place without restriction, unless otherwise prohibited.[63]

10. Restrictions on Communications With Customers and Internal Sales Personnel

The proposed rule change would apply standards to communications with customers and internal sales personnel. Any written or oral communication by a debt research analyst with a current or prospective customer or internal personnel related to an investment banking services transaction would be required to be fair, balanced and not misleading, taking into consideration the overall context in which the communication is made.[64]

Consistent with the proposed prohibition on investment banking department personnel directly or indirectly directing a debt research analyst to engage in sales or marketing efforts related to an investment banking services transaction or directing a debt research analyst to engage in any communication with a current or prospective customer about an investment banking services transaction, no debt research analyst would be permitted to engage in any communication with a current or prospective customer in the presence of investment banking department personnel or company management about an investment banking services transaction.

C. Content and Disclosure in Debt Research Reports

The proposed rule change would, in general, adopt the disclosures in the equity research rule for debt research, with modifications to reflect the different characteristics of the debt market. The proposed rule change would require members to establish, maintain and enforce written policies and procedures reasonably designed to ensure that purported facts in their debt research reports are based on reliable information.[65] In addition, the policies and procedures would be required to be reasonably designed to ensure that any recommendation or rating has a reasonable basis and is accompanied by a clear explanation of any valuation method used and a fair presentation of the risks that may impede achievement of the recommendation or rating.[66] While there would be no obligation to employ a rating system under the proposed rule, members that choose to employ a rating system would be required to clearly define in each debt research report the meaning of each rating in the system, including the time horizon and any benchmarks on which a rating is based. In addition, the definition of each rating would be required to be consistent with its plain meaning.[67]

Consistent with the equity rules, irrespective of the rating system a member employs, a member would be required to include in each debt research report limited to the analysis of an issuer of a debt security that includes a rating of the subject company the percentage of all subject companies rated by the member to which the member would assign a ''buy,'' ''hold'' or ''sell'' rating.[68] In addition, a member would be required to disclose in each debt research report the percentage of subject companies within each of the ''buy,'' ''hold,'' and ''sell'' categories for which the member has provided investment banking services within the previous 12 months.[69] All such information would be required to be current as of the end of the most recent calendar quarter or the second most recent calendar quarter if the publication date of the debt research report is less than 15 calendar days after the most recent calendar quarter.[70]

If a debt research report limited to the analysis of an issuer of a debt security contains a rating for the subject company and the member has assigned a rating to such subject company for at least one year, the debt research report would be required to show each date on which a member has assigned a rating to the debt security and the rating assigned on such date. This information would be required for the period that the member has assigned any rating to the debt security or for a three-year period, whichever is shorter.[71] Unlike the equity research rules, the proposed rule change would not require those ratings to be plotted on a price chart because of limits on price transparency, including daily closing price information, with respect to many debt securities.

The proposed rule change would require a member to disclose in any debt research report at the time of publication or distribution of the report:[72]

- If the debt research analyst or a member of the debt research analyst's household has a financial interest in the debt or equity securities of the subject company (including, without limitation, any option, right, warrant, future, long or short position), and the nature of such interest;
- If the debt research analyst has received compensation based upon (among other factors) the member's investment banking, sales and trading or principal trading revenues;
- If the member or any of its affiliates managed or co-managed a public offering of securities for the subject company in the past 12 months, received compensation for investment banking services from the subject company in the past 12 months, or expects to receive or intends to seek compensation for investment banking

[61] *See* proposed FINRA Rule 2242.03(b)(3) (Information Barriers between Research Analysts and Trading Desk Personnel).

[62] *See* proposed FINRA Rule 2242.03(b)(4) (Information Barriers between Research Analysts and Trading Desk Personnel).

[63] *See* proposed FINRA Rule 2242.03(c) (Information Barriers between Research Analysts and Trading Desk Personnel).

[64] *See* proposed FINRA Rule 2242.02(b) (Restrictions on Communications with Customers and Internal Personnel).

[65] *See* proposed FINRA Rule 2242(c)(1)(A).

[66] *See* proposed FINRA Rule 2242(c)(1)(B).

[67] *See* proposed FINRA Rule 2242(c)(2).

[68] *See* proposed FINRA Rule 2242(c)(2)(A).

[69] *See* proposed FINRA Rule 2242(c)(2)(B).

[70] *See* proposed FINRA Rule 2242(c)(2)(C).

[71] *See* proposed FINRA Rule 2242(c)(3).

[72] *See* proposed FINRA Rule 2242(c)(4).

services from the subject company in the next three months;

• If, as of the end of the month immediately preceding the date of publication or distribution of a debt research report (or the end of the second most recent month if the publication date is less than 30 calendar days after the end of the most recent month), the member or its affiliates have received from the subject company any compensation for products or services other than investment banking services in the previous 12 months; [73]

• If the subject company is, or over the 12-month period preceding the date of publication or distribution of the debt research report has been, a client of the member, and if so, the types of services provided to the issuer. Such services, if applicable, shall be identified as either investment banking services, non-investment banking securities-related services or non-securities services;

• If the member trades or may trade as principal in the debt securities (or in related derivatives) that are the subject of the debt research report;

• If the debt research analyst received any compensation from the subject company in the previous 12 months; and

• Any other material conflict of interest of the debt research analyst or member that the debt research analyst or an associated person of the member with the ability to influence the content of a debt research report knows or has reason to know at the time of the publication or distribution of a debt research report.

The proposed rule change would incorporate a proposed amendment to the corresponding provision in the equity research rules that expands the existing ''catch all'' disclosure to require disclosure of material conflicts known not only by the research analyst, but also by any ''associated person of the member with the ability to influence the content of a research report.'' The proposed rule change defines a person with the ''ability to influence the content of a research report'' as an associated person who is required to review the content of the debt research report or has exercised authority to review or change the debt research report prior to publication or distribution. This term would not include legal or compliance personnel who may review a debt research report for compliance purposes but are not authorized to dictate a particular recommendation or rating.[74] The ''reason to know'' standard in the provision would not impose a duty of inquiry on the debt research analyst or others who can influence the content of a debt research report. Rather, it would cover disclosure of those conflicts that should reasonably be discovered by those persons in the ordinary course of discharging their functions.

The proposed rule change would mandate disclosure of firm ownership of debt securities in research reports or a public appearance to the extent those holdings constitute a material conflict of interest.[75]

The proposed rule change would adopt an exception for disclosure that would reveal material non-public information regarding specific potential future investment banking transactions.[76] Similar to the equity research rules, the proposed rule change would require that disclosures be presented on the front page of debt research reports or the front page must refer to the page on which the disclosures are found. Electronic debt research reports, however, would be permitted to provide a hyperlink directly to the required disclosures. All disclosures and references to disclosures required by the proposed rule would need to be clear, comprehensive and prominent.[77]

Like the equity research rule, the proposed rule change would permit a member that distributes a debt research report covering six or more companies (compendium report) to direct the reader in a clear manner to the applicable disclosures. Electronic compendium reports would be required to include a hyperlink to the required disclosures. Paper-based compendium reports would be required to provide either a toll-free number or a postal address to request the required disclosures and also may include a web address of the member where the disclosures can be found.[78]

D. Disclosure of Compensation Received by Affiliates

The proposed rule change would provide that a member would not be required to disclose receipt of non-investment banking services compensation by an affiliate if it has implemented written policies and procedures reasonably designed to prevent the debt research analyst and associated persons of the member with the ability to influence the content of debt research reports from directly or indirectly receiving information from the affiliate as to whether the affiliate received such compensation.[79] In addition, a member would be permitted to satisfy the disclosure requirement with respect to the receipt of investment banking compensation from a foreign sovereign by a non-U.S. affiliate of the member by implementing written policies and procedures reasonably designed to prevent the debt research analyst and associated persons of the member with the ability to influence the content of debt research reports from directly or indirectly receiving information from the non-U.S. affiliate as to whether such non-U.S. affiliate received or expects to receive such compensation from the foreign sovereign. However, a member would be required to disclose receipt of compensation by its affiliates from the subject company (including any foreign sovereign) in the past 12 months when the debt research analyst or an associated person with the ability to influence the content of a debt research report has actual knowledge that an affiliate received such compensation during that time period.

E. Disclosure in Public Appearances

The proposed rule change closely parallels the equity research rules with respect to disclosure in public appearances. Under the proposed rule, a debt research analyst would be required to disclose in public appearances: [80]

• If the debt research analyst or a member of the debt research analyst's household has a financial interest in the debt or equity securities of the subject company (including, without limitation, whether it consists of any option, right, warrant, future, long or short position), and the nature of such interest;

• If, to the extent the debt research analyst knows or has reason to know, the member or any affiliate received any compensation from the subject company in the previous 12 months;

• If the debt research analyst received any compensation from the subject company in the previous 12 months;

• If, to the extent the debt research analyst knows or has reason to know, the subject company currently is, or during the 12-month period preceding the date of publication or distribution of the debt research report, was, a client of the member. In such cases, the debt research analyst also must disclose the

[73] *See also* discussion of proposed FINRA Rule 2242.04 (Disclosure of Compensation Received by Affiliates) below.

[74] *See* proposed FINRA Rule 2242.07.

[75] *See* proposed FINRA Rules 2242(c)(4)(H) and (d)(1)(E).

[76] *See* proposed FINRA Rule 2242(c)(5).

[77] *See* proposed FINRA Rule 2242(c)(6).

[78] *See* proposed FINRA Rule 2242(c)(7).

[79] *See* proposed FINRA Rule 2242.04 (Disclosure of Compensation Received by Affiliates).

[80] *See* proposed FINRA Rule 2242(d)(1).

types of services provided to the subject company, if known by the debt research analyst; or

• Any other material conflict of interest of the debt research analyst or member that the debt research analyst knows or has reason to know at the time of the public appearance.

However, a member or debt research analyst would not be required to make any such disclosure to the extent it would reveal material non-public information regarding specific potential future investment banking transactions.[81] Unlike in debt research reports, the ''catch-all'' disclosure requirement in public appearances would apply only to a conflict of interest of the debt research analyst or member that the analyst knows or has reason to know at the time of the public appearance. FINRA stated it understands that supervisors or legal and compliance personnel, who otherwise might be captured by the definition of an associated person ''with the ability to influence,'' typically do not have the opportunity to review and insist on changes to public appearances, many of which are extemporaneous in nature.

The proposed rule change would require members to maintain records of public appearances by debt research analysts sufficient to demonstrate compliance by those debt research analysts with the applicable disclosure requirements for public appearances. Such records would be required to be maintained for at least three years from the date of the public appearance.[82]

F. Disclosure Required by Other Provisions

With respect to both research reports and public appearances, the proposed rule change would require that, in addition to the disclosures required under the proposed rule, members and debt research analysts comply with all applicable disclosure provisions of FINRA Rule 2210 (Communications with the Public) and the federal securities laws.[83]

G. Distribution of Member Research Reports

The proposed rule change would require firms to establish, maintain and enforce written policies and procedures reasonably designed to ensure that a debt research report is not distributed selectively to internal trading personnel or a particular customer or class of customers in advance of other customers that the member has previously determined are entitled to receive the debt research report.[84] The proposed rule change includes further guidance to explain that firms would be permitted to provide different debt research products and services to different classes of customers, provided the products are not differentiated based on the timing of receipt of potentially market moving information and the firm discloses its research dissemination practices to all customers that receive a research product.[85]

In addition, a member that provides different debt research products and services for certain customers would be required to inform its other customers that its alternative debt research products and services may reach different conclusions or recommendations that could impact the price of the debt security.[86]

H. Distribution of Third-party Debt Research Reports

FINRA proposed to apply the supervisory review and disclosure obligations applicable to the distribution of third-party equity research similarly to third-party retail debt research. Moreover, the proposed rule change would incorporate the current standards for third-party equity research, including the distinction between independent and non-independent third-party research with respect to the review and disclosure requirements. In addition, the proposed rule change would adopt an expanded requirement in the proposed equity research rules that requires members to disclose any other material conflict of interest that can reasonably be expected to have influenced the member's choice of a third-party research provider or the subject company of a third-party research report.

The proposed rule change would prohibit a member from distributing third-party debt research if it knows or has reason to know that such research is not objective or reliable.[87] A member would satisfy the standard based on its actual knowledge and reasonable diligence. However, there would be no duty of inquiry to definitively establish that the third-party research is, in fact, objective and reliable.

In addition, the proposed rule change would require a member to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that any third-party debt research report it distributes contains no untrue statement of material fact and is otherwise not false or misleading.[88] For the purpose of this requirement, a member's obligation to review a third-party debt research report would extend to any untrue statement of material fact or any false or misleading information that should be known from reading the debt research report or is known based on information otherwise possessed by the member.

The proposed rule change would require that a member accompany any third-party debt research report it distributes with, or provide a web address that directs a recipient to, disclosure of any material conflict of interest that can reasonably be expected to have influenced the choice of a third-party debt research report provider or the subject company of a third-party debt research report, including:

• If the member or any of its affiliates managed or co-managed a public offering of securities for the subject company in the past 12 months, received compensation for investment banking services from the subject company in the past 12 months, or expects to receive or intends to seek compensation for investment banking services from the subject company in the next three months;

• If the member trades or may trade as principal in the debt securities (or in related derivatives) that are the subject of the debt research report; and

• Any other material conflict of interest of the debt research analyst or member that the debt research analyst or an associated person of the member with the ability to influence the content of a debt research report knows or has reason to know at the time of the publication or distribution of a debt research report.[89]

The proposed rule change would not require members to review a third-party debt research report prior to distribution if such debt research report is an independent third-party debt research report.[90] For the purposes of the disclosure requirements for third-party research reports, a member would not be considered to have distributed a third-party debt research report where the research is an independent third-party debt research report and made available by a member upon request, through a member-maintained Web site, or to a customer in connection with a solicited order in which the registered representative has informed the

[81] *See* proposed FINRA Rule 2242(d)(2).

[82] *See* proposed FINRA Rule 2242(d)(3).

[83] *See* proposed FINRA Rule 2242(e).

[84] *See* proposed FINRA Rule 2242(f).

[85] *See* proposed FINRA Rule 2242.06 (Distribution of Member Research Products).

[86] *See id.*

[87] *See* proposed FINRA Rule 2242(g)(1).

[88] *See* proposed FINRA Rule 2242(g)(2).

[89] *See* proposed FINRA Rule 2242(g)(3).

[90] *See* proposed FINRA Rule 2242(g)(4).

customer, during the solicitation, of the availability of independent debt research on the solicited debt security and the customer requests such independent debt research.[91]

The proposed rule would require that members ensure that third-party debt research reports are clearly labeled as such and that there is no confusion on the part of the recipient as to the person or entity that prepared the debt research reports.[92]

I. Obligations of Persons Associated With a Member

The proposed rule change would clarify the obligations of each associated person under those provisions of the proposed rule that require a member to restrict or prohibit certain conduct by establishing, maintaining, and enforcing particular policies and procedures. Specifically, the proposed rule change provides that, consistent with FINRA Rule 0140, persons associated with a member would be required to comply with such member's written policies and procedures as established pursuant to the proposed rule. In addition, consistent with Rule 0140, the proposed rule states in Supplementary Material .08 that it would be a violation of proposed Rule 2242 for an associated person to engage in the restricted or prohibited conduct to be addressed through the establishment, maintenance, and enforcement of written policies and procedures required by provisions of FINRA Rule 2242, including applicable supplementary material.

J. Exemption for Members With Limited Investment Banking Activity

Similar to the equity research rule, the proposed rule change would exempt from certain provisions regarding supervision and compensation of debt research analysts those members that over the previous three years, on average per year, have participated in ten or fewer investment banking services transactions as manager or co-manager and generated $5 million or less in gross investment banking revenues from those transactions.[93] Specifically, members that meet those thresholds would be exempt from the requirement to establish, maintain, and enforce policies and procedures that (1) prohibit prepublication review of debt research reports by investment banking personnel or other persons not directly responsible for the preparation, content, or distribution of debt research reports (but not principal trading or sales and trading personnel, unless the member also qualifies for the limited principal trading activity exemption); (2) restrict or limit investment banking personnel from input into coverage decisions; (3) limit supervision of debt research analysts to persons not engaged in investment banking; (4) limit determination of the research department budget to senior management, excluding senior management engaged in investment banking activities; (5) require that compensation of a debt research analyst be approved by a compensation committee that may not have representation from investment banking personnel; and (6) establish information barriers to insulate debt research analysts from the review or oversight by persons engaged in investment banking services or other persons who might be biased in their judgment or supervision.[94] However, the proposed rule would require that members with limited investment banking activity establish information barriers or other institutional safeguards reasonably designed to ensure debt research analysts are insulated from *pressure* by persons engaged in investment banking services activities or other persons, including persons engaged in principal trading or principal sales and trading activities, who might be biased in their judgment or supervision.[95]

While small investment banks may need those who supervise debt research analysts under such circumstances also to be involved in the determination of those analysts' compensation, the proposal would still prohibit these firms from compensating a debt research analyst based upon specific investment banking services transactions or contributions to a member's investment banking services activities. Members that qualify for this exemption would be required to maintain records sufficient to establish eligibility for the exemption and also maintain for at least three years any communication that, but for this exemption, would be subject to all of the requirements of proposed FINRA Rule 2242(b).

K. Exemption for Limited Principal Trading Activity

The proposed rule change includes an exemption from certain provisions regarding supervision and compensation of debt research analysts for members that engage in limited principal trading activity where: (1) In absolute value on an annual basis, the member's trading gains or losses on principal trades in debt securities are $15 million or less over the previous three years, on average per year; and (2) The member employs fewer than 10 debt traders; provided, however, that such members establish information barriers or other institutional safeguards reasonably designed to ensure debt research analysts are insulated from pressure by persons engaged in principal trading or sales and trading activities or other persons who might be biased in their judgment or supervision.[96] Specifically, members that meet those thresholds would be exempt from the requirement to establish, maintain and enforce policies and procedures that: (1) Prohibit prepublication review of debt research reports by principal trading or sales and trading personnel or other persons not directly responsible for the preparation, content or distribution of debt research reports (but not investment banking personnel, unless the firm also qualifies for the limited investment banking activity exemption); (2) Restrict or limit principal trading or sales and trading personnel from input into coverage decisions; (3) Limit supervision of debt research analysts to persons not engaged in sales and trading or principal trading activities, including input into the compensation of debt research analysts; (4) Limit determination of the research department budget to senior management, excluding senior management engaged in principal trading activities; (5) Require that compensation of a debt research analyst be approved by a compensation committee that may not have representation from principal trading personnel; and (6) Establish information barriers to insulate debt research analysts from the review or oversight by persons engaged in principal trading or sales and trading activities or other persons who might be biased in their judgment or supervision.[97]

As with the limited investment banking activity exemption, members

[91] *See* proposed FINRA Rule 2242(g)(5).

[92] *See* proposed FINRA Rule 2242(g)(6). This requirement would codify guidance in *Notice to Members* 04–18 (March 2004) related to equity research reports.

[93] *See* proposed FINRA Rule 2242(h).

[94] *See* proposed FINRA Rule 2242(b)(2)(A)(i), (b)(2)(B), (b)(2)(C) (with respect to investment banking), (b)(2)(D)(i), (b)(2)(E) (with respect to investment banking), (b)(2)(G) and (b)(2)(H)(i) and (iii).

[95] For the purposes of proposed FINRA Rule 2242(h), FINRA clarified that the term ''investment banking services transactions'' includes the underwriting of both corporate debt and equity securities but not municipal securities.

[96] *See* proposed FINRA Rule 2242(i).

[97] *See* proposed FINRA Rule 2242(b)(2)(A)(ii) and (iii), (b)(2)(B), (b)(2)(C) (with respect to sales and trading and principal trading), (b)(2)(D)(ii) and (iii), (b)(2)(E) (with respect to principal trading), (b)(2)(G) and (b)(2)(H)(ii) and (iii).

still would be required to establish information barriers or other institutional safeguards reasonably designed to ensure debt research analysts are insulated from *pressure* by persons engaged in principal trading or sales and trading activities or other persons who might be biased in their judgment or supervision. Members that qualify for this exemption must maintain records sufficient to establish eligibility for the exemption and also maintain for at least three years any communication that, but for this exemption, would be subject to all of the requirements of proposed FINRA Rule 2242(b).

L. Exemption for Debt Research Reports Provided to Institutional Investors

Given the debt market and the needs of its participants, the proposed rule change would exempt debt research distributed solely to eligible institutional investors (''institutional debt research'') from most of the provisions regarding supervision, coverage determinations, budget and compensation determinations, and all of the disclosure requirements applicable to debt research reports distributed to retail investors (''retail debt research'').[98] Under the proposed rule change, the term ''retail investor'' means any person other than an institutional investor.[99]

The proposed rule distinguishes between larger and smaller institutions in the manner in which their opt-in decision is obtained. Larger institutions would be permitted to receive institutional debt research based on negative consent, while smaller institutions would be required to affirmatively consent in writing to receive that research.

Specifically, the proposed rule would allow firms to distribute institutional debt research by negative consent to a person who meets the definition of a qualified institutional buyer (''QIB'') [100] and where, pursuant to FINRA Rule 2111(b): (1) The member or associated person has a reasonable basis to believe that the QIB is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies involving a debt security or debt securities; and (2) The QIB has affirmatively indicated that it is exercising independent judgment in evaluating the member's recommendations pursuant to FINRA Rule 2111 and such affirmation is broad enough to encompass transactions in debt securities. The proposed rule change would require written disclosure to the QIB that the member may provide debt research reports that are intended for institutional investors and are not subject to all of the independence and disclosure standards applicable to debt research reports prepared for retail investors. If the QIB does not contact the member and request to receive only retail debt research reports, the member would be permitted to reasonably conclude that the QIB has consented to receiving institutional debt research reports.[101] FINRA stated that it would interpret this standard to allow an order placer, *e.g.,* a registered investment adviser, for a QIB that satisfies the FINRA Rule 2111 institutional suitability requirements with respect to debt transactions to agree to receive institutional debt research on behalf of the QIB by negative consent should the rule be approved.

Institutional accounts that meet the definition of FINRA Rule 4512(c) but do not satisfy the higher tier requirements described above would still be permitted to affirmatively elect in writing to receive institutional debt research. Specifically, a person that meets the definition of ''institutional account'' in FINRA Rule 4512(c) would be permitted to receive institutional debt research provided that such person, prior to receipt of a debt research report, has affirmatively notified the member in writing that it wishes to receive institutional debt research and forego treatment as a retail investor for the purposes of the proposed rule. Members would not be permitted to allow retail investors to choose to receive institutional debt research.[102]

FINRA stated that, to avoid a disruption in the receipt of institutional debt research, the proposed rule change would allow firms to send institutional debt research to any FINRA Rule 4512(c) account, except a natural person, without affirmative or negative consent for a period of up to one year after Commission approval of the proposed rule change while they obtain the necessary consents. Natural persons that qualify as an institutional account under FINRA Rule 4512(c) would be required to provide affirmative consent to receive institutional debt research during this transition period and thereafter.[103]

The proposed exemption would permit members that distribute institutional debt research to institutional investors to do so without meeting the proposed requirements to have written policies and procedures for this research with respect to: (1) Restricting or prohibiting prepublication review of institutional debt research by principal trading and sales and trading personnel or others outside the research department, other than investment banking personnel; (2) Input by investment banking, principal trading and sales and trading into coverage decisions; (3) Limiting supervision of debt research analysts to persons not engaged in investment banking, principal trading or sales and trading activities; (4) Limiting determination of the debt research department's budget to senior management not engaged in investment banking or principal trading activities and without regard to specific revenues derived from investment banking; (5) Determination of debt research analyst compensation; (6) Restricting or limiting debt research analyst account trading; and (7) Information barriers or other institutional safeguards reasonably designed to ensure debt research analysts are insulated from review or oversight by investment banking, sales and trading or principal trading personnel, among others (but members still must have written policies and procedures to guard against those persons pressuring analysts). The exemption further would apply to all disclosure requirements, including content and disclosure requirements for third-party research.

Notwithstanding the proposed exemption, some provisions of the proposed rule still would apply to institutional debt research, including the prohibition on prepublication review of debt research reports by investment banking personnel and the restrictions on such review by subject companies. While prepublication review by principal trading and sales and trading personnel would not be prohibited pursuant to the exemption, other provisions of the rule would continue to require management of those conflicts, including the requirement to establish information barriers reasonably designed to insulate debt research analysts from pressure by those persons. Furthermore, the requirements in Supplementary

[98] *See* proposed FINRA Rule 2242(j)(1).

[99] *See* proposed FINRA Rule 2242(a)(13).

[100] *See* proposed FINRA Rule 2242(a)(12) under which a QIB has the same meaning as under Rule 144A of the Securities Act.

[101] *See* proposed FINRA Rule 2242(j)(1)(A)(i) and (ii).

[102] *See* proposed FINRA Rule 2242(j)(1)(B).

[103] *See* proposed FINRA Rule 2242.11 (Distribution of Institutional Debt Research During Transition Period).

Material .05 related to submission of sections of a draft debt research report for factual review would apply to any permitted prepublication review by persons not directly responsible for the preparation, content or distribution of debt research reports. In addition, members would be required to prohibit debt research analysts from participating in the solicitation of investment banking services transactions, road shows, and other marketing on behalf of issuers and further prohibit investment banking personnel from directly or indirectly directing a debt research analyst to engage in sales and marketing efforts related to an investment banking deal or to communicate with a current or prospective customer with respect to such transactions. The provisions regarding retaliation against debt research analysts and promises of favorable debt research also would still apply with respect to research distributed to eligible institutional investors.[104]

While the proposed rule change would not require institutional debt research to carry the specific disclosures applicable to retail debt research, it would require that such research carry general disclosures prominently on the first page warning that: (1) The report is intended only for institutional investors and does not carry all of the independence and disclosure standards of retail debt research reports; (2) If applicable, that the views in the report may differ from the views offered in retail debt research reports; and (3) If applicable, that the report may not be independent of the firm's proprietary interests and that the firm trades the securities covered in the report for its own account and on a discretionary basis on behalf of certain customers, and such trading interests may be contrary to the recommendation in the report.[105] FINRA stated that the second and third disclosures described above would be required only if the member produces both retail and institutional debt research reports that sometimes differ in their views or if the member maintains a proprietary trading desk or trades on a discretionary basis on behalf of some customers and those interests sometimes are contrary to recommendations in institutional debt research reports.

The proposed rule change would require members to establish, maintain and enforce written policies and procedures reasonably designed to ensure that institutional debt research is made available only to eligible institutional investors.[106] A member would not be permitted to rely on the proposed exemption with respect to a debt research report that the member has reason to believe will be redistributed to a retail investor. The proposed rule change also states that the proposed exemption would not relieve a member of its obligations to comply with the antifraud provisions of the federal securities laws and FINRA rules.[107]

M. General Exemptive Authority

The proposed rule change would provide FINRA, pursuant to the FINRA Rule 9600 Series, with authority to conditionally or unconditionally grant, in exceptional and unusual circumstances, an exemption from any requirement of the proposed rule for good cause shown, after taking into account all relevant factors and provided that such exemption is consistent with the purposes of the rule, the protection of investors, and the public interest.[108]

III. Summary of Comment Letters, Discussion, and Commission Findings

In response to the proposal as originally proposed by FINRA, the Commission received five comments on the proposal.[109] All of the relevant commenters expressed general support for the proposal.[110] The specifics of these comments were summarized when the Commission instituted proceedings and again when the Commission noticed Amendment No. 1.[111] FINRA filed Amendment No. 1 as a response to these earlier comments as discussed when the amendment was noticed.[112] In the time since Amendment No. 1 was filed the Commission has received four comment letters on the proposal.[113] FINRA submitted a letter in response to these comments.[114]

All five of the commenters to the original proposal,[115] and all three of the relevant commenters to the proposal in connection with instituting proceedings or with regards to Amendment No. 1,[116] expressed general support for the proposal. The Commission notes this support.

A. Comments and Discussion Regarding the Principles-Based Approach of the Proposed Rule Change

The rule proposal as originally proposed would have adopted a policies and procedures approach to identification and management of research-related conflicts of interest and require those policies and procedures to, at a minimum, prohibit or restrict particular conduct. Commenters to the original proposal expressed several concerns with the approach.

Two of these commenters asserted that the mix of a principles-based approach with prescriptive requirements was confusing in places and posed operational challenges. In particular, the commenters recommended eliminating the minimum standards for the policies and procedures.[117] One of those commenters had previously expressed support for the proposed principles-based approach with minimum requirements,[118] but asserted that the proposed rule text requiring procedures to ''at a minimum, be reasonably designed to prohibit'' specified conduct is superfluous or confusing. Another commenter to the original proposal favored utilizing a proscriptive approach similar to the current equity rules and also requiring that firms maintain policies and procedures designed to ensure compliance.[119] Another commenter to the original proposal supported the types of communications between debt research analysts and other persons that may be permitted by a firm's policies and procedures.[120] One commenter to the original proposal questioned the necessity of the ''preamble'' requiring policies and procedures that ''restrict or limit activities by research analysts that can reasonably be expected to compromise their objectivity'' that precedes specific prohibited activities related to investment banking transactions.[121] Finally, some

[104] *See* proposed FINRA Rule 2242(j)(2).

[105] *See* proposed FINRA Rule 2242(j)(3).

[106] *See* proposed FINRA Rule 2242(j)(4).

[107] *See* proposed FINRA Rule 2242(j)(5).

[108] *See* proposed FINRA Rule 2242(k).

[109] *See* note 4, *supra.*

[110] SIFMA, WilmerHale Debt One, PIABA Debt, NASAA Debt One and CFA Institute One.

[111] Exchange Act Release No. 74340 (Feb. 20, 2015); 80 FR 10538 (Feb. 26, 2015) and Amendment Notice.

[112] *Id.*

[113] WilmerHale Debt Two, CFA Institute Two, Anonymous, and NASAA Debt Two.

[114] FINRA Response.

[115] SIFMA, WilmerHale Debt One, PIABA Debt, NASAA Debt One, and CFA Institute One.

[116] WilmerHale Debt Two, CFA Institute Two, and NASAA Debt Two. As noted above the comment from Anonymous did not seem relevant to the proposed rule change as it seemed to be asking about accounting issues, which were not raised by the proposal. *See* note 14, *supra.*

[117] SIFMA and WilmerHale Debt One.

[118] Letter from Amal Aly, Managing Director and Associate General Counsel, SIFMA, to Marcia E. Asquith, Corporate Secretary, FINRA, dated November 14, 2008 regarding *Regulatory Notice* 08–55 (Research Analysts and Research Reports).

[119] NASAA Debt One.

[120] CFA Institute One.

[121] WilmerHale Debt One.

commenters to the original proposal suggested FINRA eliminate language in the supplementary material that provides that the failure of an associated person to comply with the firm's policies and procedures constitutes a violation of the proposed rule itself.[122] These commenters argued that because members may establish policies and procedures that go beyond the requirements set forth in the rule, the provision may have the unintended consequence of discouraging firms from creating standards in their policies and procedures that extend beyond the rule. One of those commenters suggested that the remaining language in the supplementary material adequately holds individuals responsible for engaging in restricted or prohibited conduct covered by the proposals.[123]

FINRA, in response, stated it believes the framework will maintain the same level of investor protection in the current equity rules (which also would largely apply to retail debt research) while providing both some flexibility for firms to align their compliance systems with their business model and philosophy and imposing additional obligations to proactively identify and manage emerging conflicts. According to FINRA the proposal, even under a policies and procedures approach, ''would effectively maintain, with some modifications, the key proscriptions in the current rules'' [124] (*e.g.,* prohibitions on prepublication review, supervision of research analysts by investment banking and participation in pitches and road shows). FINRA disagreed that the ''preamble'' to some of those prohibitions is unnecessary. As with the more general overarching principles-based requirement to identify and manage conflicts of interest, the introductory principle that requires written policies and procedures to restrict or limit activities by research analysts that can reasonably be expected to compromise their objectivity recognizes that FINRA cannot identify every conflict related to research at every firm and therefore requires proactive monitoring and management of those conflicts. FINRA did not believe this ''preamble'' language is redundant with the broader overarching principle because it applies more specifically to the activities of research analysts and, unlike the broader principle, would preclude the use of disclosure as a means of conflict management for those activities.

In light of the overarching principle that requires firms to establish, maintain, and enforce written policies and procedures reasonably designed to identify and effectively manage research-related conflicts, FINRA clarified that the ''at a minimum'' language was meant to convey that additional conflicts management policies and procedures may be needed to address emerging conflicts that may arise as the result of business changes, such as new research products, affiliations or distribution methods at a particular firm. As discussed in the Notice, FINRA stated that it intends for firms to proactively identify and manage those conflicts with appropriately designed policies and procedures. FINRA clarified that their inclusion of the ''at a minimum'' language was not, in their opinion, intended to suggest that firms' written policies and procedures must go beyond the specified prohibitions and restrictions in the proposal where no new conflicts have been identified. However, FINRA stated it believes the overarching requirement for policies and procedures reasonably designed to identify and effectively manage research-related conflicts suffices to achieve the intended regulatory objective, and therefore to eliminate any confusion, FINRA proposed to amend the proposals to delete the ''at a minimum'' language in Amendment No. 1. One of the commenters that raised this issue noted their approval of this change in their second letter.[125]

FINRA stated that it appreciates the commenters' concerns with respect to language in the supplementary material that would make a violation of a firm's policies a violation of the underlying rule. They further stated that the supplementary material was intended to hold individuals responsible for engaging in the conduct that the policies and procedures effectively restrict or prohibit. FINRA agreed that purpose is achieved with the language in the supplementary material that states that, consistent with FINRA Rule 0140, ''it shall be a violation of [the Rule] for an associated person to engage in the restricted or prohibited conduct to be addressed through the establishment, maintenance and enforcement of policies and procedures required by [the Rule] or related Supplementary Material.'' Therefore, FINRA proposed, in Amendment No. 1, to amend the proposals to delete the language stating that a violation of a firm's policies and procedures shall constitute a violation of the rule itself. One of the commenters that raised this issue noted their approval of this change in their second letter.[126]

Another of the original commenters, in a second letter, repeated their concerns about utilizing a principles-based method in a rule in this area, noting that a proscriptive approach is known to be generally effective at addressing the types of conflicts of interest that the proposal is designed to address and repeated violations by industry of the current proscriptive equity research rule.[127] FINRA disagreed with the commenter noting that the proposed rule change would establish for debt research reports, ''with a few modifications,'' the key requirements of the current equity rules as mandated policies and procedures members must establish.[128]

B. Comments and Discussion Regarding the Definitions and Terms Used in the Proposed Rule Change

One commenter to the original proposal requested that the proposal define the term ''sales and trading personnel'' as ''persons who are primarily responsible for performing sales and trading activities, or exercising direct supervisory authority over such persons.'' [129] The commenter's proposed definition was intended to clarify that the proposed restrictions on sales and trading personnel activities should not extend to senior management who do not directly supervise those activities but have a reporting line from such personnel or persons who occasionally function in a sales and trading capacity. FINRA stated that it intends for the sales and trading personnel conflict management provisions to apply to individuals who perform sales and trading functions, irrespective of their job title or the frequency of engaging in the activities. As such, FINRA stated it did not intend for the rule to capture as sales and trading personnel senior management, such as the chief executive officer, who do not engage in or supervise day-to-day sales and trading activities. However, FINRA stated it believes the applicable provisions should apply to individuals who may occasionally perform or directly supervise sales and trading activities. Otherwise, FINRA believes, investors could be put at risk with respect to the research or transactions involved when those individuals are

[122] SIFMA and WilmerHale Debt One.

[123] WilmerHale Debt One.

[124] Presumably FINRA means the current equity research rules that would be carried over to debt research reports under the proposal.

[125] WilmerHale Debt Two.

[126] WilmerHale Debt Two.

[127] NASAA Debt Two.

[128] FINRA Response.

[129] WilmerHale Debt One.

functioning in those capacities because the conflict management procedures and proscriptions and required disclosures would not apply. Therefore, FINRA proposed to amend the rule as part of Amendment No. 1 to define sales and trading personnel to include ''persons in any department or division, whether or not identified as such, who perform any sales or trading service on behalf of a member.'' FINRA noted that this proposed definition is more consistent with the definition of ''investment banking department'' in the proposed rule change.

One commenter to the original proposal asked FINRA to include an exclusion from the definition of ''debt research report'' for private placement memoranda and similar offering-related documents prepared in connection with investment banking services transactions.[130] The commenter noted that such offering-related documents typically are prepared by investment banking personnel or non-research personnel on behalf of investment banking personnel. The commenter asserted that absent an express exception, the proposals could turn investment banking personnel into research analysts and make the rule unworkable. The commenter noted that NASD Rule 2711(a) excludes communications that constitute statutory prospectuses that are filed as part of a registration statement and contended that the basis for that exception should apply equally to private placement memoranda and similar offering-related documents.

As FINRA had noted with respect to the definition of ''research report'' in the equity research filing, they also noted that a ''debt research report'' is generally understood not to include such offering-related documents prepared in connection with investment banking services transactions. In the course of administering the filing review programs under FINRA Rules 2210 (Communications with the Public), 5110 (Corporate Financing Rule), 5122 (Member Private Offerings) and 5123 (Private Placements of Securities), FINRA stated it had not received any inquiries or addressed any issues that indicate there is confusion regarding the scope of the research analyst rules as applied to offering-related documents prepared in connection with investment banking activities. Regardless, to provide firms with greater clarity as to the status of such offering-related documents under the proposals, FINRA proposed to amend the proposed rule as part of Amendment No. 1 to exclude private placement memoranda and similar offering-related documents prepared in connection with investment banking services transactions other than those that purport to be research from the definition of ''debt research report.'' In their second comment letter, the commenter expressed support for this change.[131]

One commenter to the original proposal asked FINRA to refrain from using the concept of ''reliable'' research in the proposal as it may inappropriately connote accuracy in the context of a research analyst's opinions.[132] FINRA stated it believes that the term ''reliable'' is commonly understood and notes that the term is used in certain research-related provisions in the Sarbanes–Oxley Act of 2002 (''Sarbanes-Oxley'') without definition. FINRA further stated it does not believe the term connotes accuracy of opinions.

One commenter to the original proposal asked FINRA to eliminate as redundant the term ''independently'' from the provisions permitting non-research personnel to have input into research coverage, so long as research management ''independently makes all final decisions regarding the research coverage plan.'' [133] The commenter asserted that inclusion of ''independently'' is confusing since the proposal would permit input from non-research personnel into coverage decisions. FINRA stated it had included ''independently'' to make clear that research management alone is vested with making final coverage decisions. Thus, for example, a firm could not have a committee that includes a majority of research management personnel but also other individuals make final coverage decisions by a vote. As such, FINRA declined to eliminate the term as suggested.

One commenter to the original proposal requested that the proposal define the terms ''principal trading activities,'' ''principal trading personnel,'' and ''persons engaged in principal trading activities'' to exclude traders who are primarily involved in customer accommodation or customer facilitation trading, such as market makers that trade on a principal basis.[134] The commenter stated that the exclusion is necessary to allow those traders to provide feedback from clients for the purposes of evaluating debt research analysts for compensation determination. More directly to that point, the same commenter and an additional commenter to the original proposal asserted that the proposal should not prohibit those engaged in principal trading activities from providing customer feedback as part of the evaluation and compensation process for a debt research analyst.[135] They contended that the fixed income markets operate primarily on a principal basis and prohibiting such input would have a broad impact on research management's ability to appropriately evaluate and compensate debt research analysts.

The proposal would allow sales and trading personnel, but not personnel engaged in principal trading activities, to provide input to debt research management into the evaluation of debt research analysts. As discussed in detail in the Notice in response to the similar comment raised to earlier iterations of the debt proposal,[136] given the importance of principal trading operations to the revenues of many firms, FINRA stated it believes there is increased risk that a principal trader could improperly pressure or influence debt research if he or she has a say concerning analyst compensation or can selectively relay customer feedback. FINRA also stated it believes the risk to retail investors—the compensation evaluation restrictions would not apply to institutional debt research—outweighs the benefit of an additional data point for research management to assess the quality of research produced by those that they oversee. FINRA also noted that the proposal would allow sales and trading personnel to provide customer feedback. For these reasons, FINRA declined to define the terms as the commenter suggested. One of the commenters, in their second letter, expressed disappointment in this decision, but noted their acceptance that FINRA has already considered the issue a number of times and did not reiterate the comment.[137]

Another commenter to the original proposal asked for clarification of the term ''principal trading'' because it believes the term ''sales and trading'' already encompasses all agency, principal and proprietary trading activities.[138] FINRA clarified in response to this comment that the debt proposal imposes greater restrictions on interaction between debt research analysts and principal trading personnel than between debt research analysts and sales and trading personnel because the

[130] WilmerHale Debt One.

[131] WilmerHale Debt Two.

[132] SIFMA.

[133] WilmerHale Debt One.

[134] *Id.*

[135] SIFMA and WilmerHale Debt One.

[136] 79 FR 69905, 69924.

[137] WilmerHale Debt Two.

[138] SIFMA.

magnitude of the conflict is greater with respect to the former. According to FINRA, this structure evolved based on extensive consultation and feedback from the industry. Based on those communications, FINRA stated it understands and intends for the term ''sales and trading'' to exclude principal and proprietary trading activities. FINRA further stated it will consider providing guidance where it is unclear whether a particular job function or activity falls within ''sales and trading'' or ''principal trading'' activities.

One commenter to the original proposal suggested that FINRA revise the definition of ''subject company'' to specify that the term means the ''*issuer* (rather than the ''company'') whose debt securities are the subject of a debt research report or a public appearance.'' [139] The commenter noted that, among other things, the proposal would cover debt issued by persons other than corporate entities, such as foreign sovereigns or special purpose vehicles. FINRA agreed that the change is appropriate and proposed to amend the definition accordingly in Amendment No. 1.

C. Comments and Discussion Regarding Information Barriers

The proposed rule would require written policies and procedures to ''establish information barriers or other institutional safeguards reasonably designed to ensure that research analysts are insulated from review, pressure or oversight by persons engaged in investment banking services activities or other persons, including sales and trading department personnel, who might be biased in their judgment or supervision.'' Some commenters to the original proposal suggested that ''review'' was unnecessary in this provision because the review of debt research analysts was addressed sufficiently in other parts of the proposed rule.[140] One such commenter further suggested that the terms ''review'' and ''oversight'' are redundant.[141] FINRA stated it does not agree that the terms ''review'' and ''oversight'' are coextensive, as the former may connote informal evaluation, while the latter may signify more formal supervision or authority. FINRA noted that while other provisions of the proposed rule change may address related conduct—for example, the provision that prohibits investment banking personnel, principal trading personnel and sales and trading personnel from supervision or control of debt research analysts—this provision extends to ''other persons'' who may be biased in their judgment or supervision. Finally, FINRA stated it included the ''review, pressure or oversight'' language to mirror the requirements for equity rules in Sarbanes-Oxley and therefore promote consistency. For these reasons, FINRA declined to revise the proposed rule change.

One commenter to the original proposal asked FINRA to clarify that the information barriers or other institutional safeguards required by the proposed rule are not intended to prohibit or limit activities that would otherwise be permitted under other provisions of the rule.[142] In the Amendment Notice, FINRA stated that was their intent.

This commenter stated in their comment in response to Amendment No. 1 that they interpreted this to mean that the proposal would permit members to allow persons engaged in sales and trading activities to provide informal and formal feedback on research analysts as one factor to be considered by research management for the purposes of the evaluation of the analyst.[143] FINRA stated that, in general, it agreed with the commenter's interpretation.[144]

The commenter also asserted that the terms ''bias'' and ''pressure'' are broad and ambiguous on their face and requested that FINRA clarify that for purposes of the information barriers requirement that they are intended to address persons who may try to improperly influence research.[145] As an example, the commenter asked whether a bias would be present if an analyst was pressured to change the format of a research report to comply with the research department's standard procedures or the firm's technology specifications. FINRA stated it believes the terms ''pressure'' and ''bias'' are commonly understood, particularly in the context of rules intended to promote analyst independence and objectivity. FINRA further noted that the terms appear in certain research-related provisions of Sarbanes–Oxley without definition. With respect to the commenter's example, FINRA stated it does not believe a bias would be present simply because someone insists that a research analyst comply with formatting or technology specifications that do not otherwise implicate the rules.

One commenter to the original proposal asked FINRA to modify the information barriers or other institutional safeguards requirement to conform the provision to FINRA's ''reasonably designed'' standard for related policies and procedures.[146] FINRA stated it believed the change would be consistent with the standard for policies and procedures elsewhere in the proposal, and therefore proposed to amend the provision as requested in Amendment No. 1. The commenter noted with support this change in their second letter.[147]

One commenter to the original proposal opposed as overbroad the proposed expansion of the current ''catch-all'' disclosure requirement to include ''any other material conflict of interest of the research analyst or member that a research analyst *or an associated person of the member with the ability to influence* the content of a research report knows or has reason to know'' (emphasis added) at the time of publication or distribution of research report.[148] The commenter expressed concern about the emphasized language.

FINRA stated it proposed the change to capture material conflicts of interest known by persons other than the research analyst (*e.g.,* a supervisor or the head of research) who are in a position to improperly influence a debt research report. FINRA defined ''ability to influence the content of a debt research report'' in the proposed rule's supplementary material as ''an associated person who, in the ordinary course of that person's duties, has the authority to review the research report and change that research report prior to publication or distribution.'' The commenter stated that the proposed change could capture individuals (especially legal and compliance personnel) who possess confidential information regarding potential future investment banking transactions and thus mandate disclosure of this confidential information. Further, it was possible that this information would not have been excepted from disclosure by a proposed exception in the original proposal that would have excluded disclosure where it would ''reveal material non-public information regarding specific potential future investment banking transactions of the subject company.'' This is because, according to the commenter, legal and compliance may be aware of material conflicts of interest relating to the subject company that involve material

[139] WilmerHale Debt One.
[140] SIFMA and WilmerHale Debt One.
[141] WilmerHale Debt One.
[142] WilmerHale Debt One.
[143] WilmerHale Debt Two.
[144] FINRA Response.
[145] WilmerHale Debt One.
[146] WilmerHale Debt One.
[147] WilmerHale Debt Two.
[148] WilmerHale Debt One.

non-public information regarding specific future investment banking transactions of a *competitor* of the subject company. The commenter also expressed concern that the provision would slow down dissemination of research to canvass all research supervisors and management for conflicts. The commenter suggested that the change was unnecessary given other objectivity safeguards in the proposals that would guard against improper influence.

FINRA stated it continues to believe that the catch-all provision must include persons with the ability to influence the content of a debt research report to avoid creating a gap where a supervisor or other person with the authority to change the content of a research report knows of a material conflict. However, FINRA clarified that it intended for the provision to capture only those individuals who are required to review the content of a particular research report or have exercised their authority to review or change the research report prior to publication or distribution. In addition, FINRA stated it did not intend to capture legal or compliance personnel who may review a research report for compliance purposes but are not authorized to dictate a particular recommendation or rating. FINRA proposed to amend the supplementary material in the proposals consistent with this clarification in Amendment No. 1. In addition, FINRA proposed to modify in Amendment No. 1 the exception in proposed Rules 2242(c)(5) and (d)(2) (applying to public appearances) so as to not require disclosure that would otherwise reveal material non-public information regarding specific potential future investment banking transactions, whether or not the transaction involves the subject company.

This commenter in their comment in response to Amendment No. 1, while expressing their support for these changes, asked FINRA to make a modification of the parties who trigger disclosure of any other material conflict of interest. Specifically, the commenter asked FINRA to limit this disclosure to only be required when someone has authority to dictate a particular recommendation, rating, or price target.[149] The commenter was seeking to extend this authority requirement to other parities that can trigger the disclosure, specifically persons who review the report and persons who have exercised authority to review or change the report generally. FINRA declined to make further changes, noting that the change in Amendment No. 1 ''was meant to limit application of the provision where there is a discrete review by [legal or compliance personnel] outside of the research department who do not have primary content review responsibilities'' and that ''those individuals that a firm requires to review research reports (*e.g.,* a Supervisory Analyst) or who exercise their authority to change a research report (*e.g.,* a Director of Research) by definition have the ability to influence the content of a research report.'' [150]

One commenter to the original proposal requested confirmation that members may rely on hyperlinked disclosures for research reports that are delivered electronically, even if these reports are subsequently printed out by customers.[151] As long as a research report delivered electronically contains a hyperlink directly to the required disclosures, FINRA stated that the standard will be satisfied.

D. Comments and Discussion Regarding Research Products With Differing Recommendations

The proposed rule change would require firms to establish, maintain and enforce written policies and procedures reasonably designed to ensure that a research report is not distributed selectively to internal trading personnel or a particular customer or class of customers in advance of other customers that the firm has previously determined are entitled to receive the research report. The proposals also include supplementary material that explains that firms may provide different research products to different classes of customers—*e.g.,* long term fundamental research to all customers and short-term trading research to certain institutional customers—provided the products are not differentiated based on the timing of receipt of potentially market moving information and the firm discloses, if applicable, that one product may contain a different recommendation or rating from another product.

One commenter to the original proposal supported the provisions as proposed with general disclosure,[152] while another contended that FINRA should require members to disclose when its research products and services do, in fact, contain a recommendation contrary to the research product or service received by other customers.[153] The commenter favoring general disclosure asserted that disclosure of specific instances of contrary recommendations would impose significant burdens unjustified by the investor protection benefits. The commenter stated that a specific disclosure requirement would require close tracking and analysis of every research product or service to determine if a contrary recommendation exists. The commenter further stated that the difficulty of complying with such a requirement would be exacerbated in large firms by the number of research reports published and research analysts employed and the differing audiences for research products and services.[154] The commenter asserted that some firms may publish tens of thousands of research reports each year and employ hundreds of analysts across various disciplines and that a given research analyst or supervisor could not reasonably be expected to know of all other research products and services that may contain differing views.

The opposing commenter stated that they believed that permitting contrary opinions while only disclosing the possibility of this contrary research to investors was insufficient to adequately protect investors because the use of ''may'' in a disclosure is not the same as disclosing that there actually are opposing opinions. Further, they questioned whether such disclosure was consistent with the Act in that it may contrary to Rule 10b–5 by permitting the omission of a material fact in the research report. They did not believe that the disclosure of actual opposing views would be burdensome on members as they should be aware of contrasting opinions. As a result, FINRA should require specific disclosures.[155]

Another commenter to the original proposal expressed concern that the proposal raises issues about the parity of information received by retail and institutional investors, and whether research provided to institutional investors could contain views that differ from those in research to retail investors.[156]

The supplementary material states that products may lead to different recommendations or ratings, provided that each is consistent with the member's ratings system for each respective product. In other words, according to FINRA, all differing recommendations or ratings must be reconcilable such that they are not truly at odds with one another. As such, the proposed rule change would not, in

[149] WilmerHale Debt Two.

[150] FINRA Response.

[151] WilmerHale Debt One.

[152] WilmerHale Debt One.

[153] PIABA Debt.

[154] WilmerHale Debt One.

[155] PIABA Debt.

[156] CFA Institute One.

FINRA's view, allow research provided to an institutional investor to contain views inconsistent with those offered in retail debt research.[157] FINRA provided the following example from the filing regarding equity research: A firm might define a ''buy'' rating in its long-term research product to mean that a stock will outperform the S&P 500 over the next year, while a ''sell'' rating in its short-term trading product might mean the stock will underperform its sector index over the next month. In this case, FINRA stated that the firm could, under the proposal, maintain a ''buy'' in the long-term research and a ''sell'' in its trading research at the same time if the firm believed the stock would temporarily drop near term based on failing to meet expectations in an earnings report but still outperform the S&P over the next year. One commenter, in their second letter, stated that this clarification addressed their concerns that investor protections were being impacted.[158]

Since the proposed rule change would not allow inconsistent recommendations that could mislead one or more investors, FINRA stated that it believes general disclosure of alternative products with different objectives and recommendations is appropriate relative to its investor protection benefits. The commenter who supported this approach expressed support for FINRA's decision in their second letter.[159]

E. Comments and Discussion Regarding Structural and Procedural Safeguards

One commenter to the original proposal asked that FINRA clarify that members that have developed policies and procedures consistent with FINRA Rule 5280 (Trading Ahead of Research Reports) would also be in compliance with the debt proposal's expectation of structural separation between investment banking and debt research, and between sales and trading and principal trading and debt research.[160] FINRA indicated in the proposed rule change that while the proposed rule would not require physical separation, FINRA would expect such physical separation except in extraordinary circumstances where the costs are unreasonable due to a firm's size and resource limitations. FINRA Rule 5280 does not, according to FINRA, specify physical separation between all of the persons involved. While similar in design and purpose to some aspects of the proposed requirements in the debt proposal, FINRA clarified that FINRA Rule 5280 is not congruent with the proposal to the point where compliance with the policies and procedures provision of that rule would be deemed compliance with the debt proposal separation requirements. FINRA stated that both FINRA Rule 5280 and the debt proposal require policies and procedures reasonably designed to limit information flow.

FINRA also stated it believes that physical separation is an effective component to a reasonably designed compliance system that requires information barriers.

The same commenter asked that FINRA modify the prohibition on debt analyst attendance at road shows to permit passive participation since there is less opportunity to meet and assess issuer management than in the equity context.[161] FINRA stated it believes that even passive participation by debt research analysts in road shows and other marketing may present conflicts of interest and, therefore, declined to revise the proposal as suggested.[162] In their second letter, the commenter reiterated this suggested change because, while they note the need for analysts to maintain their objectivity, unlike equity research analysts who have frequent interactions with issuer management and may assist in the due diligence process for offerings, debt research analysts typically do not participate in due diligence and do not have the same opportunities to meet with issuer management and road shows may present the only opportunity to do so.[163] For the same reasons as above, FINRA declined again to make this change.[164]

F. Comments and Discussion Regarding Communications Between Research Analysts and Trading Desk Personnel

A commenter to the original proposal asked FINRA to delete the term ''attempting'' in the proposed Supplementary Material .03(a)(1), which would require members to have policies and procedures reasonably designed to prohibit sales and trading and principal trading personnel from ''attempting to influence a debt research analyst's opinion or views for the purpose of benefitting the trading position of the firm, a customer, or a class of customers.'' [165] The commenter stated that it is unclear how a firm should enforce a prohibition on attempts to influence. FINRA notes that Supplementary Material .03(b)(2) sets forth permissible communications between debt research analysts and sales and trading and principal trading personnel, including, for example, allowing a debt research analyst to provide ''customized analysis, recommendations or trade ideas'' to customers or traders upon request, provided that the communications are ''not inconsistent with the analyst's current or pending debt research, and that any subsequently published debt research is not for the purpose of benefitting the trading position of the firm, a customer or a class of customers.'' In the context of such a request, FINRA stated that is not hard to envision the possibility that a trader, for example, might attempt to influence the analyst's view by emphasizing that a particular recommendation would be beneficial to the firm. FINRA expressed its belief that there are a variety of policies and procedures that could address such attempts, including periodic monitoring of such communications. As such, FINRA declined to delete ''attempting'' from the provision.

The commenter further expressed concern that the term ''pending'' is vague in the above-cited provision.[166] The commenter suggested that FINRA delete the term or confirm that ''pending'' means ''imminent publication of a debt research report.'' FINRA stated it believes it is important that any customized analysis, recommendations or trade ideas be consistent not only with published research, but also any research being drafted in anticipation of publication or distribution that may contain changed or additional view or opinions. FINRA stated it considers such research in draft to be pending and therefore declined to delete the term or adopt an ''imminent'' standard as suggested by the commenter.

Proposed Supplementary Material .03(b)(3) would provide that, in determining what is consistent with a debt research analyst's published debt research for purposes of sharing certain views with sales and trading and principal trading personnel, members

[157] According to FINRA, the proposed rule change would not require that all investors receive all research products, nor would it preclude a firm from offering, for example, a research product to select customers that includes greater depth of analysis. However, it would not, in FINRA's view, be consistent with the proposed rule change to provide inconsistent views to different classes of customers or to advantage one class of customers based on the timing of receipt of a recommendation, rating or potentially market moving information.

[158] CFA Institute Two.

[159] WilmerHale Debt Two.

[160] WilmerHale Debt One.

[161] WilmerHale Debt One.

[162] *See also* Notice.

[163] WilmerHale Debt Two.

[164] FINRA Response

[165] WilmerHale Debt One.

[166] *Id.*

may consider the context, including that the investment objectives or time horizons being discussed may differ from those underlying the debt analyst's published views. One commenter to the original proposal asked FINRA to clarify that the standard may be applied wherever consistency with a debt research analyst's views may be assessed under the proposed debt rule, such as with respect to debt research analyst account trading or providing customized analysis, recommendations, or trade ideas to sales and trading, principal trading, and customers.[167] FINRA agreed in the Amendment Notice that context may be considered whenever consistency of research or views is at issue.

G. Comments and Discussion Regarding Disclosure Requirements

One commenter to the original proposal expressed concern about the proposed requirements that a member disclose in retail debt research reports its distribution of all debt security ratings (and the percentage of subject companies in each buy/hold/sell category for which the member has provided investment banking services within the previous twelve months) and historical ratings information on the debt securities that are the subject of the debt research report for a period of three years or the time during which the member has assigned a rating, whichever is shorter.[168] The commenter asked FINRA to eliminate these provisions because the commenter believes that they are impractical and provide minimal benefit to investors in the context of debt research, even though they may be very useful in the equity context.[169] The commenter stated that the large number of bond issues followed by analysts make the provisions especially burdensome and do not allow for helpful comparisons for investors across debt securities or issuers. With respect to the ratings distribution requirements, the commenter asserted that in some cases, a debt analyst may assign a rating to the issuer that applies to all of that issuer's bonds, thereby skewing the distribution because those issuers will be overrepresented in the distribution. The commenter also stated that the tracking requirements for these provisions would be particularly burdensome, given the numerous bonds issued by the same subject company and the fact that bonds are constantly being replaced with newer ones. Finally, the commenter stated that the three-year look back period is too long and suggested instead a one-year period if FINRA retains the historical rating table requirement.

FINRA stated it believes that, similar to the current equity rules, to the extent that a firm produces retail debt research that assigns a rating to an issuer—*i.e.,* a credit analysis—these disclosure provisions would provide value to retail investors to quickly gauge any apparent bias toward more or less favorable ratings or investment banking clients and to assess the accuracy of past ratings. Moreover, FINRA stated it understands that the burden to comply with the requirements with respect to this limited subset of debt research would be manageable for firms. Therefore, FINRA proposed to amend Rules 2242(c)(2) and (3) in Amendment No. 1 to apply the ratings distribution requirement and historical rating table requirement only to each debt research report limited to the analysis of an issuer of a debt security that includes a rating of the subject company. Since the proposal would be limited to these issuer credit analyses and would not apply to individual bonds, FINRA expressed belief that many of the commenter's burden concerns would be alleviated and that it would be reasonable and appropriate to maintain the proposed three-year look back period with respect to the historical rating provision. In their second letter, the commenter expressed support for this change.[170]

While FINRA also believes that the disclosures would be valuable to retail investors with respect to debt research on individual debt securities, FINRA stated it recognizes the additional complexity and cost associated with compliance, particularly where a retail debt research report may include multiple ratings of individual debt securities, some of which may be positive and others negative or neutral. FINRA stated it believes it would be beneficial to obtain additional information about the array of debt research products that are now being distributed to retail investors, as well as the operational challenges and costs to apply these disclosure provisions to debt research on individual debt securities. Accordingly, FINRA proposed in Amendment No. 1 to eliminate for now the requirements with respect to debt research reports on individual debt securities. FINRA stated it will reconsider the appropriateness of the disclosure requirements as applied to research on individual debt securities after obtaining and assessing the additional information.

The same commenter also requested that FINRA allow members to provide a hyperlink or web address to web-based disclosures in all debt research reports, rather than requiring the disclosures within a printed report.[171] The commenter noted that while the Commission has interpreted section 15D(b) of the Exchange Act to require disclosure in each equity report, the law does not apply to debt research.[172] FINRA stated it believes that disclosures in retail debt research reports should be proximate to the content of those reports and easily available to recipients of the research without requiring any substantive additional steps. Therefore, to the extent a debt research report is not delivered electronically with hyperlinked disclosures, FINRA stated it believes the disclosures must be in the research report itself. FINRA also expressed its belief that this will promote consistency between equity and retail debt research. FINRA further noted that institutional debt research would not require the specific disclosures.

H. Comments and Discussion Regarding the Institutional Debt Research Exemption

The proposed rule change would exempt debt research provided solely to certain eligible institutional investors from many of the proposed rule's provisions, provided that a member obtains consent from the institutional investor to receive that research and the research reports contain specified disclosure to alert recipients that the reports do not carry the same protections as retail debt research. The proposal distinguishes between larger and smaller institutions in the manner in which the consent must be obtained. Firms would be permitted to use negative consent where the customer meets the definition of a QIB and satisfies the institutional suitability standards of FINRA Rule 2111 with respect to debt transactions and strategies. Institutional accounts that meet the definition of FINRA Rule 4512(c), but do not satisfy the higher tier standard required for negative consent, would be permitted to affirmatively elect in writing to receive institutional debt research.

One commenter to the original proposal opposed providing any exemption for debt research distributed solely to eligible institutional investors, contending that it would deprive the

[167] *Id.*

[168] WilmerHale Debt One.

[169] *Id.*

[170] WilmerHale Debt Two.

[171] WilmerHale Debt One.

[172] *See* 15 U.S.C. 78o–6(b) and (d)(2).

market's largest participants of the important protections of the proposed rules for retail debt research.[173] Another such commenter reiterated concerns expressed in response to an earlier iteration of the debt research proposal that the proposed standard for negative consent would be difficult to implement and would disadvantage institutional investors who are capable of, and in fact, make independent investment decisions about debt transactions and strategies. The commenter suggested as an alternative that the institutional investor standard should be based on only on the institutional suitability standard in Rule 2111.[174]

Another commenter to the original proposal supported the proposed tiered approach for how institutional investors may receive research reports.[175] The commenter stated that a QIB presumably has the sophistication and human and financial resources to evaluate debt research without the disclosures and other protections that accompany reports provided to retail investors. The commenter also supported permitting an institutional investor that does not fall within the higher tier category to receive the debt research without the retail investor protections if it notifies the firm in writing of its election.

FINRA stated in the Notice and Amendment Notice that it believes an institutional exemption is appropriate to allow more sophisticated institutional market participants that can assess risks associated with debt trading and are aware of conflicts that may exist between a member's recommendations and trading interests, to continue to receive the timely flow of analysis and trade ideas that they value. FINRA noted that institutional debt research still would remain subject to several provisions of the rules, including the required separation between debt research and investment banking and the requirements for conflict management policies and procedures to insulate debt analysts from pressure by traders and others. In addition, FINRA noted that no institutional investor will be exposed to this less-protected institutional research without either negative or affirmative consent, as applicable.

FINRA noted, with regard to the standard for negative consent, it does not believe that less sophisticated institutional investors should be required to take any additional steps to receive the full protections of the proposed rules. To the extent the QIB standard for negative consent is too difficult to implement, the proposal would provide an alternative to obtain a one-time affirmative consent for any Rule 4512(c) institutional account and further provides a one-year grace period to obtain that consent, so as not to disrupt the current flow of debt research to institutional customers. As discussed in the rule filing, FINRA included the alternative methods of consent and the grace period to satisfy the differing industry views on which of two consent options would be most cost effective.

Another commenter to the original proposal asked that FINRA confirm that, in distributing debt research reports under the institutional debt research framework to certain non-U.S. institutional investors who are customers of a member's non-U.S. broker-dealer affiliate, the member may rely on similar classifications in the non-U.S. institutional investors' home jurisdictions.[176] The commenter contended that this is necessary because some global firms distribute their debt research reports to non-U.S. institutional investors who may not have been vetted as QIBs for a variety of reasons. The debt proposal never contemplated recognizing equivalent institutional standards in other jurisdictions, and FINRA stated it does not believe that approach is appropriate or workable. FINRA questioned whether there are standards in other jurisdictions that are truly the equivalent of the QIB standard, and stated that it is impractical for FINRA to survey and assess the institutional standards around the world to determine equivalency, not to mention whether the home jurisdiction adequately examines for and enforces compliance with the standard. FINRA noted that, under the proposal, to the extent non-U.S. institutional investors have not been vetted as QIBs, firms have the option of either vetting them if they wish to send them institutional debt research by negative consent or obtaining affirmative written consent to the extent the institution satisfies the Rule 4212(c) standard.

The same commenter asked FINRA to clarify the application of the institutional debt research framework to desk analysts or other personnel who are part of the trading desk and are not ''research department'' personnel. In particular, the commenter suggested that proposed Rules 2242(b)(2)(H) (with respect to pressuring) and (b)(2)(L) (which would require policies and procedures reasonably designed to, among other things, restrict or limit activities by debt research analysts that can reasonably be expected to compromise their objectivity) should not apply when sales and trading personnel or principal trading personnel publish debt research reports in reliance on the institutional research exemption because the requirements of those provisions cannot be reconciled with the inherent nature of conflicts present.[177] Those provisions would require firms to have policies and procedures to both establish information barrier or other institutional safeguards reasonably designed to insulate debt research analysts from pressure by, among others, principal trading or sales and trading personnel and restrict or limit activities by debt research analysts that can reasonably be expected to compromise their objectivity. FINRA disagreed with the commenter. They stated that they believe that minimum objectivity standards should apply to institutional debt research regardless of whether the research is published by research department personnel, sales and trading personnel or principal trading personnel. FINRA further stated it believes that a firm can and should put in place policies and procedures reasonably designed to ensure that other traders or sales and trading personnel do not overtly pressure a trader who produces debt research to express a particular view and to prevent that trader from participating in solicitations of investment banking or road show participation.

I. Comments and Discussion Regarding the Exemptions for Limited Investment Banking Activity and Limited Principal Trading Activity

The proposed rule change would exempt members with limited principal trading activity or limited investment banking activity from the review, supervision, budget, and compensation provisions in the proposed rule related to principal trading and investment banking personnel, respectively. The limited principal trading exemption would apply to firms that engage in principal trading activity where, in absolute value on an annual basis, the member's trading gains or losses on principal trades in debt securities are $15 million or less over the previous three years, on average per year, and the member employs fewer than ten debt traders. The limited investment banking exemption would apply, as it does in the equity rules, to firms that have managed or co-managed ten or fewer investment banking services

[173] PIABA Debt.

[174] SIFMA.

[175] CFA Institute One.

[176] WilmerHale Debt One.

[177] *Id.*

transactions on average per year, over the previous three years and generated $5 million or less in gross investment banking revenues from those transactions.

One commenter to the original proposal questioned whether the exemptions could compromise the independence and accuracy of the analysis and opinions provided.[178] The commenter further expressed concern that the exemption might allow traders to act on debt research prior to publication and distribution of that research. The commenter noted FINRA's commitment to monitor firms that avail themselves of the exemptions to evaluate whether the thresholds for the exemptions are appropriate and asked FINRA to publish findings that could help properly weigh the burdens on small firms while ensuring the independence of investment research. The commenter also encouraged FINRA to provide additional guidance as to what specific measures should be taken to ensure that debt research analysts are insulated from pressure by persons engaged in principal trading or sales and trading activities or other persons who might be biased in their judgment or supervision.

FINRA stated in the Notice and the Amendment Notice that it included the exemptions to balance the burdens of compliance with the level or risk to investors. FINRA stated that it determined the thresholds for each exemption based on data analysis and a survey of firms that engage in principal trading activity or investment banking activity, respectively. FINRA clarified that it has not found abuses with respect to the limited investment banking exemption in the equity context and notes that some important separation requirements would still apply to the eligible firms, such as the prohibition on compensating a debt research analyst based on a specific investment banking transaction or contributions to a member's investment banking services activities.

FINRA clarified that the proposed limited principal trading exemption would apply where, based on the survey and data analysis, it reasonably believes the amount of potential principal trading profits poses appreciably lower risk of pressure on debt research analysts by sales and trading or principal trading personnel and where there would be a significant marginal cost to add a trader dedicated to producing research relative to the increase in investor protection. FINRA further noted that the proposal would still prohibit debt research analysts at exempt firms from being compensated based on specific trading transactions.

With respect to both exemptions, as the commenter noted, firms would still be required to establish information barriers or other institutional safeguards reasonably designed to ensure debt research analysts are insulated from pressure by persons engaged in investment banking or principal trading activities, among others. FINRA stated it believes a number of policies could be implemented to achieve compliance with this requirement. For example, in the context of principal trading, these measures might include monitoring of communications between debt research analysts and individuals on the trading desk and reviewing published research in relation to transactions executed by the firm in the subject company's debt securities. FINRA also noted that neither exemption would allow trading ahead of research by firm traders, as FINRA Rule 5280 would continue to apply to both debt and equity research and prohibits such conduct. Finally, as noted by the commenter, FINRA stated it intends to monitor the research produced by firms that avail themselves of the exemptions to assess whether the thresholds to qualify for the exemptions are appropriate or should be modified.

The commenter responded in its second letter that, while FINRA addressed their concerns, they still had concerns that the examples given by FINRA in the Amendment Notice were insufficient. They recommended additional guidance by FINRA to help ensure adequate compliance. They also approved of FINRA's commitment to continue to monitor this issue and urged publication of the results.[179] In their response, FINRA noted that the examples were not intended to be exhaustive and that, in light of the principles-based approach of the proposal there will be different ways for members to design policies and procedures reasonably designed to protect against pressure. FINRA stated it will continue to monitor the issue and will consider sharing its findings as appropriate.[180]

J. Comments and Discussion Regarding the Filing Requirement Exclusion

One commenter to the original proposal asked FINRA to consider amending FINRA Rule 2210 to exclude debt research reports from that rule's filing requirements, since there is an exception from the filing requirements for equity research reports that concern only equity securities that trade on an exchange.[181] FINRA stated it is willing to separately consider the merits of the request, but does not believe the issue is appropriate for resolution in the context of the debt proposal since it primarily relates to the provisions of a rule that are not the subject of the proposed rule change.

K. Comments and Discussion Regarding the Implementation Date

One commenter to the original proposal requested that the implementation date be at least twelve months after Commission approval of the proposed rule change and that FINRA sequence the compliance dates of the equity research filing and the proposed rule change in that order.[182] Another such commenter requested that FINRA provide a ''grace period'' of one year or the maximum time permissible, if that is less than one year, between the adoption of the proposed rule and the implementation date.[183] FINRA stated that it is sensitive to the time firms will require to update their policies and procedures and systems to comply with the proposed rule change and will take those factors into consideration when establishing implementation dates. As stated in the Amendment Notice, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. FINRA further stated that the effective date will be no later than 180 days following publication of the Regulatory Notice announcing Commission approval.

J. Summary of Findings and Conclusion

The Commission has carefully considered the proposed rule change, all of the comments received, and FINRA's responses to the comments. Based on its review of the record, the Commission finds that the proposed rule change, as amended by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[184] In particular, the Commission finds that the proposed rule change, as amended by Amendment No. 1, is consistent with section 15A(b)(6) of the Act, which requires, among other things, that FINRA's rules be designed to prevent fraudulent and manipulative acts and

[178] CFA Institute One.

[179] CFA Institute Two.

[180] FINRA Response.

[181] WilmerHale Debt One.

[182] SIFMA.

[183] WilmerHale Debt One.

[184] 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).

practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[185]

FINRA stated in its proposal that it ''believes that the proposed rule change would promote increased quality, objectivity and transparency of debt research distributed to investors by requiring firms to identify and mitigate conflicts in the preparation and distribution of such research'' and that ''the [proposed] rule will provide investors with more reliable information on which to base investment decisions in debt securities, while maintaining timely flow of information important to institutional market participants and providing those institutional investors with appropriate safeguards.''

We generally agree with these assertions. The potential abuses spawned by the conflicts of interest between research and the business interests of broker-dealers in the equity space are well-known and well-established.[186] As FINRA explained in the Notice, debt research is not immune to the challenges that these conflicts create. For example, the Massachusetts Secretary of the Commonwealth in 2008 alleged that a FINRA member ''co-opted its supposedly independent [r]esearch [d]epartment to assist in sales efforts geared towards reducing its inventory'' of debt instruments.[187] These allegations are similar to those raised in the allegations that led to the global research analyst settlement as a result of the abuses found regarding equity research.[188] As a result, as noted by the U.S. Government Accountability Office, ''until FINRA adopts a fixed-income research rule, investors continue to face a potential risk.'' [189] The proposed rule change attempts to address this need in a way that seems to effectively balance the public interest in effectively managing debt research conflicts of interest with the ability of members to also effectively provide research, and thus information, to the investing public. We also note that the relevant commenters to the proposal as amended, all of which were commenters to the original proposal, stated in their second comment letters that they generally agree with the proposal as amended.[190]

Regarding concerns raised by commenters regarding the principles-based structure of the proposal, we note the proposed rule change establishes the key provisions of NASD Rule 2711 for debt research and includes a number of protections for investors beyond those currently found in that rule, including the requirement that research management make independent decisions regarding research coverage,[191] maintenance of information barriers or other institutional safeguards between research and investment banking, sales and trading, and other persons who might be biased in their judgment or supervision including, for certain members, requiring physical separation,[192] information barriers between research analysts and trading desk personnel,[193] and ensure that purported facts in research reports are based on reliable information.[194] Further, FINRA's responses to interpretive questions posed by the commenters to the original proposal in the Amendment Notice should help eliminate uncertainty regarding how the proposal will operate. For instance, one commenter noted with approval the clarification regarding the ''at a minimum'' requirement which seemed to be the source of the commenter's confusion.[195] FINRA also provided further guidance on other issues in the FINRA Response, such as whether sales and trading personnel can provide feedback for purposes of evaluating an analyst.

In approving this proposal, however, we expect that FINRA will continue to monitor the effectiveness of the rule proposal, especially with regards to the treatment of research provided to institutional investors, and modify the rule should it prove to be unworkable or fail to provide an appropriate level of protection to investors.[196]

For the reasons stated above, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to section 19(b)(2) of the Act,[197] that the proposed rule change (SR–FINRA–2014–048), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[198]

Brent J. Fields,

Secretary.

[FR Doc. 2015–17972 Filed 7–21–15; 8:45 am]

BILLING CODE 8011–01–P

[185] 15 U.S.C. 78o–3(b)(6).

[186] *See, e.g.,* ''Ten of Nation's Top Investment Firms Settle Enforcement Actions Involving Conflicts of Interest Between Research and Investment Banking,'' Press Release 2003–54 (available at *http://www.sec.gov/news/press/2003-54.htm*). As one commenter noted, these conflicts can still influence equity research. NASAA Debt Two. *See also* ''FINRA Fines 10 Firms a Total of $43.5 Million for Allowing Equity Research Analysts to Solicit Investment Banking Business and for Offering Favorable Research Coverage in Connection With Toys'R'Us IPO,'' FINRA News Release (available at *http://www.finra.org/newsroom/2014/finra-fines-10-firms-total-435-million*).

[187] Commonwealth of Massachusetts, Office of the Secretary of the Commonwealth, Securities Division, *In the Matter of Merrill Lynch, Pierce, Fenner & Smith, Incorporated,* Administrative Complaint, Docket No. 2008–0058 (Jul. 31, 2008) (available at *http://archives.lib.state.ma.us/bitstream/handle/2452/213560/ocn886547410.pdf?sequence=1&isAllowed=y*).

[188] *See,* ''Ten of Nation's Top Investment Firms Settle Enforcement Actions Involving Conflicts of Interest Between Research and Investment Banking,'' Press Release 2003–54 (available at *http://www.sec.gov/news/press/2003-54.htm*) (stating that ''[t]he enforcement actions allege that, from approximately mid-1999 through mid-2001 or later, all of the firms engaged in acts and practices that created or maintained inappropriate influence by investment banking over research analysts, thereby imposing conflicts of interest on research analysts that the firms failed to manage in an adequate or appropriate manner'').

[189] U.S. Government Accountability Office, GAO–12–209, *Securities Research: Additional Actions Could Improve Regulatory Oversight of Analyst Conflicts of Interest,* at 41 (Jan. 12, 2012) (available at *http://www.gao.gov/assets/590/587613.pdf*).

[190] WilmerHale Debt Two, CFA Institute Two, and NASAA Debt Two.

[191] Proposed FINRA Rule 2242(b)(2)(B).

[192] Proposed FINRA Rule 2242(b)(2)(H) and Notice (''Among the structural safeguards, FINRA believes separation between investment banking and debt research, and between sales and trading and principal trading and debt research, is of particular importance. As such, while the proposed rule change does not mandate physical separation between the debt research department and the investment banking, sales and trading and principal trading departments (or other person who might seek to influence research analysts), FINRA would expect such physical separation except in extraordinary circumstances where the costs are unreasonable due to a firm's size and resource limitations. In those instances, a firm must implement written policies and procedures, including information barriers, to effectively achieve and monitor separation between debt research and investment banking, sales and trading and principal trading personnel.'')

[193] Proposed FINRA Rule 2242.03.

[194] Proposed FINRA Rule 2242(c)(1)(A).

[195] WilmerHale Debt Two.

[196] We note that, as one commenter to the equity version of this proposal noted, the interpretation of what constitutes ''reasonableness'' may prove difficult for FINRA and member alike. *See* Letter from Egidio Mogavero, Managing Director and Chief Compliance Officer, JMP Securities, dated Mar. 19, 2015.

[197] 15 U.S.C. 78s(b)(2).

[198] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75476; File No. SR–CBOE–2015–068]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to AIM and FLEX AIM

July 16, 2015.

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 July 14, 2015, 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 and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] 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 proposed rule changes propose to amend the Exchange's rules related to its Automated Improvement Mechanism (''AIM'') and its Automated Improvement Mechanism (''AIM'') for Flexible Exchange Options (''FLEX Options'').[5] The text of the proposed rule change is provided below.

(additions are *italicized;* deletions are [bracketed])

* * * * *

Chicago Board Options Exchange, Incorporated Rules

* * * * *

Rule 6.74A Automated Improvement Mechanism (''AIM'')

Notwithstanding the provisions of Rule 6.74, a Trading Permit Holder that represents agency orders may electronically execute an order it represents as agent (''Agency Order'') against principal interest or against a solicited order provided it submits the Agency Order for electronic execution into the AIM auction (''Auction'') pursuant to this Rule.

(a)–(b) No change.

. . . Interpretations and Policies:

.01–.02 No change.

.03 Initially, and for at least a Pilot Period expiring on July 18, 201[5]*6,* there will be no minimum size requirement for orders to be eligible for the Auction. During this Pilot Period, the Exchange will submit certain data, periodically as required by the Commission, to provide supporting evidence that, among other things, there is meaningful competition for all size orders and that there is an active and liquid market functioning on the Exchange outside of the Auction mechanism. Any *raw* data which is submitted to the Commission will be provided on a confidential basis.

.04–.05 No change.

.06 Subparagraph (b)(2)(E) of this rule will be effective for a Pilot Period until July 18, 201[5]*6.* During the Pilot Period, the Exchange will submit certain data, periodically as required by the Commission, relating to the frequency with which early termination of the Auction occurs pursuant to this provision as well as any other provision, and also the frequency with which early termination pursuant to this provision results in favorable pricing for the Agency Order. Any *raw* data which is submitted to the Commission will be provided on a confidential basis.

.07–.08 No change.

* * * * *

Rule 24B.5A. FLEX Automated Improvement Mechanism

Notwithstanding the provisions of Rule 24B.5, a FLEX Trader that represents agency orders may electronically execute an order it represents as agent (''Agency Order'') against principal interest and/or against solicited orders provided it submits the Agency Order for execution into the automated improvement mechanism auction (''AIM Action'') pursuant to this Rule.

(a)–(b) No change.

This rule supersedes Exchange Rule 6.74A.

. . . Interpretations and Policies:

.01–.02 No change.

.03 Initially, and for at least a Pilot Period expiring on July 18, 201[5]*6,* there will be no minimum size requirement for orders to be eligible for the AIM Auction. During this Pilot Period, the Exchange will submit certain data, periodically as required by the Commission, to provide supporting evidence that, among other things, there is meaningful competition for all size orders and that there is an active and liquid market functioning on the Exchange outside of the AIM Auction. Any *raw* data which is submitted to the Commission will be provided on a confidential basis.

.04–.07 No change.

* * * * *

The text of the proposed rule change is also 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

In February 2006, CBOE obtained approval from the Securities and Exchange Commission (the ''Commission'') to adopt the AIM auction process.[6] AIM exposes certain orders electronically to an auction process to provide these orders with the opportunity to receive an execution at an improved price. The AIM auction is available only for orders that a Trading Permit Holder represents as agent (''Agency Order'') and for which a second order of the same size as the Agency Order (and on the opposite side of the market) is also submitted (effectively stopping the Agency Order at a given price).

The Commission approved two components of AIM on a pilot basis: (1) That there is no minimum size requirement for orders to be eligible for the auction; and (2) that the auction will conclude prematurely anytime there is a quote lock on the Exchange pursuant to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] FLEX Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. The rules governing the trading of FLEX Options on the FLEX Request for Quote (RFQ) System platform are contained in Chapter XXIVA. The rules governing the trading of FLEX Options on the FLEX Hybrid Trading System platform are contained in Chapter XXIVB.

[6] *See* Securities Exchange Release No. 53222 (February 3, 2006), 71 FR 7089 (February 10, 2006) (SR–CBOE–2005–60).

Rule 6.45A(d).[7] In connection with the pilot programs, the Exchange has submitted to the Commission reports providing detailed AIM auction and order execution data. The Exchange will provide the Commission six months of additional AIM auction and order execution data for the period of January 1, 2015 to June 30, 2015 no later than January 18, 2016. The raw data provided will be submitted on a confidential basis. In addition, the Exchange will submit tables summarizing AIM price improvement statistics for each month of the January 1, 2015 to June 30, 2015 period. The summary tables will be made available to the public. Finally, the Exchange will submit data, for the period of January 1, 2015 to June 30, 2015, to the Commission with respect to situations in which the AIM is terminated prematurely and an analysis of the impact of unrelated orders on early auction terminations. The impact analysis will be made available to the public.

Nine one-year extensions to the pilot programs have previously become effective.[8] The proposed rule change merely extends the duration of the pilot programs until July 18, 2016. Extending the pilots for an additional year will allow the Commission more time to consider the impact of the pilot programs on AIM order executions.

Additionally, in March 2012, CBOE obtained approval from the Commission to adopt the AIM auction process for FLEX Options.[9] AIM for FLEX Options exposes certain FLEX Options orders electronically to an auction process to provide these orders with the opportunity to receive an execution at an improved price. The FLEX AIM auction is available only for Agency Orders and for which a second order of the same size as the Agency Order (and on the opposite side of the market) is also submitted (effectively stopping the Agency Order at a given price).

The Commission approved on a pilot basis the component of AIM for FLEX Options that there is no minimum size requirement for orders to be eligible for the auction.[10] In connection with the pilot program, the Exchange has submitted to the Commission reports providing detailed FLEX AIM auction and order execution data. The Exchange will provide the Commission six months of additional FLEX AIM auction and order execution data for the period of January 1, 2015 to June 30, 2015 no later than January 18, 2016. The raw data provided will be submitted on a confidential basis. In addition, the Exchange will submit tables summarizing FLEX AIM price improvement statistics for each month of the January 1, 2015 to June 30, 2015 period. The summary tables will be made available to the public. Three one-year extensions to the pilot program have previously become effective.[11] The proposed rule change merely extends the duration of the pilot program until July 18, 2016. Extending the pilot for an additional year will allow the Commission more time to consider the impact of the pilot program on AIM order executions for FLEX Options.

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.[12] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[13] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[14] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change protects investors and the public interest by allowing for an extension of the AIM and FLEX AIM pilot programs, and thus allowing additional time for the Commission to evaluate the pilot programs. The pilot programs will continue to allow (1) smaller non-FLEX option and FLEX Option orders to receive the opportunity for price improvement pursuant to the AIM auction, and (2) with respect to non-FLEX options, Agency Orders in AIM auctions that are concluded early because of quote lock on the Exchange to receive the benefit of the lock price. The additional data provided will help the Commission determine if there is evidence of meaningful competition for all size orders, significant price improvement for orders going through the AIM and FLEX AIM and an active and liquid market functioning on the Exchange outside of the AIM and FLEX AIM auctions.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule changes impose any burden on intramarket competition because it applies to all Trading Permit Holders. All Trading Permit Holders that submit orders into an AIM or FLEX AIM auction are still subject to the same requirements. In addition, the Exchange does not believe the proposed rule changes will impose any burden on intermarket competition, as they merely extend the duration of an existing pilot programs, which are available to all market participants through Trading Permit Holders. AIM and FLEX AIM will continue to function in the same manner as they currently function for an extended period of time.

[7] A quote lock occurs when a CBOE Market-Maker's quote interacts with the quote of another CBOE Market-Maker (*i.e.* when internal quotes lock).

[8] *See* Securities Exchange Act Release Nos. 54147 (July 14, 2006), 71 FR 41487 (July 21, 2006) (SR–CBOE–2006–64); 56094 (July 18, 2007), 72 FR 40910 (July 25, 2007) (SR–CBOE–2007–80); 58196 (July 18, 2008), 73 FR 43803 (July 28, 2008) (SR–CBOE–2008–76) (in this filing, the Exchange agreed to provide to the Commission additional information relating to the AIM auctions each month in order to aid the Commission in its evaluation of the pilot program, which the Exchange will continue to do); 60338 (July 17, 2009), 74 FR 36803 (July 24, 2009) (SR–CBOE–2009–051); 62522 (July 16, 2010), 75 FR 43596 (July 26, 2010) (SR–CBOE–2010–067); 64930 (July 20, 2011), 76 FR 44636 (July 26, 2011) (SR–CBOE–2011–066); 67302 (June 28, 2012), 77 FR 39779 (July 5, 2012) (SR–CBOE–2012–061); 69867 (June 27, 2013), 78 FR 40230 (July 3, 2013) (SR–CBOE–2013–066); and 72570 (July 9, 2014), 79 FR 41337 (July 15, 2014) (SR–CBOE–2014–054).

[9] *See* Securities Exchange Release No. 66702 (March 30, 2012), 77 FR 20675 (April 5, 2012) (SR–CBOE–2011–123).

[10] The pilot for the FLEX AIM auction process was modeled after the pilot for non-FLEX Options described above, and included an initial expiration date of July 18, 2012 so that the FLEX pilot would coincide with the existing non-FLEX pilot.

[11] *See* Securities Exchange Act Release No. 67302 (June 28, 2012), 77 FR 39779 (July 5, 2012) (SR–CBOE–2012–061); 69938 (July 5, 2013), 78 FR 41481 (July 10, 2013) (SR–CBOE–2013–069); and 72570 (July 9, 2014), 79 FR 41337 (July 15, 2014) (SR–CBOE–2014–054).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *Id.*

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (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) of the Act [15] and subparagraph (f)(6) of Rule 19b–4 thereunder.[16]

A proposed rule change filed under Rule 19b–4(f)(6) [17] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[18] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay. The Exchange noted that waiver of the 30-day operative delay will allow the Exchange to extend the pilot programs prior to their expiration on July 18, 2015. In addition, the Exchange believes that waiver of the operative delay is also consistent with the protection of investors and the public interest because it will allow for the least amount of market disruption, as the pilot programs will continue as they currently do, maintaining the status quo.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot programs to continue uninterrupted, thereby avoiding any potential investor confusion that could result from a temporary interruption in the pilot programs. Therefore, the Commission designates the proposed rule change to be operative on July 18, 2015.[19]

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.

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–2015–068 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–CBOE–2015–068. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2015–068 and should be submitted on or before August 12, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–17889 Filed 7–21–15; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] For purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on the Change of Use of Aeronautical Property at Coastal Carolina Regional Airport, New Bern, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comment.

SUMMARY: The Federal Aviation Administration is requesting public comment on a request by the Coastal Carolina Regional Airport to change the use of a portion of airport property at the Coastal Carolina Regional Airport. The request consists of approximately 11.7 acres for use as a future non-aeronautical development area. This action is taken under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before *August 21, 2015.*

ADDRESSES: Documents are available for review at the Coastal Carolina Regional Airport, 200 Terminal Drive, New Bern, NC 28564; and the FAA Memphis Airports District Office, 2600 Thousand Oaks Boulevard, Suite 2250, Memphis, TN 38118–2482. Written comments on the Sponsor's request must be delivered or mailed to: Mr. Phillip J. Braden, Manager, Memphis Airports District Office, 2600 Thousand Oaks Boulevard, Suite 2250, Memphis, TN 38118–2482.

In addition, a copy of any comments submitted to the FAA must be mailed or delivered to Mr. Tom Braaten, Airport Director, Coastal Carolina Regional Airport Authority, 200 Terminal Drive, P.O. Box 3258, New Bern, NC 28564.

FOR FURTHER INFORMATION CONTACT: Mr. Michael L. Thompson, Program

Manager, Federal Aviation Administration, Memphis Airports District Office, 2600 Thousand Oaks Boulevard, Suite 2250, Memphis, TN 38118–2482. The application may be reviewed in person at this same location, by appointment.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the request to change the designation of property currently reserved for aeronautical use to non-aeronautical use at Coastal Carolina Regional Airport, New Bern, NC 28564 under the provisions of AIR 21 (49 U.S.C. 47107(h)(2)).

On July 15, 2015, the FAA determined that the request to release property for non-aeronautical purposes at Coastal Carolina Regional Airport meets the procedural requirements of the Federal Aviation Administration. The FAA may approve the request, in whole or in part, no later than *August 21, 2015.*

The following is a brief overview of the request:

The Coastal Carolina Regional Airport is proposing to change the designation of property reserved for aeronautical use to a designation of non-aeronautical use to make the property available for future non-aeronautical development. This property consists of 11.7 acres along the Old Airport Road starting south of the current airport access road and extending approximately 1,200 feet south of that point. The airport is not proposing the sale of the property.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

Issued in Memphis, TN on July 15, 2015.

Phillip Braden,

Manager, Memphis Airports District Office.

[FR Doc. 2015–17874 Filed 7–21–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2015–47]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14, Code of Federal Regulations (14 CFR). The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before August 11, 2015.

ADDRESSES: You may send comments identified by docket number FAA–2015–2021 using any of the following methods:

- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments digitally.
- Mail: Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- Fax: Fax comments to the Docket Management Facility at 202–493–2251.
- Hand Delivery: Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Forseth, ANM–113, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356, email *mark.forseth@faa.gov,* phone (425) 227–2796; or Sandra Long, ARM–200, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, email *sandra.long@faa.gov,* phone (202) 267–4714.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on July 17, 2015.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2015–2021.
Petitioner: The Boeing Company.
Section of 14 CFR Affected: §§ 25.901(c) and 25.981(a)(3).
Description of Relief Sought: The petitioner requests an exemption pertaining to planned changes for the 757–200 (Freighters Only) and 757–200PF center-wing-tank Fuel Quantity Indication System (FQIS) fuselage wiring installation.

[FR Doc. 2015–17941 Filed 7–21–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2015–0019]

Agency Information Collection Activities: Request for Comments for the Renewal of an Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request approval from the Office of Management and Budget (OMB) for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by September 21, 2015.

ADDRESSES: You may submit comments identified by DOT Docket ID 2015–0019 by any of the following methods:

Web Site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West

Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nicole Katsikides, 202–366–6993, Office of Freight Management & Operations (HOFM–1), Office of Operations, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 7:30 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: USDOT Survey and Comparative Assessment of Truck Parking Facilities.

Background: U.S. Department of Transportation (USDOT) is directed to complete a survey and comparative assessment of truck parking facilities in each State as required by Section 1401(c) of *Moving Ahead for Progress in the 21st Century* (MAP–21). MAP–21 Section 1401(c) required the survey in order to evaluate the capability of the States to provide adequate parking and rest facilities for commercial motor vehicles engaged in interstate transportation. Other work activities required under this section of MAP–21 were: An assessment of the volume of commercial motor vehicle traffic in each State and the development of a system of metrics designed to measure the adequacy of commercial motor vehicle truck parking facilities in each state. The results of this survey shall be made available on a publicly accessible Department of Transportation Web site and updated periodically USDOT seeks to continue to collect data to support updates to the survey.

Respondents: State Transportation and Enforcement Officials, Private Sector Facility Owners/Operators, Trucking Company owners or their designee, and Truck Drivers. The target groups of respondents are individuals who are responsible for providing or overseeing the operation of truck parking facilities and stakeholders that depend on such facilities to safely conduct their business. The target group identified in the legislation is ''state commercial vehicle safety personnel''; the Federal Highway Administration (FHWA) has interpreted this term to include the Department of Transportation personnel in each State involved in commercial vehicle safety program activities and State enforcement agency personnel directly involved in enforcing highway safety laws and regulations and in highway incident and accident response. In addition, FHWA finds that the survey on the adequacy of truck parking opportunities is not limited to publicly owned facilities; input from private sector facility owners/operators must be obtained to adequately complete the required work provided in the federal legislation. FHWA also finds that input obtained from trucking company representatives (owners or their designees, especially those in logistics or who schedule drivers) and truck drivers, key stakeholders for truck parking facilities who are most likely to know where truck parking is needed, will be necessary to complete the survey requirements.

Types of Survey Questions: FHWA intends to survey Department of Transportation personnel in each State on the location, number of spaces, availability and demand for truck parking in their State, including at rest facilities, as well as any impediments to providing adequate truck parking capacity (including but not limited to legislative, regulatory, or financial issues; zoning; public and private impacts, approval, and participation; availability of land; insurance requirements and other issues). FHWA intends to survey private truck stop operators in each State on the location, number of truck parking spaces, availability and demand they observe at their facilities. FHWA intends to survey public safety officials in each State on their records and observations of truck parking use and patterns, including the location and frequency of trucks parked adjacent to roadways and on exit and entrance ramps to roadway facilities. FHWA intends to survey trucking companies and truck drivers regarding the location and frequency of insufficient truck parking and capacity at rest facilities, future truck parking needs and locations, availability of information on truck parking capacity, and other impediments to identification, access and use of truck parking. Other questions may be included as needed as a result of input from the focus groups, stakeholder outreach or at FHWA's discretion, or as follow-up to the survey.

Estimate:

State Departments of Transportation = 50 (4 hours each) = up to 200 hours;
State Enforcement Personnel = 50 (1 hour each) = up to 50 hours;
Private Facility Owners/Operators = 229 (1 hour each) = up to 229 hours; and
Trucking Company Representatives and Drivers = 150 (1 hour each) = up to 150 hours;
Total number of respondents = 479 for the survey.
Total burden hours = no more than 629 hours (as allocated above).

Estimated Total Annual Burden: This survey will be updated periodically; the estimated total burden for each survey cycle for all respondents is no more than 629 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: July 17, 2015.

Michael Howell,

Information Collection Officer.

[FR Doc. 2015–17951 Filed 7–21–15; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2015–0011]

Notice of Proposed Buy America Waiver for Replacement Gondola Components

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of proposed Buy America waiver and request for comment.

SUMMARY: The Federal Transit Administration (FTA) received a request for a waiver to permit the purchase of replacement gondola components that are non-compliant with Buy America requirements using FTA funding. The request is from the Colorado Department of Transportation on behalf of the Town of Mountain Village for its public transportation gondola system. In accordance with 49 U.S.C. 5323(j)(3)(A), FTA is providing notice of the waiver request and seeks public comment before deciding whether to grant the request. If granted, the waiver would apply only to FTA-funded procurements by Mountain Village necessary for the current gondola refurbishment projects described herein.

DATES: Comments must be received by August 5, 2015. Late-filed comments

will be considered to the extent practicable.

ADDRESSES: Please submit your comments by one of the following means, identifying your submissions by docket number FTA–2015–0011:

1. *Web site: http://www.regulations.gov*. Follow the instructions for submitting comments on the U.S. Government electronic docket site.

2. *Fax:* (202) 493–2251.

3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must make reference to the ''Federal Transit Administration'' and include docket number FTA–2015–0011. Due to the security procedures in effect since October 2011, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received, including any personal information therein, will be posted without change or alteration to *http://www.regulations.gov*. For more information, you may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000 (65 FR 19477), or you may visit *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Richard Wong, FTA Attorney-Advisor, at (202) 366–0675 or *Richard.Wong@dot.gov*.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to provide notice and seek comment on whether the FTA should grant a non-availability waiver for Mountain Village's procurement of certain replacement gondola components for its public transportation gondola system.

With certain exceptions, FTA's Buy America requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless ''the steel, iron, and manufactured goods used in the project are produced in the United States.'' 49 U.S.C. 5323(j)(1). A manufactured product is considered produced in the United States if: (1) all of the manufacturing processes for the product take place in the United States; and (2) all of the components of the product are of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents. 49 CFR 661.5(d). If, however, FTA determines that ''the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality,'' then FTA may issue a waiver (non-availability waiver). 49 U.S.C. 5323(j)(2)(B); 49 CFR 661.7(c).

The Town of Mountain Village provides free public transportation via gondola (also known as a tramway) between Mountain Village and the Town of Telluride. The gondola operates continuous fixed route service 17 hours per day, 7 days per week, 280 or more days per year, serving over 2,000,000 passengers per year. According to Mountain Village, the existing low-speed conveyor components (bearings, pulleys, tires and other related components) and gondola grip components (coil springs, movable jaws, fixed jaws, bearings, bolts, bushings, wheels and other related components) are nearing the end of their useful service lives and are showing signs of wear and fatigue. Without periodic capital equipment replacement/rebuild, the likelihood of mechanical downtime increases significantly, equating to prolonged service outages for commuters. Mountain Village also needs to refurbish the 59 gondola cabins due to wear and tear. Mountain Village intends to replace these gondola components over several phases during the coming years. Specifically, procurement of the low-speed conveyor components and the grips will be procured in two phases, one in 2015 and one in 2016; parts for the cabin refurbishment are anticipated to be procured over a six-year period. Any non-availability waiver granted would be effective for all phases of these projects, but would expire upon completion of these projects.

Mountain Village asserts that there are no companies that manufacture these gondola components in the United States and that each of the gondola components to be procured is only available from a single source, the original equipment manufacturers. The Colorado Passenger Tramway Safety Board (CPTSB) has agreed and concluded that, because gondolas are specialized and the market limited, there are no aftermarket manufacturers for these gondola components. CPTSB has concluded that, for these parts, there are no alternatives to the original equipment manufacturers, Dopplemayer and CWA, which do not manufacture the components in the United States. Although there is a new U.S. manufacturer for tramways in the United States, it does not produce detachable tramways like the one used by Mountain Village. In addition, parts for the remainder of the tramway are of a different design and cannot be used in other gondola systems.

The purpose of this notice is to publish the Colorado Department of Transportation request, made on behalf of Mountain Village, and seek public comment from all interested parties in accordance with 49 U.S.C. 5323(j)(3)(A). Comments will help FTA understand completely the facts surrounding the request, including the effects of a potential waiver and the merits of the request. A full copy of the request has been placed in docket number FTA–2015–0011.

Dana C. Nifosi,

Deputy Chief Counsel.

[FR Doc. 2015–17909 Filed 7–21–15; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2015–0010]

Notice of Proposed Buy America Waiver for a Variable Refrigerant Flow HVAC System

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of proposed Buy America waiver and request for comment.

SUMMARY: The Federal Transit Administration (FTA) received a request for a waiver to permit the purchase of a Variable Refrigerant Flow (VRF) HVAC system that is non-compliant with Buy America requirements using FTA funding. The request is from the City of Kansas City, Missouri (Kansas City) for its Vehicle Maintenance Facility (VMF) associated with the Kansas City Downtown Streetcar Project. In accordance with 49 U.S.C. 5323(j)(3)(A), FTA is providing notice of the waiver request and seeks public comment before deciding whether to grant the request. If granted, the waiver would apply only to the FTA-funded procurement of a VRF HVAC system by Kansas City.

DATES: Comments must be received by August 5, 2015. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Please submit your comments by one of the following means, identifying your submissions by docket number FTA–2014–0021:

1. *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site.

2. *Fax:* (202) 493–2251.

3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must make reference to the ''Federal Transit Administration'' and include docket number FTA–2014–0021. Due to the security procedures in effect since October 2011, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received, including any personal information therein, will be posted without change or alteration to *http://www.regulations.gov.* For more information, you may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000 (65 FR 19477), or you may visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Richard L. Wong, FTA Attorney-Advisor, at (202) 366–4011 or *richard.wong@dot.gov.*

SUPPLEMENTARY INFORMATION: FTA seeks comment on whether it should grant a non-availability waiver for the Kansas City procurement of a VRF HVAC system for its VMF associated with the Kansas City Downtown Streetcar Project, using FTA grant funding.

With certain exceptions, FTA's Buy America requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless ''the steel, iron, and manufactured goods used in the project are produced in the United States.'' 49 U.S.C. 5323(j)(1). A manufactured product is considered produced in the United States if: (1) All of the manufacturing processes for the product must take place in the United States; and (2) all of the components of the product must be of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents. 49 CFR 661.5(d). If, however, FTA determines that ''the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality,'' then FTA may issue a waiver (non-availability waiver). 49 U.S.C. 5323(j)(2)(B); 49 CFR 661.7(c).

Kansas City is requesting a non-availability waiver for its procurement of a VRF HVAC system that will be installed in a VMF in Kansas City, Missouri, that will service its street cars. This facility is being built to U.S. Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) standards and will incorporate a number of sustainable and energy efficient elements. One of those elements is a VRF HVAC system that, among other things, is space saving, has invertor technology, efficiency, and a non-ozone depleting refrigerant that domestic manufacturers of HVAC systems do not provide. According to Kansas City, its contractor was directed to evaluate the substitution of a Buy America-compliant Variable Air Volume (VAV) system, but the contractor advised Kansas City that the VAV system would endanger the project's LEED Gold certification because of the difference in efficiency between the VAV and VRF HVAC systems. In addition, the substitution of a VAV system would require significant changes to the project, such as the alteration of already-erected structural elements that were designed to accommodate a VRF system and additional design changes and plan reviews by Kansas City.

Kansas City points to two recent non-availability waivers FTA issued to the San Bernardino Associated Governments (79 FR 61129, October 9, 2014) and Rock Island County Metropolitan Mass Transit District for a similar VRF system (79 FR 34653, June 17, 2014), as well as to a blanket non-availability waiver issued by the U.S. Department of Energy (DOE) in 2010 for VRF HVAC systems procured with American Reinvestment and Recovery Act funding (75 FR 35447, June 22, 2010). According to Kansas City, the U.S. DOE's determination of non-availability and FTA's recent waivers, as well as their own contractor's research, indicate that this product is not manufactured domestically. Finally, FTA, in collaboration with the National Institute of Standards and Technology's Hollings Manufacturing Extension Partnership, conducted a nationwide search to determine if any company currently manufactures a compatible VRF system that complies with Buy-America. The search revealed that no company currently can provide a Buy-America compliant VRF system that meets Kansas City's specifications.

The purpose of this notice is to publish Kansas City's request and to seek public comment from all interested parties in accordance with 49 U.S.C. 5323(j)(3)(A). Comments will help FTA understand completely the facts surrounding the request, including the effects of a potential waiver and the merits of the request. A full copy of the request has been placed in docket number FTA–2015–0010.

Dana Nifosi,

Acting Chief Counsel.

[FR Doc. 2015–17910 Filed 7–21–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Docket Number: NHTSA–2012–0029.

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice and request for comment on renewal of a previously approved information collection.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comment. A **Federal Register** Notice with a 60-day comment period soliciting comments on this information collection was published on April 20, 2015 (80 FR 21796).

DATES: Comments must be submitted on or before August 21, 2015.

FOR FURTHER INFORMATION CONTACT: Michael Pyne, Office of Crash Avoidance Standards (NVS–123), National Highway Traffic Safety Administration, W43–457, 1200 New Jersey Avenue SE., Washington, DC 20590. Mr. Pyne can be reached at (202) 366–4171.

SUPPLEMENTARY INFORMATION:

Title: 49 CFR 571.403, *Platform lift systems for motor vehicles* and 49 CFR 571.404, *Platform lift installations in motor vehicles.*

Type of Request: Renewal of a currently approved collection.

OMB Control Number: 2127–0621.

Form Number: None.

Abstract: FMVSS No. 403, Platform lift systems for motor vehicles, establishes minimum performance standards for platform lifts designed for installation on motor vehicles. Its purpose is to prevent injuries and fatalities to passengers and bystanders during the operation of platform lifts that assist wheelchair users and other persons with limited mobility in entering and leaving a vehicle. FMVSS No. 404, Platform lift installations in motor vehicles, places specific requirements on vehicle manufacturers or alterers who install platform lifts in new vehicles. Under these regulations, lift manufacturers must certify that their lifts meet the requirements of FMVSS No. 403 and must declare the certification on the owner's manual insert, the installation instructions, and the lift operating instruction label. Certification of compliance with FMVSS No. 404 is on the certification label already required of vehicle manufacturers and alterers under 49 CFR part 567. Under these two safety standards, lift manufacturers must produce: An insert that is placed in the vehicle owner's manual; installation instructions; and one or two labels that are placed near the controls for operating the lift in normal mode and in back-up mode. The requirements and our estimates of burden and cost to the lift manufacturers are given below. There is no burden to the general public.

Affected Parties: Businesses or other for-profit entities.

Respondents: Platform lift manufacturers and vehicle manufacturers/alterers that install platform lifts in new motor vehicles before first vehicle sale.

Estimated Number of Respondents: 10.

Frequency of Collection: Per each production platform lift unit.

Estimated Total Annual Burden:

Estimated burden to lift manufacturers to produce an insert for the vehicle owner's manual stating the lift's platform operating volume, maintenance schedule, and instructions regarding the lift operating procedures:

—10 manufacturers × 24 hrs. amortized over 5 yrs. = 48 hrs. per year.

Estimated burden to lift manufacturers to produce lift installation instructions identifying the vehicles on which the lift is designed to be installed:

—10 manufacturers × 24 hrs. amortized over 5 yrs. = 48 hrs. per year.

Estimated burden to lift manufacturers to produce two labels for operating and backup lift operation:

—10 manufacturers × 48 hrs. amortized over 5 yrs. = 96 hrs. per year.

Estimated cost to lift manufacturers to produce:

—Label for operating instructions—27,398 lifts × $0.13 per label = $3,561.74.

—Label for backup operations—27,398 lifts × $0.13 per label = $3,561.74.

—Owner's manual insert—27,398 lifts ×$0.04 per page × 1 page = $1,095.92.

—Installation instructions—27,398 lifts × $0.04 per page × 1 page = $1,095.92.

Although lift installation instructions are considerably more than one page, lift manufacturers already provide lift installation instructions in the normal course of business and one additional page should be adequate to allow the inclusion of FMVSS-specific information.

Total estimated annual cost = $9,315.32.

Total estimated hour burden per year = 192 hours.

*Addressee:*Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW., Washington, DC 20503.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1:48.

Raymond R. Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2015–17931 Filed 7–21–15; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; FFIEC Cybersecurity Assessment Tool

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, the Board of Governor of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA) (collectively, the Agencies), as part of their continuing effort to reduce paperwork and respondent burden, invite 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 Agencies 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 on behalf of the Agencies concerning renewal of the information collection titled, ''FFIEC Cybersecurity Assessment Tool.''

DATES: Comments must be received by September 21, 2015.

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: 1557–0328, 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. Upon arrival, visitors will be required to present valid government-issued photo identification and to 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 enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, or Beth Knickerbocker, Counsel (202) 649–5490, 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 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) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The definition contained in 5 CFR 1320.3(c) also includes a voluntary collection. 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, the OCC is publishing, on behalf of the Agencies, a notice of the proposed collection of information set forth in this document.

In connection with issuance of the assessment entitled ''FFIEC Cybersecurity Assessment Tool,'' [1] OMB provided a six-month approval for this information collection. The OCC is proposing to extend OMB approval of the collection for the standard three years.

Title: FFIEC Cybersecurity Assessment Tool.

OMB Number: 1557–0328.

Description: Cyber threats have evolved and increased exponentially with greater sophistication than ever before. Financial institutions [2] are exposed to cyber risks because they are dependent on information technology to deliver services to consumers and businesses every day. Cyber attacks on financial institutions may not only result in access to, and the compromise of, confidential information, but also the destruction of critical data and systems. Disruption, degradation, or unauthorized alteration of information and systems can affect an institution's operations and core processes and undermine confidence in the nation's financial services sector. Absent immediate attention to these rapidly increasing threats, financial institutions and the financial sector as a whole are at risk.

For this reason, the Agencies, under the auspices of the Federal Financial Institutions Examination Council (''FFIEC''), have accelerated efforts to assess and enhance the state of the financial industry's cyber preparedness and to close gaps in the Agencies' examination procedures and training that can strengthen the oversight of financial industry cybersecurity readiness. The Agencies also have focused on improving their abilities to provide financial institutions with resources that can assist in protecting institutions and their customers from the growing risk posed by cyber attacks.

As part of these increased efforts, the Agencies have developed a Cybersecurity Assessment Tool (''Assessment'') that will assist financial institutions of all sizes in assessing their inherent cybersecurity risks and their risk management capabilities. The Assessment will allow a financial institution to identify its inherent cyber risk profile based on the financial institution's technologies and connection types, delivery channels, online/mobile products and technology services it offers, organizational characteristics, and threats it is likely to face. Once an institution identifies its inherent cyber risk profile, it will be able to use the Assessment's maturity matrix to evaluate its level of cybersecurity preparedness based on the institution's cyber risk management and oversight, threat intelligence capabilities, cybersecurity controls, external dependency management, and cyber incident management and resiliency planning. A financial institution can use the matrix's maturity levels to identify opportunities for improving the institution's cybersecurity, based on its inherent risk profile. The Assessment also will enable a financial institution to identify areas more rapidly that could improve its cybersecurity risk management and response programs, if needed. Use of the Assessment by financial institutions is not mandatory.

Type of Review: Regular.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: [3]

OCC: 1,511 (19 large; 48 mid-size (including credit card banks); and 1,444 community national banks and Federal savings associations).

Estimated Burden per Response: 80 hours.

Total Estimated Burden: 120,880 hours.

Board: 5,282 (858 state member banks; 522 large bank holding companies; 3,902 small bank holding companies).

Estimated Burden per Response: 80 hours.

Total Estimated Burden: 422,560.

FDIC: 4,084 (includes 3,882 community banks).

Estimated Burden per Response: 80 hours.

Total Estimated Burden: 326,720.

NCUA: 6,206.

Estimated Burden per Response: 80 hours.

Total Estimated Burden: 496,480.

All Agencies:

Estimated Number of Respondents: 176 technology service providers.

Estimated Burden per Response: 80 hours.

Total Estimated Burden: 14,080 hours.

Estimated Frequency of Response: On occasion.

Estimated Total Annual Burden: 1,380,720 hours.

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 Agencies, including whether the information has practical utility;

(b) The accuracy of the Agencies' estimates of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden 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.

[1] *http://www.ffiec.gov/cyberassessmenttool.htm.*

[2] For purposes of this information collection, the term ''financial institution'' includes banks, savings associations, credit unions, bank and saving and loan holding companies and critical third-party service providers to financial institutions.

[3] Burden is estimated conservatively and assumes all institutions will complete the Assessment. Therefore, the estimated burden may exceed the actual burden because use of the Assessment by financial institutions is not mandatory.

Dated: July 16, 2015.

Stuart E. Feldstein,

Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

[FR Doc. 2015–17907 Filed 7–21–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Open Meeting of the Federal Advisory Committee on Insurance

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice of open meeting.

SUMMARY: This notice announces that the Department of the Treasury's Federal Advisory Committee on Insurance (''Committee'') will convene a meeting on Thursday, August 6, 2015, in the Cash Room, 1500 Pennsylvania Avenue NW., Washington, DC 20220, from 1:00–5:00 p.m. Eastern Time. The meeting is open to the public, and the site is accessible to individuals with disabilities.

DATES: The meeting will be held on Thursday, August 6, 2015, from 1:00–5:00 p.m. Eastern Time.

ADDRESSES: The Federal Advisory Committee on Insurance meeting will be held in the Cash Room, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220. The meeting will be open to the public. Because the meeting will be held in a secured facility, members of the public who plan to attend the meeting must either:

1. Register online. Attendees may visit *http://www.cvent.com/d/xrqfz6?ct=6128d144-9ad5-45f5-910c-c7b44560aae0&RefID=General+Attendee+Registration* and fill out a secure online registration form. A valid email address will be required to complete online registration.

Note: Online registration will close at 5:00 p.m. Eastern Time on Friday, July 31, 2015.

2. Contact the Federal Insurance Office (FIO), at (202) 622–5892, by 5:00 p.m. Eastern Time on Friday, July 31, 2015, and provide registration information.

Requests for reasonable accommodations under Section 504 of the Rehabilitation Act should be directed to Marcia Wilson, Office of Civil Rights and Diversity, Department of the Treasury at (202) 622–8177, or *marcia.wilson@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Brett D. Hewitt, Policy Advisor, FIO, Room 1410, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220, at (202) 622–5892 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. II, 10(a)(2), through implementing regulations at 41 CFR 102–3.150.

Public Comment: Members of the public wishing to comment on the business of the Federal Advisory Committee on Insurance are invited to submit written statements by any of the following methods:

Electronic Statements

- Send electronic comments to *faci@treasury.gov.*

Paper Statements

- Send paper statements in triplicate to the Federal Advisory Committee on Insurance, Room 1410, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

In general, the Department of the Treasury will post all statements on its Web site *http://www.treasury.gov/about/organizational-structure/offices/Pages/Federal-Insurance.aspx* without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. The Department of the Treasury will also make such statements available for public inspection and copying in the Department of the Treasury's Library, 1500 Pennsylvania Avenue NW., Washington, DC 20220, on official business days between the hours of 10:00 a.m. and 5:00 p.m. Eastern Time. You can make an appointment to inspect statements by telephoning (202) 622–0990. All statements, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

Tentative Agenda/Topics for Discussion: This is a periodic meeting of the Committee, and in this meeting the Committee will discuss a number of issues, including developments in workers' compensation insurance, additional perspectives on retirement security, FIO's proposed definition of affordability of personal auto insurance, and Public Consultation Document on Higher Loss Absorbency Capacity for Global Systemically Important Insurers released by the International Association of Insurance Supervisors. The Committee will also receive updates from its subcommittees.

Michael T. McRaith,

Director, Federal Insurance Office.

[FR Doc. 2015–17938 Filed 7–21–15; 8:45 am]

BILLING CODE 4810–35–P

FEDERAL REGISTER

Vol. 80 Wednesday,
No. 140 July 22, 2015

Part II

Department of Defense

32 CFR Part 232
Limitations on Terms of Consumer Credit Extended to Service Members and Dependents; Final Rule

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 232

[DOD–2013–OS–0133]

RIN 0790–AJ10

Limitations on Terms of Consumer Credit Extended to Service Members and Dependents

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of Defense (''Department'') amends its regulation that implements the Military Lending Act, herein referred to as the ''MLA.'' Among other protections for Service members and their families, the MLA limits the amount of interest that a creditor may charge on ''consumer credit'' to a maximum annual percentage rate of 36 percent. The Department amends its regulation primarily for the purpose of extending the protections of the MLA to a broader range of closed-end and open-end credit products. Among other amendments, the Department modifies the provisions relating to the optional mechanism a creditor could use when assessing whether a consumer is a ''covered borrower,'' modifies the disclosures that a creditor must provide to a covered borrower, and implements the enforcement provisions of the MLA.

DATES: *Effective Date:* October 1, 2015. Compliance required by October 3, 2016.

FOR FURTHER INFORMATION CONTACT: Marcus Beauregard, 571–372–5357.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Regulatory Action

In September 2014, the Department published a proposal to amend its regulation implementing the MLA [1] primarily for the purpose of extending the protections of 10 U.S.C. 987 to a broader range of closed-end and open-end credit products (''Proposed Rule''),[2] rather than the limited credit products that had been defined as ''consumer credit.'' [3] After reviewing comments submitted on the Proposed Rule and in light of its experience administering the existing regulation for over seven years, the Department amends its regulation so that, in general, consumer credit covered under the MLA [4] would be defined consistently with credit that for decades has been subject to the disclosure requirements of the Truth in Lending Act (TILA), codified in Regulation Z, namely: Credit offered or extended to a covered borrower primarily for personal, family, or household purposes, and that is (i) subject to a finance charge or (ii) payable by a written agreement in more than four installments.[5]

The Department believes that this final rule is appropriate in order to address a wider range of credit products that currently fall outside the scope of the Department's existing regulation that, until now, had implemented the MLA (''existing rule''). In addition, the final rule streamlines the information that a creditor must provide to a covered borrower when consummating a transaction involving consumer credit and provides a more straightforward mechanism for a creditor to conclusively determine—via a safe harbor—whether a consumer-applicant is a covered borrower. In this regard, the Department is aware of misuses of the covered borrower identification statement whereby a Service member (or covered dependent) falsely declares that he or she is not a covered borrower. The Department believes that, if a creditor elects to (but is not required to) unilaterally conduct a covered-borrower check by obtaining information from the Department's online database (''MLA Database''),[6] a Service member or his or her dependent would be relieved from making any statement regarding his or her status as a covered borrower.

The Department is provided authority in 10 U.S.C. 987(h) to establish regulations to implement the MLA. As described in 10 U.S.C. 987(h)(3) the Department, at a minimum, must consult with other Federal agencies ''not less often than once every two years'' with a view towards revising the regulation implementing the MLA. In developing this final rule the Department has consulted with the Board of Governors of the Federal Reserve System (''Board''), the Consumer Financial Protection Bureau (''Bureau''), the Department of the Treasury, the Federal Deposit Insurance Corporation (''FDIC''), the Federal Trade Commission (''FTC''), the National Credit Union Administration (''NCUA''), and the Office of the Comptroller of the Currency (collectively, ''Federal Agencies''). The Department will continue to consult with the Federal Agencies, as appropriate, as the Department continues to assess the measures implementing the protections of the MLA.

B. Summary of the Major Provisions of the Department's Final Rule; Modifications to the Department's Proposed Rule

The MLA, as implemented by the Department's regulation, provides two broad classes of requirements applicable to a creditor: First, the creditor may not impose a Military Annual Percentage Rate (''MAPR'') greater than 36 percent in connection with an extension of consumer credit to a covered borrower (''interest-rate limit''); second, when extending consumer credit, the creditor must satisfy certain other terms and conditions, such as providing certain information (*e.g.,* a statement of the MAPR), both orally and in a form the borrower can keep, before or at the time the borrower becomes obligated on the transaction or establishes the account, refraining from requiring the borrower to submit to arbitration in the case of a dispute involving the consumer credit, and refraining from charging a penalty fee if the borrower prepays all or part of the consumer credit (collectively, ''other MLA conditions'').

Key elements of the Department's rule, particularly relative to the Proposed Rule, include:

- Providing a temporary exemption for credit extended in a credit card account under an open-end (not home-secured) consumer credit plan. The exemption for a credit card account expires, at minimum, in October 2017, and the rule permits that exemption to be extended for up to one year;
- Providing a qualified exclusion from the requirements relating to the computation of the MAPR for a credit card account for a ''bona fide'' fee, but eliminating the proposed condition that the bona fide fee be ''customary.'' Under the final rule, an application fee, participation fee, transaction-based fee, or similar fee (other than a periodic rate) for a charge may be excluded from the MAPR to the extent that the fee is (i) a bona fide fee and (ii) reasonable for that type of fee; and

[1] 32 CFR part 232.

[2] Limitations on Terms of Consumer Credit Extended to Service Members and Dependents (Proposed Rule), 79 FR 58602 (Sept. 29, 2014). The Department extended the period for submitting comments on the Proposed Rule, to December 26, 2014. 79 FR 70137 (Nov. 25, 2014).

[3] 32 CFR 232.3(b) (2008).

[4] The forms of ''consumer credit'' that may be covered by the MLA are subject to certain exceptions, notably for a residential mortgage or auto-secured purchase loan. 10 U.S.C. 987(i)(6)(A) and 987(i)(6)(B).

[5] *See* 12 CFR 1026.1(c)(1)(iii) (2015) (limiting the coverage of the regulation, in relevant part, to credit that is subject to a finance charge or is payable by a written agreement in more than four installments).

[6] The MLA Database is available at *https://www.dmdc.osd.mil/mla/welcome.xhtml.*

• Permitting a creditor, until October 3, 2016, to continue to use the method described in the existing rule for conducting a covered-borrower check, which involves the use of a covered borrower identification statement, as a safe harbor for compliance. After October 3, 2016, a creditor seeking a safe harbor for compliance with the rule may elect to use either of the new methods for conducting a covered-borrower check (and keep a record accordingly) set forth in § 232.5(b).

C. Timetable for Implementing the Department's Final Rule

1. Twelve-month Period for Compliance

Many comments on the Proposed Rule state that, if the Department were to adopt a final rule along the lines of the Proposed Rule, creditors would need a substantial period of time to modify their operations in order to comply with the rule. For example, in a joint letter, the American Bankers Association, the Association of Military Banks of America, the Consumer Bankers Association, the Independent Community Bankers of America, and the National Association of Federal Credit Unions (the ''Associations'') state: ''Given the breadth, complexity, and broad reach of the proposal, the necessary legal analysis operations, systems changes, staff training, [and] the draconian consequences for violations, . . . the Department should allow [creditors] at least 18 months to comply'' with a final rule.[7] Similarly, another comment states that ''[the Department] should allow as long an implementation period as reasonable to provide adequate time for credit unions and others to implement necessary changes.'' [8]

Because the protections of the MLA will apply to a wider range of credit products—and thus the requirements of the final rule will apply to broader classes of creditors—the Department believes that a creditor should be afforded a reasonable period of time to adjust its operations and, if necessary, the terms and conditions of its loan product(s) offered to covered borrowers in order to comply with the final rule. Accordingly, under § 232.13(a), a creditor must comply with the requirements of the rule with respect to a consumer credit transaction or account for consumer credit consummated or established on or after October 3, 2016.[9]

2. Creditor May Use Existing Safe Harbor for Covered-Borrower Determination Prior to Compliance Date

Consistent with the Department's determination that a creditor should be afforded a 12-month period to adjust its operations and loan product(s) to comply with the rule, a creditor also is permitted to use the existing safe harbor when assessing whether a consumer-applicant is a covered borrower. If a creditor uses the safe harbor set forth in § 232.5(a) of the Department's existing rule, the creditor would be subject to the existing interpretation regarding the treatment of a covered borrower which is designed to prevent the creditor from using the borrower's declaration to allow the borrower to waive his or her rights to the protections provided under the MLA.[10]

Upon the compliance date, the rule permits—and does not require—a creditor to use information obtained from the MLA Database or information contained in a consumer report obtained from a nationwide consumer reporting agency in order to conclusively determine whether a consumer-applicant is a covered borrower. A creditor who uses one (or both) of the methods set forth in, and complies with the recordkeeping requirements of, § 232.5(b) when conducting a covered-borrower check will be afforded the new safe harbor.

3. Two-Year Exemption for Credit Card Accounts

The Department concludes that consumer credit should not include credit extended in a credit card account under an open-end (not home-secured) consumer credit plan until October 3, 2017. Section 232.13(c)(2) allows the Secretary (or an official of the Department duly authorized by the Secretary) to extend, up to an additional year, the expiration of the exemption for a credit card account. Thus, until October 3, 2017 (or potentially a longer period of time), the requirements relating to the computation of the MAPR for a credit card account, as set forth in § 232.4, would not apply. When the exemption expires, the conditional exemption for any ''bona fide'' fee charged to a credit card account, as set forth in § 232.4(d) would apply.

D. Overview of Comments on the Proposed Rule

Several hundred comments from a wide range of persons—including thousands of individuals—have submitted comments on the Proposed Rule. Including comments on form letters and petitions, over 21,000 individuals express views on the Proposed Rule,[11] and the vast majority of individuals support the proposal to extend the protections of the MLA to a wider range of closed-end and open-end credit products.

Nearly two hundred consumer or civil rights organizations have submitted comments, and most express support for the reforms in the Proposed Rule. In addition, some organizations representing consumers believe that the Department should adopt a regulation that extends the protections of the MLA to credit extended in overdraft services, as well as to rent-to-own products.

Forty U.S. Senators express support for the Department to adopt the proposed definition of ''consumer credit,'' particularly in order to close what they find to be ''loopholes'' in the existing rule that preclude Service members and their families from effectively receiving the protections of the MLA.[12] Likewise, the Attorneys General of 22 states (''Attorneys General'') support the Proposed Rule, and urge the Department to adopt more aggressive provisions to regulate some financial products under the MLA.[13] Several other state officials have submitted comments generally supporting the Proposed Rule,[14] and, in particular, applauding the proposed expansion of the definition of ''consumer credit.'' [15]

Over 350 groups, trade associations, and businesses have submitted comments, and many of these businesses and their representatives express concerns with—as well as outright opposition to—the Proposed Rule.

Most financial institutions, through approximately 50 comments, urge the Department to adopt in the final rule an exemption for certain types of creditors or, more narrowly, one or more exemptions for certain types of credit products. In particular, insured depository institutions and insured credit unions believe that, if the Department extends the scope of ''consumer credit,'' then the Department also should craft that definition so that an extension of credit from an insured depository institution or insured credit

[7] Associations, Dec. 18, 2014, at 58.

[8] Missouri Credit Union Assoc., Nov. 25, 2014, at 3.

[9] The Department has determined that the final rule shall be effective on October 1, 2015.

[10] *See* 72 FR 50588.

[11] In this regard, the comment from U.S. PIRG includes thousands of letters from consumers who support the Proposed Rule (U.S. PIRG, Dec. 23, 2014), and Public Citizen provides the names of 12,000 consumers supporting the Proposed Rule. Public Citizen, Dec. 24, 2014.

[12] Sen. Jack Reed, et al., Nov. 25, 2014.

[13] Attorneys General, Dec. 22, 2014.

[14] *See, e.g.,* Hon. Kate Marshall, State Treasurer, State of Nevada, Dec. 23, 2014.

[15] Hon. Benjamin M. Lawsky, Superintendent, N.Y. Dep't of Financial Services, Dec. 24, 2014.

union should be exempt from the requirements of the MLA. In addition, banks and credit unions, as well as others, raise concerns that Service members and their families should continue to have access to voluntary credit insurance products, unrestricted from the interest-rate limit of the MLA. Financial institutions request that the Department, at a minimum, delay the date(s) on which a creditor must comply with the final rule, seeking time periods ranging from 90 days to three years after the effective date of the rule.[16]

Apart from banks and credit unions, several finance companies and their representatives express the view that the Proposed Rule, if adopted, would reduce access to a wide range of installment loans, which these commenters contend are valuable resources for Service members and their families. Some of these comments state that the four relief societies for the military services (Army Emergency Relief, Navy-Marine Corps Relief Society, Air Force Aid Society and Coast Guard Mutual Assistance) (collectively, the ''Relief Societies'') currently have limited scope of service and resources, insufficient to handle the range and volume of loans needed by Service members and their families; extending the Department's rule to cover a wider range of installment loans, these comments contend, would restrict access to these products for covered borrowers.[17] Installment lenders, including payday loan companies, also raise concerns about the potential burdens of using the MLA Database to conduct covered-borrower checks. Nonetheless, the Community Financial Services Association of America, which represents certain payday loan companies operating in more than 30 states, stated that it ''believes that extending MLA protections to a broader range of consumer credit products will provide more consistent consumer protections.'' [18]

Pawnbrokers and their representatives explain that traditional pawn transactions are different in kind from other types of credit transactions, principally because a pawn transaction typically is a non-recourse loan,[19] and should be exempt from the scope of ''consumer credit'' regulated under the MLA.[20]

E. Costs and Benefits

In its proposal, the Department posed a series of questions in order to facilitate comments and, in particular, encourage interested persons to provide detailed information about the potential effects if the Department were to adopt the Proposed Rule. Some commenters offer certain data regarding the potential costs and benefits that might emerge if the Proposed Rule were to be implemented; in assessing the potential effects of the final rule, the Department has incorporated that data, as appropriate.

The Department has quantified three effects of the regulation. With respect to costs, the Department anticipates that, absent any relief under § 232.13(c), its regulation might impose costs of approximately $106 million during the first year, as creditors adapt their systems to comply with the requirements of the MLA and the Department's regulation. When the relief afforded to creditors for the general exemption for credit card accounts is included, then the anticipated approximate costs would be significantly lower during the first year. After the first year and on an ongoing basis, in a sensitivity analysis, the annual benefits to the Department may be between approximately $14 to $133 million. The Department estimates the potential savings that could result if the rule reduces the involuntary separations of Service members where financial distress is a contributing factor in sensitivity analyses; at some points in the range of estimates the Department has used to assess the proposal, these savings are estimated to exceed the compliance costs that would be borne by creditors. The Department also has developed a transfer payment analysis that estimates between $100 and $119 in transfer payments per year from creditors to service members and their dependents. In addition to these quantified effects, the Department examined some effects qualitatively including those effects listed in figure 2 within section V.A.

FIGURE 1—SUMMARY OF ESTIMATED EFFECTS OF FINAL RULE

[2015 dollars in millions]

		First Year, set-up costs (Oct. 1, 2015–Sept. 30, 2016)	Annual, ongoing (October 1, 2016 and thereafter)	PV 10-year, 7% discount rate	PV 10-year, 3% discount rate
Sensitivity Analysis: Benefits to the Department	Low	$0	$14	$96	$129
	High	$0	$133	$940	$1,263
Primary Analysis: Costs to Creditors of Compliance.		($106)	($30)	($185)	($259)
Sensitivity Analysis: Transfer Payments	Low	n/a	$100	$616	$856
	High	n/a	$119	$740	$1,022

II. Background

A. Overview of the Final Rule

The Department is amending its regulation that implements 10 U.S.C. 987, which was enacted in section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (''2006 Act''),[21] and amended by sections 661–663 of the National Defense Authorization Act for Fiscal Year 2013 (''2013 Act'').[22]

The 2013 Act amended several provisions of 10 U.S.C. 987. In particular, the 2013 Act added provisions that would permit a covered borrower to recover damages from a creditor who violates a requirement of

[16] *See, e.g.,* Nat'l Pawnbrokers Assoc., Nov. 24, 2014, at 21 (urging the Department to delay the date for compliance with the final rule for at least 90 days); GECU-Greater El Paso's Credit Union, Dec. 12, 2014, at 1 (recommending that, for credit unions, the compliance date should be delayed for a minimum of three years).

[17] *See, e.g.,* Nat'l Installment Lenders Assoc., Dec. 9, 2014.

[18] Community Financial Services Assoc. of America, Dec. 24, 2014, at 2.

[19] *See, e.g.,* Nat'l Pawnbrokers Assoc., Nov. 24, 2014, at 3.

[20] *See, e.g.,* American-Gold Mine, Inc., Nov. 25, 2014.

[21] Public Law 109–364, 120 Stat. 2266.

[22] Public Law 112–239, 126 Stat. 1785.

the MLA,[23] and authorizes the agencies ''specified in section 108 of the Truth in Lending Act'' [''TILA''] to enforce the requirements of the MLA ''in the manner set forth in that section [of TILA] or under any other applicable authorities available to such agencies by law.'' [24] Section 663 of the 2013 Act modified the definition of ''dependent'' in order to make the meaning of that term consistent with parts of the definition that applies in the context of eligibility of a Service member's dependent for military medical care.[25] In addition, section 661 of the 2013 Act amended the MLA to require the Department to consult—''not less often than once every two years''—with the Federal Agencies with a view towards revising the regulation implementing the MLA.

In August 2007, the Department published its regulation to implement the MLA.[26] At that time, the Department elected to define the scope of ''consumer credit'' as a narrow band of products within three categories of credit; for example, the existing rule had defined a ''payday loan,'' in relevant part, as ''[c]losed-end credit with a term of 91 days or fewer in which the amount financed does not exceed $2,000.'' [27]

In September 2014, the Department published a proposal to amend the existing rule primarily for the purpose of extending the protections of 10 U.S.C. 987 to a broader range of closed-end and open-end credit products. In describing the Proposed Rule, the Department explained, in relevant part, that ''the narrowly defined parameters of the credit products regulated as 'consumer credit' under [the then-existing rule] do not effectively provide the protections intended to be afforded to Service members and their families under the MLA.'' [28]

Many persons and entities believe that the Department should not amend its regulation as proposed because the expansion of the definition of ''consumer credit'' and the attendant requirements under the MLA would impair the ability of many types of creditors, particularly insured depository institutions and insured credit unions, to provide short-term credit to Service members and their families. However, some commenters argue that the Department should amend its regulation to apply to a broader range of credit products, including open-end credit, provided that the regulation also includes an exemption for insured depository institutions and insured credit unions.[29] Still other commenters urge the Department to amend its regulation to apply to a broader range of credit products, including open-end credit, without any exemptions or conditions.[30]

In the process of adopting this final rule, the Department has reviewed the comments on the Proposed Rule and consulted with the Federal Agencies on a wide range of issues implicated by the Proposed Rule. In light of its assessment of the comments, its experience observing the effects of its existing regulation, and the scope and purposes of the provisions of 10 U.S.C. 987, the Department has determined that a wider range of credit products offered or extended to covered borrowers should be subject to the protections of the MLA. As proposed, the Department is amending its regulation so that, in general, consumer credit covered under the MLA [31] would be defined consistently with credit that for decades has been subject to TILA, namely: Credit offered or extended to a covered borrower primarily for personal, family, or household purposes, and that is (i) subject to a finance charge or (ii) payable by a written agreement in more than four installments.[32] In general, any charge that is a ''finance charge'' under Regulation Z,[33] adopted by the Bureau, as well as certain other charges that would be covered as ''interest'' under 10 U.S.C. 987(i)(3), must be included in the calculation of the MAPR, as applicable to the transaction for consumer credit.

The Department has considered whether unqualified exclusions from the MAPR for certain types of fees, such as an application fee or participation fee, should be adopted for credit card accounts in order to preserve current levels of access to those products for Service members and their dependents; however, the Department believes that unqualified exclusions from the MAPR for certain fees, or all non-periodic fees, could be exploited by a creditor who would be allowed to preserve a high-cost, open-end credit product by offering a relatively lower periodic rate coupled with an application fee, participation fee, or other fee (as described in the exclusion), subject to the restrictions under the amendments to TILA enacted in the Credit Card Accountability Responsibility and Disclosure Act of 2009 (''CARD Act'').

However, the Department also adopts the provisions in the Proposed Rule, with certain modifications, that provide a broad exclusion to allow a creditor who offers consumer credit through a credit card account to exclude from the MAPR any ''bona fide'' fee (other than a periodic rate). Under the final rule, that creditor would need to confirm that its fees are bona fide and reasonable, and if so, the Department believes that the creditor should be able to continue to offer the same credit card product(s) to covered borrowers by making certain adjustments to the terms and conditions for the product(s) by, for example, including the ''statement of the MAPR'' (which would be permitted simply to be added to its credit card agreement(s), and which is not required to be provided in any advertisement),[34] and modifying any provision (if any) that requires a covered borrower to ''submit to arbitration.'' [35]

The Department has considered whether to provide a complete exemption from the definition of consumer credit for certain types of loans, such as a ''payday alternative loan'' (''PAL'') offered by a federal credit union and regulated under the NCUA's regulation [36] or similar credit product; likewise, the Department has considered whether to provide an exclusion from the requirements for computing the MAPR for an application fee or participation fee imposed on certain types of credit transactions or credit accounts. The Department has determined that an application fee or participation fee is an element generally required to be included when computing the MAPR (subject to a limited exception for a qualifying closed-end loan and the conditional exclusion for a bona fide fee charged to a credit card account).

As discussed in section III.D., the Department declines to provide a complete exemption for a PAL and,

[23] *Id. See* section 662(a) of the 2013 Act.

[24] 126 Stat. 1786. *See* section 662(b) of the 2013 Act.

[25] 126 Stat. 1786 (defining ''dependent'' to be a person described in subparagraph (A), (D), (E), or (I) of 10 U.S.C. 1072(2)).

[26] Limitations on Terms of Consumer Credit Extended to Service Members and Dependents, 72 FR 50580 (Aug. 31, 2007).

[27] 32 CFR 232.3(b)(1)(i) (definition of ''consumer credit'').

[28] 79 FR 58610.

[29] *See, e.g.,* Associations, Dec. 18, 2014, at 8.

[30] *See, e.g.,* Attorneys General, Dec. 22, 2014, at 3 (urging the Department to adopt ''a more inclusive calculation of the MAPR,'' without the conditional exclusion for ''bona fide'' fees charged for a credit card account).

[31] The forms of ''consumer credit'' that may be covered by the MLA are subject to certain exceptions, notably for a residential mortgage. 10 U.S.C. 987(i)(6)(A) and 987(i)(6)(B).

[32] *See* 12 CFR 1026.1(c)(1)(iii) (limiting the coverage of the regulation, in relevant part, to credit that is subject to a finance charge or is payable by a written agreement in more than four installments).

[33] 12 CFR part 1026 (2013).

[34] *See* § 232.6.

[35] *See* § 232.8(c).

[36] 12 CFR 701.21(c)(7)(iii) (2015).

instead, has determined that an application fee may be excluded from the computation of the MAPR for a short-term, small amount loan, subject to certain conditions.

The Department adopts in the final rule provisions designed to provide a creditor with a more straightforward mechanism to assist in assessing the status of a consumer as a covered borrower so that the creditor may have ''some degree of certainty in determining that the loans [the creditor makes] are in compliance with [the MLA] as implemented by Part 232.'' [37] The Department continues to believe that a covered-borrower check could be conducted unilaterally by a creditor who uses information obtained from the MLA Database and without relying on the borrower (as currently required), akin to the process a creditor currently uses to obtain a consumer report when assessing the creditworthiness of a consumer. Accordingly, the Department amends the existing rule to allow a creditor to use information obtained from the MLA Database or information contained in a consumer report from a nationwide consumer reporting agency to assess the status of a consumer-applicant for consumer credit and thereby providing a clearer mechanism for a creditor to obtain the protection of a safe harbor when determining whether a consumer is a covered borrower.

B. Financial Stability and Readiness

As the Department stated when issuing the Proposed Rule, the Department makes a significant investment in recruiting, training and retaining highly qualified Service members. The Department expects these Service members to maintain personal readiness standards, including paying their debts and maintaining their ability to attend to the financial needs of their families.[38] Losing qualified Service members due to personal issues, such as financial instability, causes loss of mission capability and drives significant replacement costs. The Department estimates that each separation costs the Department $58,250.[39] Losing an experienced mid-grade noncommissioned officer (NCO), who may be in a leadership position or key technical position, may be considerably more expensive in terms of replacement costs and in terms of the degradation of mission effectiveness resulting from a loss of personal reliability for deployment and availability for duty. A study of the potential impact of the access to payday loans on enlisted members in the Air Force found ''[a]irmen job performance and retention declines with payday loan access, and severely poor readiness increases.'' [40] Additionally, financial concerns detract from mission focus and often require attention from commanding officers and senior NCOs to resolve outstanding debts and other credit issues.

C. Financial Readiness Program

As young people with steady pay checks and personal responsibilities which emerge earlier than their contemporaries, junior enlisted Service members need to have a commensurate level of financial acumen and maturity to succeed. Junior enlisted Service members are generally high school graduates who may have started college.[41] Prior to entering the military they may have had limited exposure to financial literacy programs within high school, but they are generally unprepared for their financial responsibilities.[42] The Department has established the Financial Readiness Program to assist Service members in dealing with financial concerns, by providing messaging, education, and assistance. Throughout each year, the Department provides key messages on personal finance to the military community as part of a strategic communications plan that includes press releases, news articles, interviews, Web sites and social media. The Department has the assistance of nonprofit organizations in delivering messages and programs to promote savings and sound money management. The Department annually promotes the ''Military Saves Campaign,'' which occurs at the end of February each year as part of ''America Saves,'' sponsored by the Consumer Federation of America. The campaign asks Service members and their families to pledge towards their own savings goals, and the campaigns are supported by banks and credit unions on military installations. Initiated in 2007, the campaign has signed up 31,527 savers through 2013.[43] Additionally, the Financial Institutions National Regulatory Authority (FINRA) Foundation sponsors the ''Save and Invest Program'' that has provided forums at military installations (33,000 participants), fellowships for 1,200 military spouses to earn a financial counselor credential and give back to the community through 355,000 practicum hours, assistance to wounded warriors (17,000 guides distributed), 800,000 booklets on managing money during military moves and deployments, and access to no cost on-line tools to assist 150,000 military families with managing credit.[44]

The Department has established policy requiring Service members to receive financial education throughout their military careers, commencing with an initial course provided within 3 months of having arrived at their first duty station. As Service members assume supervision of others, they are also provided information on policies and practices designed to protect junior military members.[45] Each of the military services manages its own educational program to fulfill this requirement, based on regulations from the Military Departments. For Fiscal Year 2012, the military services reported providing 34,867 briefings to 872,187 participants.[46] In addition, the National Guard and Reserve Commands conducted 8,912 sessions, hosted at unit

[37] 72 FR 50588.

[38] U.S. Dep't of Defense, Instruction 1344.09, Indebtedness of Military Personnel (2008) (''Members of the Military Services are expected to pay their just financial obligations in a proper and timely manner [to include alimony and child support]. A Service member's failure to pay a just financial obligation may result in disciplinary action under the Uniform Code of Military Justice [10 U.S.C. 801–940] or a claim pursuant to [Article 139 of Uniform Code of Military Justice (10 U.S.C. 939)].'').

[39] U.S. Gov't Accountability Office, GAO–11–170, *Military Personnel: Personnel and Cost Data Associated with Implementing DOD's Homosexual Conduct Policy* (January 20, 2011) (estimating that each separation costs the Department $52,800 in 2009 dollars). The cost of $58,250 is calculated in 2015 dollars (through December 2014), using the DOL, Bureau of Labor Statistics, Consumer Price Index, All Urban Consumers (CPI–U), available at *ftp://ftp.bls.gov/pub/special.requests/cpi/cpiai.txt.*

[40] Scott Carrell and Jonathan Zinman, ''In Harm's Way? Payday Lending and Military Personnel Performance,'' August 2014, Abstract, available at *http://www.econ.ucdavis.edu/faculty/scarrell/payday.pdf.*

[41] Defense Manpower Data Center (DMDC) QuickCompass of Financial Issues, (2013), question 20: 39% of E1–E4s have a high school diploma, 22% have less than one year of college, 24% have one or more years of college, but no degree.

[42] *See* Lewis Mandell, *The Financial Literacy of Young American Adults,* (2008), at 8, available at *www.jumpstart.org/assets/files/2008Survey Book.pdf* (reporting that average score for high school seniors was 48.3% and 62.2% for college students on a financial literacy test measuring: (1) Income; (2) money management; (3) saving and investing; and (4) spending and credit).

[43] Consumer Federation of America, Military Saves Week 2013 Report, at 2, available at *http://www.militarysaves.org/in-the-newsroom/military-saves-week-reports.*

[44] ''*Military Financial Readiness Program—Accomplishments To Date,*'' SaveandInvest.org, About the Program, available at *http://www.saveandinvest.org/MilitaryCenter/About/P124822.*

[45] *See* DoD Instruction 1342.22, Family Readiness Program, July 3, 2012, at 12, available at *http://www.dtic.mil/whs/directives/corres/pdf/134222p.pdf.*

[46] Fiscal Year 2012 Annual Report on Family Readiness Programs (internal Department report), which reflects activities of installation-based Military and Family Support Centers/Reserve Family Program Sites.

events lasting one-to-three days, attended by 13,480 participants.[47]

Department policy also requires the military services to provide one-on-one counseling to help a Service member determine appropriate short- and long-term actions to alleviate debt and achieve financial goals. The military services employ at least one certified financial counselor (civil service or contractor) at each military installation and have developed Military Service-specific programs to extend counseling into the military units through designated approved financial educators. For example, the Department of the Navy directs Navy and Marine Corps units to designate and train a Command Financial Specialist (E6 or above) who delivers financial education, conducts basic counseling and makes referrals to certified counselors. The military services reported 1,828,299 brief counseling contacts and 161,992 extended counseling contacts for Fiscal Year 2012.[48] To supplement the counseling services provided by the military services, the Department employs contract counselors through Military One Source to conduct over-the-phone counseling (available 24 hours a day and 7 days each week) and 12 in-person sessions for each military client (in a 12 month period). These counselors provided 32,000 in-person sessions for 35,000 Service members and spouses in Fiscal Year 2012.[49]

To provide monetary support to Service members and their families with financial hardships, the military services have partnered with nonprofit charitable organizations chartered to provide relief services to Service members and their families. The four Relief Societies provide no-interest loans, grants, and scholarships, and fund other support programs for active-duty military communities. Each of these Relief Societies traditionally has provided no-interest loans and grants for shortfalls in household expenses (*e.g.,* rent, mortgage, or utilities) and for unforeseen emergencies (*e.g.,* auto repair, funeral, or family emergency). Since 2007, each of the Relief Societies also has offered small-dollar loans, which can be drawn without counseling.[50] In total for 2012, the Relief Societies provided $142.2 million in no-interest loans and grants to 159,745 clients.[51]

D. Regulation in Support of Financial Readiness

The Department continues to believe that, consistent with the MLA, there may be a need to limit access to high-cost borrowing, even with the Department's emphasis on delivering messages to save and control debt, education to support managing finances wisely, counseling resources to aid Service members, and financial resources to help Service members cover unforeseen shortfalls and emergencies. Additionally, as messaging and education programs make clear, the Department expects Service members to seek out assistance rather than continue attempting by themselves to manage high-cost debt.

The majority of Service members have access to reasonably priced (as well as low-cost) credit, and, as long as they wisely use those resources, they are likely not to need high-cost loans to fulfill their credit needs. In particular, the military services have partnered with nonprofit charitable organizations chartered to provide relief services to Service members and their families so that Service members and their families can obtain monetary support for their financial hardships. The Relief Societies provide no-interest loans and grants for shortfalls in household expenses (*e.g.,* rent, mortgage, or utilities) and for unforeseen emergencies (*e.g.,* auto repair, funeral, or family emergency), as well as scholarships; the Relief Societies also fund other support programs for active-duty military communities. In the event that a Service member overwhelms his or her credit, or has not established credit for an emergency, the Department and the Relief Societies are prepared to assist that person in order that he or she might resolve the immediate difficulties and continue to manage his or her income and expenses to a point where he or she can develop a sound financial basis. In circumstances where Service members have taken high-cost loans because no other alternatives appeared to be available, Department counselors and the Relief Societies have found that the existing high-cost debt makes intervention more difficult; these service providers would rather have had the opportunity to have helped resolve issues sooner.

Section 661 of the 2013 Act amended the MLA to require the Department to consult—''not less often than once every two years''—with the Federal Agencies. Consistent with this provision of the MLA and with Executive Order 13563 (''EO 13563''),[52] the Department intends to conduct periodic reviews of this rule and may, as appropriate, modify certain provisions of the rule after notice and comment. The Department is mindful that the changes to credit made pursuant to this rule warrant continued evaluation of access to and the impact on credit extended to service members and their families, and that there may be relevant distinctions between military and civilian populations. During the periodic review and the required consultations, the Department will review its need to collect data as well as information provided by the Federal Agencies. The Department intends to synthesize and review available data on new and historical information to evaluate the effectiveness of this rule, including incorporation of fees in calculating MAPR, affected open-ended credit products, and availability of credit to covered borrowers with an eye toward striking an appropriate ongoing balance between covered borrower protection and industry compliance burden. These results of this data gathering will form the basis for ongoing reviews of the rule and assessments of various aspects of the rule. Any modifications, including those based on the results of studies currently ongoing and underway, would be subject to further analysis. This rule, as well as any proposed revisions to this rule, are part of the Department's retrospective review plan under EO 13563 completed in August 2011. The Department's full plan and retrospective review reports is available at: *http://www.regulations.gov/#!docketDetail;D=DOD-2011-OS-0036*.

III. Key Aspects of the Final Rule

A. Scope of ''Consumer Credit''

1. In General

As proposed, the Department has determined to revise the scope of the definition of ''consumer credit'' to be generally consistent with the credit

[47] Military OneSource internal report for Fiscal Year 2012.

[48] Fiscal Year 2012 Annual Report on Family Readiness Programs (internal Department report), which reflects activities of installation-based Military and Family Support Centers/Reserve Family Program Sites.

[49] Military OneSource internal report for Fiscal Year 2012.

[50] *See* Army Emergency Relief, Soldiers Helping Soldiers: Army Emergency Relief 2012 Annual Report, at 13 (2013) (in 2012, Army Emergency Relief provided $19.1 million in ''Commander Referral Loans''); Air Force Aid Soc'y, Air Force Aid Society 2012 Annual Report, at 6 (2013) (in 2012, the Air Force Aid Society provided half of its $10.1 million in emergency assistance ''Falcon Loans''); Coast Guard Mut. Assistance, 2012 Annual Report, at 2 (2013) (in 2012, Coast Guard Mutual Assistance provided $212,000 in quick loans).

[51] *See* Army Emergency Relief, Soldiers Helping Soldiers: Army Emergency Relief 2012 Annual Report, at 13 (2013); Navy-Marine Corps Relief Society, 2012 Annual Report, at 11 (2013); Air Force Aid Soc'y, Air Force Aid Society 2012 Annual Report, at 6 (2013); Coast Guard Mut. Assistance, 2012 Annual Report, at 2 (2013).

[52] Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 21, 2011).

products that for decades have been subject to the requirements of the Bureau's Regulation Z. Accordingly, the Department has revised § 232.3(e) so that, in general, consumer credit is defined consistently with certain credit that long has been subject to TILA, namely: Credit offered or extended to a covered borrower primarily for personal, family, or household purposes, and that is (i) subject to a finance charge or (ii) payable by a written agreement in more than four installments.[53]

The Department believes that the narrow parameters of the credit products defined as ''consumer credit'' under the existing rule do not effectively provide the protections intended to be afforded to Service members and their families under the MLA. As forty U.S. Senators observe, extending the scope of ''consumer credit'' to track the credit regulated under Regulation Z closes ''existing MLA loopholes'' and ''[t]his comprehensive approach is essential to preventing future evasions'' of the requirements of the MLA.[54] Subject to certain exceptions, under the final rule when extending consumer credit to a covered borrower, a creditor should be permitted to rely on the provisions and jurisprudence of the Bureau's Regulation Z because that regulation substantially regulates the central components of the framework of the MLA, particularly the types of charges that should be included as ''interest'' [55] and the methods for calculating the annual percentage rate of interest for consumer credit.[56] In general, in §§ 232.3(n) and 232.4(c), any charge that is a ''finance charge'' under Regulation Z, as well as certain other charges that would be covered as ''interest'' under 10 U.S.C. 987(i)(3), must be included in the calculation of the MAPR (as applicable to the transaction), and would be subject to the interest-rate limit.

Commenters urge the Department to modify certain aspects of the Proposed Rule in light of certain provisions relating to the scope of consumer credit and the charges included in the MAPR that do not track the terms and conditions of Regulation Z. As discussed in section IV., the Department declines to adopt provisions that would allow any fee for a voluntarily agreed to credit insurance product, debt cancellation contract, or debt suspension agreement to be excluded from the MAPR.

2. Need to Address Risks Posed by High-Cost Consumer Credit

Many persons and entities urge the Department not to revise the scope of ''consumer credit'' as described in the Proposed Rule. For example, one commenter that generally ''applaud[s] the proposal and support[s] the expansion of the definitions of the credit products that fall under the [Proposed Rule]'' nonetheless cautions that ''the proposed changes [to the regulation] would mean that the cost of providing small dollar loans will be more than can be recovered in fees and interest.'' [57] The Associations likewise appear to argue that the Department should not adopt the definition of consumer credit set forth in the Proposed Rule: ''we recommend a more focused approach and urge the Department to address particular problems of the current regulation by modifying coverage in a targeted fashion, consistent with its previous approach.'' [58] However, the Associations also specifically recommend that the Department ''*broaden coverage of the regulation by eliminating the current parameters in the definition of covered consumer credit related to loan terms and amount, expand coverage to open-end credit, and exempt insured depository institutions.*'' [59]

Other persons and entities similarly urge the Department not to adopt the approach of the Proposed Rule because, they contend, 10 U.S.C. 987 is intended solely to address so-called ''predatory'' loan products. For example, a comment on behalf of certain credit card issuers asserts that the ''regulatory framework [under the MLA] . . . was developed by the [Department] for application only to specific types of closed-end products,'' and the comment contends that, in adopting the rule in 2007, the Department had established or endorsed certain ''criteria for evaluating whether credit products pose risks to [Service] members.'' [60] These credit card issuers argue that the Department should not abandon a product-based approach to a regulation that implements the protections of the MLA,[61] and further argue that certain aspects of the Proposed Rule ''clearly demonstrate the significant problems that would arise by abandoning a more targeted and tailored approach to coverage under the MLA.'' [62]

Even though the Department's initial proposal, issued in April 2007,[63] referred to various studies and reports (including reports and other initiatives by the Department) that describe ''predatory'' lending ''practices,'' the Department broadly described its overarching aim, namely, to promote readiness by taking steps to reduce the risk that a Service member or his or her family could get caught in a ''debt trap.'' [64] In the context of describing its own report to Congress in 2006, for example, the Department observed that ''some forms of credit'' could pose risks for Service members and their families: ''The combination of little to no regard for the borrower's ability to repay the loan, unrealistic payment schedule, high fees and interest and the opportunity to rollover the loan instead of repaying it can create a cycle of debt for financially overburdened Service

[53] *See* 12 CFR 1026.1(c)(1)(iii) (limiting the coverage of the regulation, in relevant part, to credit that is subject to a finance charge or is payable by a written agreement in more than four installments).

[54] Sen. Jack Reed, et al., Nov. 25, 2014.

[55] *See* 10 U.S.C. 987(i)(3) (broadly defining ''interest'').

[56] *See* 10 U.S.C. 987(h)(2) (granting discretion to the Department to prescribe rules regarding ''[t]he method for calculating the applicable annual percentage rate of interest on [consumer credit] obligations'').

[57] Nat'l Military Family Assoc., Dec. 18, 2014, at 1. However, the National Military Family Association declines to explain how the changes to the regulation could be a source for increasing the costs of providing small-dollar loans and does not provide data to support its assertion that ''the proposed changes to the [regulation], if implemented as drafted, could eliminate an important category of products proven to be beneficial to [Service] members and their families.'' *Id.*

[58] Associations, Dec. 18, 2014, at 8. In this regard, the Associations argue that the MLA is intended ''to target *specific* loans considered under the legislation to be ''predatory:'' Payday loans, vehicle title loans, rent-to-own programs, refund anticipation loans, and military installment loans.'' *Id.* at 2 (emphasis in original). *But see* Associations at 11 (explaining that Congress rejected an ''original payday lending amendment'' offered in the Senate, which was ''narrower than the legislation ultimately [enacted]'').

[59] Associations, Dec. 18, 2014, at 8 (emphasis in original).

[60] L. Chanin, Dec. 23, 2014, at 7.

[61] *Id.*

[62] L. Chanin, Dec. 23, 2014, at 7–8. Nevertheless, these credit card issuers do not provide any proposal to improve the ''product-based approach.'' In this regard, the Department specifically sought comment on ways to ''refin[e] the Department's current rule for payday loans, vehicle title loans, and refund anticipation loans—and the associated benefits and costs.'' 79 FR 58604. These credit card issuers decline to take up the Department's invitation; their silence regarding one or more ways to establish a ''more targeted and tailored approach to coverage under the MLA'' evinces support solely for the very narrowly defined scope of consumer credit adopted in 2007.

Compare New York Credit Union Assoc., Dec. 26, 2014, at 3 (arguing that the Department should amend 32 CFR 232.3(b)(1) by adding a new subparagraph (iv) that would clarify that consumer credit includes '' 'similarly structured loans' in which a lender has engaged in a pattern of offering loans in which a paycheck, vehicle's title, or an anticipated tax refund is used as collateral for the [underlying] loan'').

[63] Limitations on Terms of Consumer Credit Extended to Service Members and Dependents, 72 FR 18157 (Apr. 11, 2007).

[64] 72 FR 18159.

members and their families.'' [65] When implementing the regulation in 2007, the Department acted in light of the short timetable for the effective date of 10 U.S.C. 987 [66] and the instruction to act swiftly, as evidenced in authority to prescribe interim regulations without regard to the notice-and-comment requirements of the Administrative Procedure Act.[67] Still, the Department elected to act judiciously by initially regulating only certain credit products that, at that time, the Department believed posed the most severe risks to Service members and their families.[68] Moreover, in proposing and adopting the regulation in 2007, the Department eschewed any reliance on certain criteria as a predicate to define the scope of consumer credit.[69]

In explaining the bases and rationale for redefining consumer credit in the Proposed Rule, the Department observed that ''certain payday loans, vehicle title loans, and refund anticipation loans present the *most severe* risks to Service members and their families'' [70]—not the only risks. Some comments [71] have seized on the Department's characterization of the risks posed by those three narrowly defined products in the context of that aspect of the Proposed Rule to conclude that the status quo must be maintained because either: (i) The Department's countervailing consideration—to guard against unintended adverse consequences [72]—is a relatively more important objective; or (ii) expanding the scope of consumer credit to track the scope of credit that is subject to Regulation Z would eliminate access to credit products that are benign or beneficial to Service members and their families.[73] The Department finds that the conclusion many comments support—avoid expanding the scope of consumer credit—is based on false absolutes, say, between preserving access to ''much needed, good, small-dollar credit'' [74] and affording the protections of the MLA to Service members and their families when they choose to obtain a wider range of loan products. As the Department explained when issuing the Proposed Rule, ''a broader range of closed-end and open-end credit products carry high costs, many of which far exceed the interest rate limit established in 10 U.S.C. 987(b), and thereby [pose risks] to Service members and their families. . . .'' [75] The Department believes, and comments amply support the view,[76] that the scope of consumer credit reasonably could apply to credit products that are subject to the requirements of Regulation Z in order to reduce the risks to covered borrowers posed by high-cost loans, and still preserve access to a wide range of products, including ''much needed, good, small-dollar credit options,'' [77] for those borrowers.[78]

B. Department's Authorities To Establish Key Terms, Conditions, and Criteria

The MLA grants the Department various authorities to prescribe regulations to carry out the law and broad latitude to determine the scope, terms, and conditions of the regulations. The Department is empowered to define the scope of the regulations through, first, a broad grant of authority to define ''consumer credit'' and the type(s) of ''creditor'' [79] that is subject to the requirements of the MLA, and, second, authority to prescribe ''[s]uch other criteria or limitations as the [Department] determines appropriate, consistent with the provisions of [10 U.S.C. 987].'' Within those general grants of authority, the law further grants the Department powers to prescribe terms and conditions relating to ''[t]he method for calculating the applicable annual percentage rate of interest on [consumer credit], in accordance with the limit established

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[65] *Id.*

[66] The 2006 Act, enacted on October 17, 2006, was scheduled to take effect in less than one year, and under 10 U.S.C. 987(c)(3) the Department was authorized to establish an earlier effective date. 10 U.S.C. 987 note.

[67] 10 U.S.C. 987(d).

[68] 72 FR 50584 (observing the need to act ''judiciously'' when initially defining the scope of ''creditor'' and ''consumer credit''). *See also* 72 FR 18162 (''the statute allows the Department to focus [the limitation imposed under the MLA] on areas that create the most concern'') and 72 FR 50585 (''the final rule focuses on three problematic credit products that the Department identified in its August 2006 [report to Congress]'').

[69] In this regard, comments urging the Department to ''continue'' to define the scope of the regulation to address only credit products with ''predatory characteristics'' miss the mark. *See, e.g.,* L. Chanin, Dec. 23, 2014, at 2; Assoc. of Military Banks of America, Dec. 18, 2014, at 2; Independent Bank, Dec. 24, 2014, at 1.

[70] 79 FR 58607 (emphasis added). Likewise, the Department finds no occasion to concur with the view expressed by many comments asserting that the (primary or sole) purpose of the MLA is to ''curb predatory lending practices.'' *See* Attorneys General, Dec. 22, 2014, at 2.

[71] *See, e.g.,* American Financial Services Assoc. (''AFSA''), Dec. 22, 2014, at 8–9 (In particular, AFSA states:

''[T]he Department recognizes that there is a need for small-dollar credit, while at the same time being concerned that the current regulation implementing the MLA does not protect covered borrowers from high-cost credit products.

''AFSA agrees with the Department that Service members and their families should have access to safe and responsible credit. We understand the Department's concern that high-cost loans can pose risks to Service members and their families.

''The Department's proposed approach, though, does not meet these two goals. It seems that the Department is willing to prevent covered borrowers from accessing much needed, good, small-dollar credit options by rewriting the rules with a broad brush stroke that assumes that all products are undesirable.'').

[72] Avoidance of unintended adverse consequences is one of the Department's longstanding objectives, and the one of the principal bases for the Department's election to incrementally implement the protections of the MLA. *See* 72 FR 50584–50585 (explaining that a ''narrow definition'' of consumer credit in the existing regulation ''will prevent unintended consequences'').

[73] *See* 79 FR 58610 (explaining the Department's view that the MLA should be interpreted to provide ''important protections to Service members and their families . . . without unduly impeding the availability of credit that is benign or beneficial to [them]'').

[74] AFSA, Dec. 22, 2014, at 9.

[75] 79 FR 58607.

[76] *See, e.g.,* Navy Federal Credit Union, Dec. 15, 2014, at 1–2 (stating that ''Navy Federal supports the Department's proposal to expand the scope of the rule to include additional credit products'' and not raising any objection to the cost elements, other than ''*voluntary* debt cancellation fees,'' that must be included in the MAPR) (emphasis in original); Consumer Finance team at the Pew Charitable Trusts (''Pew''), Dec. 23, 2014, at 1–3 (stating that ''comprehensive definitions that include all small-dollar loans will give lenders clear guidance to foster innovation,'' and that ''[t]horough assessment of income and expenses is the best way to ensure that loans are affordable for borrowers''); Consumer Federation of America *et al.,* Aug. 1, 2013, at 12–14 (describing dozens of financial institutions that offer to consumers credit products that would satisfy the interest-rate limit imposed by the MLA).

[77] AFSA, Dec. 22, 2014, at 9.

[78] Moreover, the Department continues to believe that the extremely narrow definition of ''consumer credit'' in the existing rule permits a creditor to structure its credit products in order to reduce or avoid altogether the obligations of the MLA. For example, if a creditor wishes to market a ''payday loan'' to a covered borrower without regard to the 36-percent interest-rate limit under the MLA, the creditor simply needs to adjust the terms or conditions so that the loan is (i) not closed-end credit, (ii) for a term longer than 91 days, *or* (iii) for an amount of more than $2,000. Making any of these elementary adjustments to a credit product marketed as a ''payday loan'' is not illegal, however, the effect is clear: a covered borrower would obtain the credit without the protections afforded under the MLA. Many persons and entities commenting on the Proposed Rule share the view that ''consumer credit'' in the existing rule is unduly narrow and permits a creditor to avoid the obligations of the MLA. *See, e.g.,* Texas Appleseed, Dec. 2, 2014 (describing products offered by various lenders and observing that ''the [Proposed Rule] will help close the loopholes Texas' payday and auto title businesses have been able to exploit''); *see also* U.S. PIRG, Dec. 23, 2014, at 2; Americans for Financial Reform et al., Dec. 26, 2014, at 1–2.

[79] 10 U.S.C. 987(h)(2)(D). *See also* 10 U.S.C. 987(i)(5) (in relation to the term ''creditor,'' permitting the Department to prescribe ''such additional criteria as are specified for such purpose in regulations prescribed under [10 U.S.C. 987]'' and 987(i)(6) (providing that ''[t]he term 'consumer credit' has the meaning provided for such term in regulations prescribed [by the Department],'' subject to the exceptions for a residential loan or a loan procured in the course of purchasing a car or personal property).

under [10 U.S.C. 987]'' [80] and ''[a] maximum allowable amount of all fees, and the types of fees, associated with any such extension of credit. . . .'' [81] Moreover, several parts of these core provisions relating to the charges to be accounted for in order to implement the interest-rate limit of 10 U.S.C. 987(b) are ambiguous,[82] and the law contemplates that the Department prescribe regulations to carry out the law through a process that involves the Department exercising its discretion to establish other appropriate ''criteria or limitations'' that are consistent with the law.[83]

C. Consideration of Exemptions for Certain Classes of Creditors

In light of the scope of the Proposed Rule, the Department asked whether consideration should be given for a limited or complete exemption for an insured depository institution or insured credit union.[84] Many comments argue in favor of providing a complete exemption for a supervised financial institution.[85] Indeed, the Associations appear to tie their support for broadening the scope of the definition of consumer credit with an exemption for insured depository institutions.[86] One association representing credit unions cautions against the ''unintended consequences [of the Proposed Rule] for credit unions,'' which that association contends ''could jeopardize extension of some consumer credit to [Service] members and their families.'' [87] This association urges the Department to provide a blanket exemption for ''credit unions and other depository institutions.'' [88] Likewise, other associations representing credit unions argue that credit unions should be exempt from the regulation because (i) ''credit unions are not predatory lenders,'' (ii) ''already have very high compliance burdens'' under other laws and regulations (implemented and enforceable by other agencies), and (iii) of ''the highly regulated and relatively limited nature of their operations.'' [89]

One credit union argues:

> Simply stated, there is a critical and growing need for short-term credit among our military and the working class families that make up the majority of [the credit union's] constituents. . . . [T]he reality is that over 40% of [the credit union's] military members survive on less than $30,000 per year. They have financial emergencies. An unexpected illness, an emergency vehicle repair, or a loss of income in the family often strikes at the worst possible time. Yet, most have no ability to qualify for a traditional loan or credit card due to poor and insufficient credit history. In order to make ends meet, short term credit is the only option. And when there is demand the market will provide an outlet to satisfy that demand. The question for the [Department] then is what market is most appropriate to address this demand. Payday lenders that have shown time and again the ability to circumvent any regulatory attempt to control their lending practices and cap excessive finance charges? Or highly regulated not-for-profit cooperatives that are controlled by the very same members we serve? The [Proposed Rule] makes no distinction between the various players in the market and therefore must not be enacted.[90]

This credit union argues that if the Proposed Rule were to be implemented, covered borrowers who ''require short term credit . . . will lose access to the one sector of the financial industry that places consumer fairness at the core of its mission: credit unions.'' [91] Another credit union states that ''[b]ecause we strongly believe our military members should have continued access to the same types of fair credit we offer to all of our members, we respectfully encourage the [Department] to reconsider its [Proposed Rule] in several important ways,'' and urges the Department to provide an exemption for ''credit unions and other insured depository institutions.'' [92]

The Department rejects the view that in considering whether to extend the scope of consumer credit to generally track the credit that is subject to Regulation Z the Department must choose between allowing Service members and their families to obtain credit products and services from insured depository institutions and insured credit unions or shutting them out from access to those institutions. The Department is confident that an insured depository institution or insured credit union that places the fair treatment of its consumers at the core of its mission still could find appropriate methods to provide to covered borrowers credit products that comply with the interest-rate limit and other requirements of 10 U.S.C. 987.

Other comments support providing an exemption for an insured depository institution or insured credit union based on the current framework of regulating these entities. A comment on behalf of certain credit card issuers, for example, contends that ''the existing robust regulatory and supervisory framework that applies to federally-supervised depository institutions provides a strong basis for exempting such institutions from the scope of the MLA regulations.'' [93] Commerce Bancshares, Inc. similarly states that the Department should ''craft a specific exclusion for insured depository institutions, such as Commerce, because they are highly regulated by their prudential regulators, and already prohibited from engaging in abusive practices.'' [94]

The Department recognizes that the regulation and supervision of an insured depository institution or insured credit union could be among the criteria that the Department, in its discretion, may apply in defining a ''creditor'' [95] that would be subject to the MLA. Various provisions of 10 U.S.C. 987 would permit the Department to determine that a partial or complete exemption is justified because, for example, supervision of an bank, thrift, or credit union could effectively limit or prohibit one or more of the activities that are the object of the restrictions under the MLA.

[80] 10 U.S.C. 987(h)(2)(B).

[81] 10 U.S.C. 987(h)(2)(C). The grant of authority under this subparagraph also relates to the disclosures that a creditor must provide to a covered borrower, which is addressed in subsection 2 of the relevant part of section IV (Section 232.6 Mandatory loan disclosures).

[82] For example, 10 U.S.C. 987(i)(4) first provides that the term ''annual percentage rate'' has the same meaning as implemented in Regulation Z, but, second, provides that the term ''includes all fees and charges,'' including specified charges, even though Regulation Z for years has excluded from the disclosures of APR many types of fees and charges, particularly some of the fees specified in 987(i)(4).

[83] In addition, as discussed in section II.A., the Department is directed to periodically consult with the Federal Agencies.

[84] 79 FR 58610 (QUESTION 4).

[85] *See, e.g.,* Iowa Credit Union League, Nov. 28, 2014, at 1; L. Chanin, Dec. 23, 2014, at 2 (supporting an exemption for ''federally-supervised depository institutions''); Bellco Credit Union, Dec. 19, 2014, at 2–3 (supporting an exemption for ''federally-insured credit unions''). However, other comments argue that the regulation should not distinguish between types of creditors; instead, the regulation should distinguish between types of loans or between certain features of loan products. *See, e.g.,* Nat'l Installment Lenders Assoc., Dec. 9, 2014, at 6.

[86] Associations, Dec. 18, 2014, at 8.

[87] Missouri Credit Union Assoc., Nov. 25, 2014, at 1.

[88] Missouri Credit Union Assoc., Nov. 25, 2014, at 2–3. *See also* The Wisconsin Credit Union League, Dec. 4, 2014, at 1–2.

[89] African-American Credit Union Coalition, Credit Union National Assoc., Defense Credit Union Council, Nat'l Assoc. of Federal Credit Unions, and the Nat'l Assoc. of State Credit Union Supervisors (the ''Credit Union Associations''), Dec. 22, 2014, at 1–3.

[90] Wright-Patt Credit Union, Inc., Dec. 23, 2014, at 1.

[91] Wright-Patt Credit Union, Inc., Dec. 23, 2014, at 3. Similarly, Bellco Credit Union asserts that, unlike for-profit financial institutions, ''[a]s not-for-profit, cooperatives, credit unions have no incentive to extort money from Service members, or any members.'' Bellco Credit Union, Dec. 19, 2014, at 3.

[92] Randolph-Brooks Federal Credit Union, Dec. 23, 2014, at 1.

[93] L. Chanin, Dec. 23, 2014, at 9.

[94] Commerce Bancshares, Inc., Dec. 24, 2014, at 2.

[95] 10 U.S.C. 987(i)(5)(A)(ii).

The Department had recognized, both in 2007 and when issuing the Proposed Rule, that in the course of implementing the protections of the MLA the Department should strive towards comity with other federal laws, including considering whether a partial or complete exemption for one or more types of federally regulated financial institutions should be established in deference to the federal laws that may provide protections that are consonant with those of the MLA.[96] Alternatively, an exemption based on the regulation and supervision of an insured depository institution or insured credit union might reasonably be based, at least in part, on the interest in avoiding unduly duplicative regulatory requirements.

The 2013 Act amended 10 U.S.C. 987 to grant enforcement authority to certain agencies (as specified in section 108 of TILA),[97] indicating that an insured depository institution and insured credit union should be subject to the requirements of the MLA, enforceable by the appropriate supervisory agency. Moreover, as staff of the FTC observe, ''[e]xempting some [types of] entities could have unintended consequences, including limiting the protections afforded to [covered borrowers] under the MLA, and placing covered entities that comply with the MLA at a competitive disadvantage.'' [98]

Supervision to assess whether a financial institution complies with safety-and-soundness principles or mandates, or even with consumer protection requirements, is designed largely for other purposes, and not directly aimed to lower the costs of credit to covered borrowers in the manner that 10 U.S.C. 987 is expressly designed to do. In light of the terms and structure of 10 U.S.C. 987, as well as the Department's review of the comments submitted on the Proposed Rule, the Department finds, at this time, that there is no adequately strong connection between the supervision of an insured depository institution or insured credit union and restrictions on costs of consumer credit to warrant an exemption from the definition of ''creditor'' for either type of institution.[99]

Nevertheless, supervision to assess compliance by an insured depository institution or insured credit union with safety-and-soundness principles or requirements (or other applicable laws) could provide meaningful benefits to borrowers that are the object of the protections of the MLA.[100] And supervision by the Bureau of covered persons who extend credit for compliance with requirements of applicable federal consumer financial laws is conducted with a view towards providing meaningful benefits to borrowers. Accordingly, as discussed in section III.D.2., the Department concludes that supervision of an insured depository institution or insured credit union under applicable federal law is an important element in support of a targeted exclusion from the requirements for computing the MAPR to allow a charge by that type of entity for an application fee for a qualifying closed-end loan.

D. Application or Participation Fees

1. In General

Many commenters urge the Department to modify the definition of consumer credit set forth in the Proposed Rule to accommodate schemes that many financial institutions use involving a fixed fee, commonly an 'application' or 'processing' fee, plus an interest-rate charge. As one commenter explains:

> The ability to offer small-dollar loans, open or closed-end, most often requires assessing a fixed fee in conjunction with higher interest rates to recover costs. As an example, an application fee is charged to offset underwriting requirements, which include accessing credit bureaus, decision processing (automated or manual), and regulatory notifications, for an approved or denied loan. . . . This balance between fixed fee and reduced interest earnings allows a banking institution to recover its costs and continue its small-dollar lending. It must be noted that the above example is illustrative of how banking institutions recover costs, not generate significant income, from small-dollar lending.[101]

The Department has no occasion to dispute this account of how financial institutions could structure credit products, particularly small-dollar loans, to borrowers. Similarly to the way that a saver uses separate envelopes to allocate cash for different purposes (*e.g.,* groceries, fuel), a bank or credit union could split its revenue between fixed fees, periodic interest, and other charges, nominally associated with different phases of a credit transaction or account (*e.g.,* origination, servicing, regulatory compliance). But from the perspective of the covered borrower who is the focus of protection under 10 U.S.C. 987, the financial institution's own apportioning of revenue among the various 'fees' and 'interest' does not change the key fact that it is all part of an aggregate bundle of costs ''associated with the extension of credit.'' [102]

The Department remains concerned that if an application fee or participation fee were to be excluded from the elements that must be included in the calculation of the MAPR (under § 232.4(c))—the principal basis of the NCUA's argument to provide an exclusion for a PAL made in accordance with its regulation [103]—a creditor would have a strong incentive to evade the interest-rate limit by shifting the costs of a credit product by offering an interest rate below that limit and imposing (or increasing) one or more of those fees. Moreover, the Department believes that a creditor could attempt to impose an application or processing fee—regardless of whether formally tied to or nominally associated with the costs of processing the application—in order to obtain revenue that replaces (or pre-funds) periodic interest revenue, particularly for a covered borrower whose creditworthiness is low (and who thus has a higher risk of defaulting on periodic interest).[104] One credit union, for example, explains that its own small-dollar credit product includes an ''annual fee'' that ''replaces traditional underwriting and is used to offset the historical default rate of nearly 10%, thereby making the product financially sustainable''—for the credit union.[105]

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[96] As discussed in section III.B., the Department is authorized to establish one or more appropriate exemptions for specific types of creditors under several provisions of 10 U.S.C. 987, such as 987(h) or 987(i).

[97] 126 Stat. 1786. *See* section 662(b) of the 2013 Act.

[98] Staff of the FTC, Dec. 22, 2014, at 5.

[99] In the course of periodically consulting with the Federal Agencies and, as the Department may find to be appropriate, periodically reviewing the scope and effects its regulation, the Department could revisit the factors that could justify a limited or complete exemption in favor of a supervised or federally regulated financial institution.

[100] Similarly, supervision of financial-institution licensees by one or more state regulatory agencies for compliance with state laws, including safety-and-soundness requirements and consumer protection laws, could provide benefits to borrowers.

[101] Assoc. of Military Banks of America, Dec. 18, 2014, at 2.

[102] 10 U.S.C. 987(i)(3) (defining the term ''interest,'' in relevant part, to ''include[ ] all cost elements associated with the extension of credit'').

[103] NCUA, Dec. 16, 2014, at 6.

[104] The Department does not mean to imply that, when providing a PAL, a credit union would not conform to its underwriting standards. *See* 12 CFR 701.21(c)(2)–(3) (requiring a Federal credit union to establish written policies for making loans or establishing lines of credit and to keep a credit application on file for each borrower supporting the credit union's decision to make the loan or establish the line of credit); 701.21(c)(8) (requiring a Federal credit union to implement appropriate underwriting guidelines for minimizing risk, including when making PALs, by, for example, ''requiring a borrower to verify employment by producing at least two recent pay stubs'').

[105] Wright-Patt Credit Union, Inc., Dec. 23, 2014, at 2. *See also* Assoc. of Military Banks of America,

Continued

The Department observes that 10 U.S.C. 987(b) and the provisions that define ''annual percentage rate'' and ''interest'' which are integral to that interest-rate limit, taken together, are designed to thwart high cost lending to Service members and their families—not solely loan products that carry the very highest costs. Accordingly, and consistent with its authorities to prescribe ''consumer credit'' and the method for computing the MAPR of ''interest,'' the Department concludes that, in general, an application fee charged to a covered borrower must be accounted for when computing the MAPR.

2. Exclusion for Application Fee Charged by a Federal Credit Union or Insured Depository Institution When Making a Qualifying Closed-End Loan

The NCUA states (and many credit unions share the NCUA's view) that a PAL structured in accordance with the NCUA's regulation [106] for that product likely could not be provided by a credit union to a covered-borrower member in many cases in which such loans would otherwise be made, because, given the short duration of such loans, the total charge for the PAL, which is a function of the periodic interest charged plus the application fee, would exceed the interest-rate limit of the MLA.[107] The NCUA notes that, under its regulation, a credit union may charge an application fee that ''reflects the actual costs associated with processing the application, not to exceed $20,'' [108] and that the NCUA interprets the relevant provision of the Federal Credit Union Act (''FCU Act'') so that the term ''finance charge'' does not include an application fee, consistent with the interpretation of finance charge under Regulation Z.[109] Because of the treatment of an application fee under the Proposed Rule, which is at variance with the treatment of that fee under the NCUA's regulation for a PAL, the NCUA urges the Department to adopt a final rule that contains an exemption for a PAL. Similarly, an association representing credit unions argues that credit unions are different from other types of financial institutions, in part, because the FCU Act imposes a statutory limit on the interest rate that a credit union may charge for a loan,[110] and (if adopted) the Proposed Rule ''could provide a challenge for credit unions to provide small-dollar loans because of the change in definition of finance charge and how it relates to how the MAPR is calculated.'' [111] The NCUA ''respectfully submits that a PAL with a military APR exceeding 36 percent is still a responsible credit product and that PALs should not be subject to the [interest-rate limit of the MLA].'' [112]

Even though the Department has determined that an application fee fits within the (ambiguous, but broad) definitions of ''interest'' and ''annual percentage rate'' in the MLA, the Department also recognizes that the FCU Act establishes an express restriction on the amount of interest that a federal credit union may charge to a member-consumer,[113] which is comparable to the interest-rate limit of the MLA. The Department concludes that this federal law warrants a measure of respect or comity. More broadly, there is an appropriate federal interest in implementing the requirements of the MLA, to the extent practicable, in a manner designed to promote due comity with, as well as to avoid direct conflict with, other federal laws or federal regulations which are expressly intended to regulate the cost of credit extended to consumers.[114] The Department concludes that in the case of a short-duration loan, which squarely presents arithmetic obstacles for any creditor who must simultaneously comply with the MLA and an annual interest-rate limit set by another federal law or a comparable federal regulation addressing the cost of credit, the express restriction on the amount of interest that may be charged to a borrower under that other federal law or federal regulation should not be disregarded in the course of the Department's implementation of the MLA.

After review of comments on the Proposed Rule—including those contending that PALs are necessary forms of short-term, small-dollar loans (complete with the charge of an application fee) for covered borrowers [115]—the Department expresses no view on the potential benefits for a covered borrower from a short-term loan provided by a federal credit union or insured depository institution. Still, the Department is mindful that the charge of an application fee, though permissible under other law, poses a cost to a covered borrower, and when combined with the interest rate the overall cost to the borrower from a loan extended by a federally supervised bank or credit union still could exceed the interest-rate limit of the MLA. Nonetheless, the Department elects to exercise its discretion under 10 U.S.C. 987(h) and 987(i)(6) to implement the requirements of the MLA in a manner that affords comity with other federal laws that expressly limit the costs of credit products that may be provided to covered borrowers. Accordingly, the Department determines to modify § 232.4(c)(1) to contain an exception that allows a ''Federal credit union'' or an ''insured depository institution''—as those terms are defined in § 232.3—to exclude from the computation of the MAPR an application fee charged when making a ''short-term, small amount loan,'' which is defined in § 232.3(t).

Consistent with the Department's policy to implement the requirements of the MLA in a manner that affords comity with other federal laws that expressly limit the interest rate of credit products that may be provided to covered borrowers, the Department adopts the exclusion in § 232.4(c)(1)(iii)(B) to apply to the FCU Act and to other similar federal laws that apply to insured depository institutions. In particular, the exclusion would apply to a closed-end loan that is ''[s]ubject to and made in accordance with a Federal law (other than the [MLA]) that expressly limits the interest rate or cost that a Federal credit union or an insured depository institution may charge on an extension of credit.'' [116] In defining that closed-end loan, the Department has established the further condition that the limitation ''in that law is comparable to a limitation of an annual percentage rate of interest of 36 percent.'' [117] The language in

Dec. 18, 2014, at 2 (stating that the ''fixed cost [relating to origination] may be much higher on a small-dollar loan amount'' and that small-dollar loans have ''higher delinquency rates'').

[106] 12 CFR 701.21(c)(7)(iii).

[107] NCUA, Dec. 16, 2014, at 6.

[108] NCUA, Dec. 16, 2014, at 4.

[109] NCUA, Dec. 16, 2014, at 6.

[110] Nat'l Assoc. of Federal Credit Unions, Dec. 23, 2014, at 2.

[111] Nat'l Assoc. of Federal Credit Unions, Dec. 23, 2014, at 3.

[112] NCUA, Dec. 16, 2014, at 6.

[113] 12 U.S.C. 1757(5)(A)(vi).

[114] Under Executive Order 12866, the Department must, to the extent permitted by law and where applicable, take care to avoid prescribing a rule that is ''inconsistent, incompatible, or duplicative with its other regulations or those of other Federal Agencies.'' Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993), § 1(b)(10).

[115] *See, e.g.,* Nat'l Assoc. of Federal Credit Unions, Dec. 23, 2014, at 3 (''Many of these types of loans are loss-leaders in credit unions and are offered strictly for the benefit of their members who are in need of short-term [,] small-dollar alternatives to payday lenders. . . . Also, these types of loans give credit unions another opportunity to work with members to get them back into the traditional banking system and away from unregulated or under-regulated predatory actors.'').

[116] 12 CFR 232.3(t)(1) (prescribing a new definition for a ''[s]hort-term, small amount loan'').

[117] *Id.*

§ 232.4(c)(1)(iii)(B)—''other than an application fee charged by a Federal credit union or an insured depository institution when making a short-term, small amount loan''—is not limited to an extension of credit by a federal credit union that is subject to the FCU Act. This provision, therefore, provides comity to not only the FCU Act, but also to federal laws applicable to other insured depository institutions if the laws were to be enacted to include a cost limitation comparable to the MLA on loans made to the general public.

At this time, the Department has crafted the exclusion in § 232.4(c)(1)(iii)(B) only with respect to a closed-end loan subject to a ''Federal law (other than 10 U.S.C. 987) that expressly limits the rate of interest'' [118] that a qualifying creditor may charge for the loan. The Department recognizes that, over time, the landscape of federal requirements designed to limit finance charges or other costs of credit to consumers could be altered, particularly by the adoption of new regulations applicable to creditors, notably federal credit unions and insured depository institutions. If new regulations that sanction types of short-term or small-dollar loans involving application fees (or similar charges) are implemented by one or more federal agencies, the Department could reevaluate the contours of the exclusion for an application fee for a short-term, small amount loan.

The exclusion from the elements required to be included when computing the MAPR applies to an application fee charged when making a ''short-term, small amount loan,'' defined in § 232.3(t). As a matter of deference to FCU Act and the NCUA's authorities under that Act, this new term is designed to contain certain elements of the short-duration, closed-end loan product prescribed by the NCUA's regulation [119] that the Department finds are integral for protecting a covered borrower and, at the same time, may be stated generally so that insured depository institutions also could be eligible for the exclusion.

First, § 232.3(t)(2)(i) provides that the relevant law or rule must contain ''[a] fixed numerical limit on the maximum maturity term, which term shall not exceed 9 months.'' The short duration of the loan is the key arithmetic predicate for the exclusion for the application fee, and the Department has arrived at the upper boundary by selecting a maximum term which is fifty percent greater than the maximum term permitted under the NCUA's regulation.[120] This subparagraph sets the maximum term of the closed-end loan to the lesser of (i) the fixed numerical limit established by the federal law or rule that the creditor must comply with or (ii) 9 months.

Second, the condition in § 232.3(t)(2)(ii), namely, that the ''law or rule contains a fixed numerical limit on any application fee that may be charged to a consumer who applies for such closed-end loan,'' is consistent with one of the key conditions in the NCUA's regulation.[121] The limitation on the amount of the application fee that a federal credit union may charge to a covered borrower flows from the NCUA's considered judgment regarding how to implement the provisions of the FCU Act. The Department's determination to accommodate, to this extent, the structure of a PAL, and similar federal laws that may be adopted, does not require a broader scope of exception from the general MAPR approach.[122]

In addition to defining the ''short-term, small amount loan'' so that the creditor making the qualifying closed-end loan product must adhere to certain conditions integral for protecting a covered borrower, the Department has established a restriction on the number of times that a creditor may impose an application fee without being required to include that fee when computing the MAPR. Under § 232.4(c)(1)(iii)(B), a creditor who is a federal credit union or insured depository institution is not required to include in the MAPR an application fee charged for the qualifying closed-end loan product if the creditor charges the fee only once ''in any rolling 12-month period.'' [123] The fee is, after all, an ''application fee,'' and if a covered borrower seeks to obtain a second or third of these short-duration loans during one year, the creditor already knows who the borrower is and reasonably could be expected to have on file information bearing on the covered borrower's creditworthiness. In the Department's judgement, there is no adequate basis—consistent with the interest-rate limit of 10 U.S.C. 987(b) and the other terms of the MLA relating to that limit—for allowing a creditor to repeatedly exclude an application fee from the computation of the MAPR for multiple closed-end loans, each of which is structured to be repaid within a matter of months. If a creditor charges a second application fee to a covered borrower who applies for a second short-term, small amount loan within that same 12-month period, then that second fee (and any subsequent application fee charged during that period) is not eligible for the exclusion and must be included when computing the MAPR for that loan.

The upshot is that even though at this time the Department declines to adopt a general exemption for a federal credit union or an insured depository institution, the Department adopts new terms (notably, in §§ 232.3(t) and 232.4(c)(1)(iii)(B)) that allow either type of entity to exclude an application fee from the computation of the MAPR for a qualifying closed-end loan. By crafting this targeted exclusion, the Department affords comity to the FCU Act and similar federal laws, and nonetheless adopts a final rule that requires a federal credit union (or insured depository institution, as the case may be) to comply with the other MLA conditions when making a short-term, small amount loan.

The Department has considered other approaches that would afford comity with the FCU Act or other similar federal laws. For example, the Department has considered whether, as the NCUA and other comments argue, a PAL should be wholly excluded from the scope of ''consumer credit,'' and the Department concludes that that would be a step too far. In the Department's judgment, the Department may exercise

[118] 32 CFR 232.3(t)(1).

[119] 12 CFR 701.21(c)(7)(iii).

[120] 12 CFR 701.21(c)(7)(iii)(2).

[121] 12 CFR 701.21(c)(7)(iii)(7).

[122] In the process of assessing whether to provide an exclusion from the elements that must be included when computing the MAPR for an application fee, the Department has considered whether to establish (*e.g.,* in § 232.3(t)) a fixed numerical limit or a percentage-based limitation (*e.g.,* a limit based on a percentage of the credit to be extended or the amount of available credit for an open-end credit account) for that fee. The Department believes that there are benefits associated with directly establishing a fixed limit on the amount of the application fee that a creditor could charge, and the Department retains the discretion to adjust this aspect (as well as related aspects) of the rule, as may be appropriate. However, at this time, the Department concludes that the language in § 232.3(t) stating that the ''law or rule [must contain] a fixed numerical limit on any application fee that may be charged'' accomplishes the central purpose of the desired limit and, equally importantly, is designed so that these particular requirements under the MLA afford comity with that other federal law or rule which imposes the same type of limit.

[123] The Department has considered whether to establish (*e.g.,* in § 232.3(t) or in § 232.4(c)(1)(iii)(B)) a more restrictive limit on the number of times a creditor may charge an ''application fee.'' For example, the Department has considered whether to adopt a condition on the exclusion that would restrict a creditor from charging an application fee not more than once in any two calendar years or not more than once for any covered borrower. The Department believes that there could be benefits associated with a more restrictive limit on the exclusion from this required element of the MAPR, and the Department retains the discretion to adjust this aspect (as well as related aspects) of the rule, as may be appropriate.

its discretion, out of comity toward other federal programs, to make some accommodation toward the provisions of those programs—but such comity does not require accommodating every aspect of such other programs, without any reciprocal accommodation of requirements under such other programs in the direction of MLA standards.

E. Conditional Exclusion for Credit Card Accounts

1. In General

Even though the Department believes that the consumer credit regulated under the MLA generally should track the scope of credit regulated under Regulation Z, the Department recognizes that imposing the interest-rate limit of 10 U.S.C. 987(b) on credit card products likely would result in dramatic changes to the terms, conditions, and availability of those products to Service members and their families. Many commenters echo the Department's own recognition and underscore that a typical creditor that issues a credit card would be required to revamp the fee, terms, and other conditions for that credit product when offering it to a covered borrower or, more drastically, disqualify a covered borrower from opening that credit card account. One commenter, for example, offers the view that the Proposed Rule would, if adopted, ''have a material and substantial impact on thousands of credit card issuers who must redesign technology, sales processes, and business strategies while incurring significant legal risk to comply with a proposal that affords Service members no increased protections.'' [124]

As the Department explained when issuing the Proposed Rule, unlike the vast majority of credit products that are amenable to straightforward pricing mechanisms relating to the cost of the funds borrowed (such as solely on the basis of a fixed or variable interest rate applied for a term or on a periodic basis or, as discussed above, a combination of an 'application' fee and a periodic rate), credit provided through a credit card account can be provided subject to pricing mechanisms that, in part, account for the value of products or services delivered through the cardholder's use of the card itself. In this regard, many creditors offer credit card products that, from a consumer's perspective, generally are subject to periodic interest-rate charges (*i.e.,* the cost of the funds borrowed), plus participation fees and transaction-based fees that may vary, depending on the consumer's use of the card.

Comments on the Proposed Rule do not dispute that the cost of the funds borrowed in a credit card account can be segregated from the fees that a creditor expressly ties to specific products or services for using the credit card itself. For example, a foreign transaction fee that applies when the cardholder tenders the card for a purchase made outside of the United States can be segregated from the interest charge that the creditor may impose for the funds loaned to make that purchase. Even though some of these fees might appear to be relatively high under certain circumstances, the Department believes that the costs of bona fide fees expressly tied to specific products or services which may be imposed upon the covered borrower's own choices regarding the use of the card can meaningfully be distinguished from the cost of borrowing itself. Flatly applying the interest-rate limit of 10 U.S.C. 987(b) to credit card products could result in unusually adverse consequences to both creditors and covered borrowers, especially because creditors likely would be required to significantly re-structure their current products, services, and pricing mechanisms when providing credit cards to Service members and their families—without a corresponding benefit to those covered borrowers.[125]

The Department also continues to believe that credit card products warrant special consideration under the MLA because comparable protections for consumers who use these products separately apply under the CARD Act. For example, the CARD Act, as implemented by the Bureau's Regulation Z, generally prohibits a card issuer from opening a credit card account or increasing the credit limit on an existing account without considering the consumer's ability to repay the amount borrowed on the account.[126] The CARD Act limits penalty fees on credit cards, including late-payment and over-the-limit fees, to those fees that are ''reasonable and proportional'' to the omission or violation that triggered the fee.[127] Regulation Z provides safe harbor fee ranges designed to facilitate compliance with these requirements of the CARD Act. The CARD Act also limits the total amount of fees that may be charged on an account in its first year: in general, a creditor may not impose fees for a credit card account during the first year that exceed 25 percent of the available line of credit in effect when the account is opened.[128]

Several comments state that the CARD Act provides substantial protections to consumer-cardholders and that the protections under that law are sufficient to justify a wholesale exclusion from the definition of consumer credit for credit card accounts. One commenter, for example, explains that the prohibition against opening a credit card account or increasing the credit limit on an existing account without considering the consumer's ability to repay ''helps prevent [covered borrowers] from obtaining credit that they may find difficult to repay.[129] A comment on behalf of certain credit card issuers concludes that ''[b]alancing these costs against the benefits should lead to the conclusion that imposition of special rules for credit card lending to active duty service members is not justified or appropriate in light of the significant consumer protections already in place as a result of the CARD Act.'' [130] The Associations even go so far to state:

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[124] Schwartz & Ballen LLP, Dec. 24, 2014, at 4. *See also* Associations, Dec. 18, 2014, at 56–57 (describing some examples of types of costs that could be incurred when a creditor provides a credit card account to a covered borrower, and stating that ''[w]hile we do not have exact costs, implementing, running and maintaining a shadow control process for MAPR compliance''—including for credit card accounts whose transaction fees could be subject to an exemption under § 232.4(d)—''will be in the millions of dollars for the larger banks and a comparably expensive redundancy for community banks'').

In this regard, when issuing the Proposed Rule the Department requested that interested parties ''provide specific data relating to the benefits and costs of amending the regulation, including costs to implement measures to adjust computer systems and to train personnel. . . . Please provide information on the type of costs and the magnitude of costs by providing relevant data and studies.'' 79 FR 58626. The Department does not dispute the views (as expressed in these two, as well as in other, comments) that creditors will encounter certain costs to adjust their business operations in order to comply with the interest-rate limit and other requirements of the MLA. Nonetheless, the comment from Schwartz & Ballen LLP offers no data in support of its view, and the Associations offer scant data.

[125] *See, e.g.,* Associations, Dec. 18, 2014, at 37 (In the context of addressing the application of the Proposed Rule to open-end credit, particularly credit cards, the Associations state: ''Given the challenges, complexities, and costs of creating a system to segregate a small minority of customers, calculate the MAPR, and waive fees, especially when coupled with all of the other provisions in the [Proposed Rule] and the accompanying risk, a rational choice for individual lenders or the market as a whole might be simply not to make those products available to covered borrowers or not offer covered consumer credit to anyone.'').

[126] 15 U.S.C. 1665e; 12 CFR 1026.51(a) (effectively requiring a card issuer to consider whether a consumer can ''make the required minimum periodic payments under the terms of the account based on the consumer's current income or assets and the consumer's current obligations'').

[127] 15 U.S.C. 1665d; 12 CFR 1026.52.

[128] 15 U.S.C. 1637(n)(1); 12 CFR 1026.52(a).

[129] Schwartz & Ballen LLP, Dec. 24, 2014, at 3.

[130] L. Chanin, Dec. 23, 2014, at 12.

''Though Congress created these broad consumer protections when it passed the CARD Act in 2009, what it did not do was expand application of MLA to credit cards, even though they were exempt from the MLA at that time.[131] If Congress had felt it necessary to apply MLA to credit cards, it could and would have done so in 2009.'' [132]

Even though the CARD Act provides certain protections for all consumers that are not inconsistent with overarching objectives evident under the MLA, the Department has determined, at this time, that the interest-rate limit and other requirements of the MLA should not be completely set aside in reliance on the CARD Act for covered borrowers. The Department continues to believe that certain creditors could take advantage of an opportunity to exploit a complete exemption for credit cards by transforming high-cost, open-end credit products (which otherwise would be covered as ''consumer credit'') into credit card products.[133] In this regard, forty U.S. Senators support the Department's ''comprehensive approach'' because, they believe, this approach ''is essential to preventing future evasions.'' [134] Nevertheless, the Department recognizes the benefits of implementing the protections of the MLA in a manner that balances the interests of limiting credit practices that have an adverse impact on covered borrowers without unduly impeding the availability of credit that is benign or beneficial to those borrowers. Accordingly, the Department is adopting a final rule that: (1) Contains a qualified exclusion from the requirements relating to the computation of the MAPR for a credit card account for a fee that is both ''bona fide'' and ''reasonable'' for that type of fee; and (2) temporarily provides a complete exemption from the definition of ''consumer credit'' for credit extended to a covered borrower under a credit card account.

Even though the Department's general policy is to avoid, when possible, creating regulatory gaps in the framework for 10 U.S.C. 987, the Department believes that, for a definite period of time as set forth in the rule, consumer credit under the MLA should not include credit extended to a covered borrower under a credit card account under an open-end (not home-secured) consumer credit plan. However, when the exemption for a credit card account expires, this form of consumer credit would be subject to a qualified exclusion for bona fide application fees, participation fees, transaction-based fees, and similar fees connected to the use of the credit card under § 232.4(d).[135]

2. Standards for Exclusion for Bona Fide Fees

Section 232.4(d) of the final rule allows a creditor to exclude from the MAPR a bona fide fee—other than a periodic rate—only to the extent that the charge by the creditor is (i) a bona fide fee and (ii) reasonable for that type of fee.

Among other comments on the proposed exclusion for a bona fide fee, many focus on the provision that would have required the fee to be ''customary'' in order to be excluded from the MAPR. In criticizing this aspect of the Proposed Rule, commenters believe that this condition could thwart innovation because a creditor would not be able to show that a fee for a newly-designed product or service for a credit card is ''customary.'' [136] Even though the Department believes that this type of criticism is misplaced,[137] the Department has determined to omit this condition from the final rule.

The Department believes that the conditions for excluding a bona fide fee from the MAPR—namely, that the fee must be bona fide and ''reasonable''—fairly allows Service members and their families to continue to have access to credit card products *and* limit the opportunity for a creditor to exploit the exclusion for those products. A conditional exclusion is designed to bar a creditor from transforming high-cost, open-end credit products into credit card accounts by offering a relatively lower periodic rate coupled with a high application fee, participation fee, or other fee. Under the final rule, a creditor who imposes a fee that is not bona fide or unreasonable in a credit card account for a covered borrower must include the total amount of the fees—including any fee(s) that otherwise may be eligible for the exclusion—in the MAPR. The ''reasonable '' condition for a bona fide fee should be applied flexibly so that, in general, creditors may continue to offer a wide range of credit card products that carry reasonable costs expressly tied to bona fide, specific products or services and which vary depending upon the Service member's own choices regarding the use of the card.

Sections 232.4(d)(3) provides standards to guide determinations regarding whether a bona fide fee—other than a periodic rate—for a credit card account may be excluded from the calculation of the MAPR as ''reasonable.''

3. Like-Kind Fees

Section 232.4(d)(3)(i) provides that the bona fide fee must be compared to ''fees typically imposed by other creditors for the same or a substantially similar product or service.'' The Department believes that this elementary like-kind standard is appropriate because a creditor should not be permitted to assess the

[131] Associations, Dec. 18, 2014, at 19. On this claim, the Associations do not cite the provision of 10 U.S.C. 987 (or other law) that had provided an ''exempt[ion]'' for credit card accounts.

[132] Associations, Dec. 18, 2014, at 19. The Association's argument is curious because the contrary inference appears to be more compelling. When Congress enacted the CARD Act (and again when Congress enacted the 2013 Act), Congress declined to amend 10 U.S.C. 987 in order to provide a partial or complete exemption from the scope of ''consumer credit'' for a credit card account that is subject to the CARD Act; thus, a reasonable interpretation of 10 U.S.C. 987 in light of the enactment of the CARD Act is that a credit card account appropriately should be regulated as ''consumer credit,'' subject to the Department's authorities to prescribe regulations that may include conditions or criteria applicable to a credit card account. *See, e.g.,* 10 U.S.C. 987(h)(2)(D)–(E).

[133] In this regard, the New York State Department of Financial Services (NY Dep't Financial Services) argues that the Proposed Rule ''falls short'' of providing appropriate consumer protections intended by the MLA, in part, because ''undefined 'bona fide' fess [would not be] included in the calculation of the [MAPR], which could allow lenders to charge exorbitant interest rates under the guise of permissible fees.'' NY Dep't Financial Services, Dec. 24, 2014, at 3.

[134] Sen. Jack Reed et al., Nov. 25, 2014, at 1.

[135] The Department maintains that 10 U.S.C. 987(i)(6) grants broad latitude to the Department to ''define which types of consumer credit transactions shall be covered by the law, provided that they do not include the two listed exemptions.'' 72 FR 50585. Furthermore, 10 U.S.C. 987(h) grants to the Department discretion to ''prescribe regulations to carry out [the MLA],'' and, in particular, to prescribe rules relating to ''[t]he method for calculating the applicable annual percentage rate of interest'' and the ''types of fees'' that are subject to the restrictions of the MLA. 10 U.S.C. 987(h)(2)(B) and (h)(2)(C).

[136] *See, e.g.,* Associations Dec. 18, 2014, at 38 (''First, a fee that few or no other creditors charge is tautologically 'not customary' and consequently will be deemed ineligible for the exception.'').

[137] The Associations, for example, fail to recognize that the Department's rule does not affect the extent to which a creditor could charge fees on consumers who are not covered borrowers. Under the Proposed Rule, if creditors would have succeeded in the huge marketplace of non-covered borrower cardholders in making a fee for a novel or innovative service ''customary'' (or in making the fee itself ''customary'')—that is, commonly used or encountered—then a creditor would have been permitted to claim that that type of fee would qualify as ''customary'' in a credit card account for a covered borrower. This dimension of the conditional exemption remains relevant because, under § 232.4(d)(3)(ii)–(iv), a creditor is permitted to rely on practices and amounts used by other creditors in the huge marketplace of non-covered borrower cardholders when assessing whether a fee charged by that creditor to a covered borrower is ''reasonable.''

reasonableness of a fee for, say, a balance-transfer service based on the fees that other creditors charge for cash-advance services.

A comment on behalf of certain credit card issuers contends that the like-kind standard is ''not workable in practice because it disregards the fact that there can be significant differences between issuers' credit cards and fails to provide a clear basis for determining what constitutes a comparable product or service.'' [138] On this point, the comment for these credit card issuers presents two principal arguments.[139] First, the comment raises a series of rhetorical questions relating to potentially different features of ''rewards programs,'' and asks ''[h]ow will a [creditor] determine whether a fee imposed in connection with its rewards program is substantially similar to, or the same as, another issuer's rewards program?'' The like-kind standard does not require a creditor to compare its rewards program to other *rewards programs,* per se; rather, the like-kind standard requires a creditor to assess the reasonableness of the *fee* charged for its rewards program to the fees charged by other creditors for their rewards programs, respectively. In this way, the like-kind standard does not allow a creditor to compare a ''rewards program fee'' (an amount other than zero) to the ''foreign transaction fee'' charged by another creditor (which could be, say, three percent of the amount of the purchase) in order to assess whether its reward program fee is reasonable under § 232.4(d)(1). Moreover, in the case of a creditor that imposes a fee for participation in a credit card account that includes a ''rewards program,'' the creditor is permitted under § 232.4(d)(3)(iv) to assess the reasonableness of the participation fee by taking into account the potential value of any 'rewards points' that may be awarded to a covered borrower.

Second, the comment on behalf of these credit card issuers observes that creditors ''treat specific types of transactions differently and the imposition of a fee for a particular type of transaction is not the same across all [creditors].'' The like-kind standard does not contain a presumption that a creditor's assessment of a fee for a product or service must be relative to the product or service that is identical across all creditors; rather, the like-kind standard is designed to guard against the possibility that a creditor could improperly assess its (high) fee for one service (or type of transaction) relative to the (lower) fees charged by other creditors for a service (or type of transaction) that is different in kind. By describing the comparison to be made as between ''the same *or substantially similar* product[s] or service[s]'' (emphasis added), the Department expects creditors in the marketplace of credit card accounts to charge certain fees tied to products or services that, despite variances, can be classified in a manner that would allow a creditor to fairly assess the reasonableness of its bona fide fees. In order to illustrate their apparent confusion regarding the application of the like-kind standard under § 232.4(d)(3)(i), the comment on behalf of these credit card issuers offers this example:

> Different [creditors] treat different types of transactions as a 'cash advance' transaction. For example, some [creditors] treat transactions involving traveler's checks, money orders or gift cards as a cash advance transaction because those [creditors] consider those transactions to be 'cash equivalents' while other [creditors] do not. Under the [Proposed Rule], if [Creditor A] assesses a cash advance fee for four types of transactions, and [Creditor B] assesses a cash advance fee for only two of the four types of transactions, it is not clear whether [Creditor A] or [Creditor B] could deem their fees to be 'like-kind' fees.

Of course they could. More precisely, § 232.4(d)(3)(i) would allow Creditor A to assess the reasonableness of the 'cash advance' fee that applies to all four types of transactions by comparing its fee to the fee charged by another group of creditors who cover fewer than those transactions within their own structures of fees. Sections 232.4(d)(1) and 232.4(d)(3)(i) do not require a strict correlation among comparators. Even though each transaction that Creditor A classifies in its cardholder agreement as subject to a 'cash advance' fee has distinctive features bearing on a payment (*e.g.,* a traveler's check provides for a countersignature by the consumer-purchaser of the check when he or she negotiates the check), all of the transactions fit within the same class because each allows the cardholder to tender an item or instrument as if it were cash (and instead of the credit card itself). In this way, Creditor A would be permitted to assess the fee it charges for selling a traveler's check as a bona fide 'cash advance' fee and compare the amount of that fee to the amount that Creditor B charges for the sale of a gift card—even if Creditor B does not use the same label of 'cash advance' fee for that transaction.

To provide additional clarity on the application of the like-kind standard, the Department has modified § 232.4(d)(3)(i) by adding the statement: ''Conversely, when assessing a foreign transaction fee, that fee may not be compared to a cash advance fee because the foreign transaction fee involves the service of exchanging the consumer's currency (*e.g.,* a reserve currency) for the local currency demanded by a merchant for a good or service, and does not involve the provision of cash to the consumer.''

4. Safe Harbor

Section 232.4(d)(3)(ii) provides a firm, yet flexibly adaptable standard for a ''reasonable'' amount of a bona fide fee. Under this provision, a creditor may compare the amount of the bona fide fee to ''an average amount for a substantially similar fee charged by 5 or more creditors each of whose U.S. credit cards in force is at least $3 billion in an outstanding balance (or at least $3 billion in loans on U.S. credit card accounts initially extended by the creditor) at any time during the 3-year period preceding the time such average is computed.'' In this regard, the Department has modified § 232.4(d)(3)(ii) to clarify that a creditor may meet the $3-billion threshold even if the creditor has sold the credit card loans to a special-purpose vehicle or entered into another arrangement so that securities backed by the loans may be issued. The standard for a ''reasonable'' amount of a bona fide fee should be sufficiently flexible to allow for changing conditions in the marketplace for products and services provided through credit card accounts, and thus, as proposed, the Department has adopted language in the provision (''an average'' of an amount charged by ''5 or more creditors'') that allows a creditor to select any group of 5 or more credit card issuers who each have the qualifying amount of credit card loans in order to make a determination. The Department believes that using a pool of 5 or more of these qualifying creditors is reasonable because these creditors, taken together, would represent a

[138] L. Chanin, Dec. 23, 2014, at 16.

[139] L. Chanin, Dec. 23, 2014, at 16–17. The comment also raises a question regarding whether a creditor (say, Bank A) that issues its credit card on one payment network (*e.g.,* MasterCard) is ''the same as'' a card that another creditor (Bank B) issues on another payment network (*e.g.,* American Express). However, the comment fails to describe (or is at least incomplete as to) whether either creditor charges a fee to the cardholder that is connected to the bona fide service of processing payments over a given network. Nevertheless, assuming that the comment's example is pertinent, if Bank A charges a ''payment network fee'' to a covered borrower for the use of the MasterCard network to process payments on that card, then Bank A must compare the amount of that fee to the ''payment network fees'' charged by other creditors in order to assess whether that fee is reasonable under § 232.4(d)(1).

significant portion of the market for credit card products.[140]

In order for a creditor to use the fee(s) charged by a credit card issuer when computing an average, the credit card issuer must have met the $3-billion threshold at any time during the 3-year period preceding the date when the creditor computes the average. If the amount of the creditor's own bona fide fee is less than or equal to the average of the amount charged by those 5 or more credit card issuers who each meets the $3-billion threshold, then the creditor's bona fide fee is reasonable for the purposes of the exclusion.

Section 232.4(d)(3)(ii) sets a threshold of $3 billion in outstanding credit card loans on U.S. credit card accounts held by a credit card issuer (or at least $3 billion in loans on U.S. credit card accounts initially extended by the creditor) in order for that issuer's fees to be eligible for inclusion in an average calculated for the purposes of compliance with the ''reasonable'' condition of § 232.4(d)(1). The Department has adopted the use of a minimum of 5 credit card issuers, each of whom meet the $3-billion threshold, in order to facilitate a creditor's ability to compute an average under the safe-harbor provision in light of a very manageable, yet fairly representative, sample of fees in the marketplace for credit card products. The Department has concluded that a $3 billion threshold of credit card loans is reasonable because that threshold would include a significant number of credit card issuers, whose credit card products make up the majority of the products in the current credit card market. Moreover, the credit card issuers who hold more than $3 billion in outstanding credit card loans (or had initially had originated more than $3 billion of credit card loans) on U.S. credit card accounts offer credit card products that are typical in that marketplace. The Department is aware that many credit card issuers who do not meet the $3-billion threshold may offer credit card products with lower or similar fees (relative to issuers who hold more than $3 billion in outstanding credit card loans); these issuers would benefit in a straightforward manner from the proposed method of computing an average for the purposes of the safe-harbor proposed in § 232.4(d)(3)(ii). The Department believes that establishing this threshold would prevent a niche issuer charging unreasonable credit card fees from benefiting from the safe harbor, in a manner that evades the intent of the rule, by comparing its fees only to the fees of other niche issuers, rather than a representative sample of the marketplace.

The Department also has adopted, as proposed, a rolling 3-year look-back period to facilitate a creditor's ability to establish that a credit card issuer meets the asset-size standard. This 3-year period is designed to facilitate the process for calculating, and relying on, an average amount for one or more relevant fees because, for example, when a creditor uses information from the past year to establish that a credit card issuer meets the asset-size threshold, the creditor could rely on the fee information relating to that credit card issuer's credit card products for the next two years. At the same time, the 3-year period is expected to provide stability to the safe-harbor determination, particularly if credit card loan holdings of credit card issuers shift significantly in response to market conditions or otherwise. Furthermore, a 3-year period is expected to provide adequate time for the Department to amend the threshold or safe harbor, as may be necessary.[141]

The Department believes that all creditors who offer credit card products to Service members and their dependents could readily calculate whether each type of fee associated with those products may fit within the safe harbor because data relating to the fees imposed by other credit card issuers, as well as the amount of credit card loans outstanding, is widely available. With regard to credit card fees, most credit card issuers, particularly all of the largest issuers, make complete contract terms on their current offerings freely available on their Web sites as part of solicitations and applications for their products.[142] Indeed, subject to certain conditions, TILA, as amended by the CARD Act, requires a creditor to maintain an internet site on which the creditor must post its written agreement with a cardholder, and must provide that agreement to the Bureau to be made publicly available on the Bureau's site.[143]

With regard to the amount of outstanding credit card loans held by a credit card issuer, issuers provide this information in both filings to the Securities and Exchange Commission (SEC filings) and Consolidated Reports of Condition and Income (Call Reports). Both SEC filings [144] and Call Reports [145] are available online without charge. In addition, the Department recognizes that data collected from these and other information sources is compiled in commercially available databases regularly used by financial institutions to track the marketplace for credit card products and services, and the Department believes that creditors should be permitted to reasonably rely upon those industry-specific databases when computing an average fee under § 232.4(d)(3)(ii).

For example, a creditor seeking to determine whether another credit card issuer could qualify as one of the 5 creditors for determining the average fee under § 232.4(d)(3)(ii) could download a recent Call Report for an issuer and review Schedule RC–C Part I line 6(a) that provides credit card ''[l]oans to individuals for household, family, and other personal expenditures'' held by the institution. If that credit card issuer indicated that it held more than $3 billion in outstanding credit card loans, then the creditor could include any fee charged by that credit card issuer in the creditor's safe-harbor calculation under § 232.4(d)(3)(ii). The creditor could find the amounts of the relevant fees for that credit card issuer disclosed on the issuer's current offerings, as available through a variety of sources, such as the issuer's Web site.

5. Reasonable Fee

Section 232.4(d)(3)(iii) provides that a bona fide fee still may be ''reasonable'' for the purposes of the exclusion even if that fee is higher than an average amount as calculated under proposed § 232.4(d)(3)(ii). In particular, the Department recognizes that, due to

[140] The Department is aware of at least 16 creditors who hold loans above the proposed asset threshold. *See* The Nilson Report, Issue 1,025 (Sept. 2013) at 10 (listing 14 MasterCard and Visa issuers with above $3 billion in outstanding loans mid-year 2013); Discover Bank, Consolidated Reports on Condition and Income for A Bank with Domestic Offices Only— FFEIC 041 (July 30, 2013) at 17 (indicating that Discover held more than $49 billion in such loans); and American Express Company, Consolidated Statements of Income (July 17, 2013) at 13 (indicating that American Express held $54.6 billion in cardmember loans. These 16 creditors (who are not the only creditors above the $3 billion threshold) hold over $582 billion in credit card loans or greater than 87 percent of the market in 2013.

[141] In this regard, 10 U.S.C. 987(h)(3) requires the Department, at a minimum, to consult with other Federal agencies ''not less often than once every two years'' with a view towards revising the regulation implementing the MLA.

[142] *See, e.g.,* the solicitations available at *https://creditcards.chase.com.*

[143] 15 U.S.C. 1632(d).

[144] The SEC makes public filings available through its Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system. Information on this system is available at *http://www.sec.gov/edgar/aboutedgar.htm.*

[145] Call Reports for institutions insured by the FDIC can be found on the Federal Financial Institutions Examination Council's Web site, available at *https://cdr.ffiec.gov/public/.* Call Reports for credit unions are available online through the NCUA's Web site, available at *http://researchcu.ncua.gov/Views/FindCreditUnions.aspx.*

several factors in the marketplace for credit cards, the prices of certain fees could drop from current levels, including to zero, and yet the Department believes that a creditor who charges a reasonable fee still should be permitted to avail itself of the exclusion in paragraph (d)(1) of this section. Accordingly, the Department has adopted a provision that expressly states that ''[a] bona fide fee charged by a creditor is not unreasonable solely because other creditors do not charge a fee for the same or a substantially similar product or service.''

6. Reasonableness for a Participation Fee

Consistent with the Department's policy that the ''reasonable'' amount of a bona fide fee is a standard designed to be applied flexibly, § 232.4(d)(3)(v) provides a standard in the particular case of a participation fee. The Department recognizes that creditors who issue credit cards provide a range of benefits and services to Service members and their dependents who are cardholders, and some cards may charge a participation fee in lieu of (or in light of lower) transaction-based fees. For example, a creditor may offer a credit card that carries a relatively higher participation fee, yet does not charge a foreign transaction fee. Accordingly, § 232.4(d)(3)(v) provides a standard stating that ''[a]n amount of a bona fide fee for participation in a credit card account may be reasonable . . . if that amount reasonably corresponds to the credit limit in effect or credit made available when the fee is imposed, to the services offered under the credit card account, or to other factors relating to the credit card account.''

F. Assessment of a Covered Borrower

1. In General

Many comments on the Proposed Rule focus on the transition in the method that a creditor could use to determine whether an applicant is a covered borrower. The Department continues to be keenly aware of the practical implications of offering a safe harbor relating to a creditor's assessment of an applicant to determine whether a credit transaction or account is subject to the Department's rule implementing the protections of the MLA. Nonetheless, nothing in 10 U.S.C. 987 mandates the provision of any safe harbor for a ''covered-borrower check;'' the Department elects to maintain the existence of a safe harbor in § 232.5 in the exercise of the authorities granted to it in the law.

In their comment on § 232.5 of the Proposed Rule, the Associations incorrectly state that there would be a ''requirement for lenders to query the Department's [MLA Database]. . . .'' [146] Many other commenters similarly err: [147] Neither the Department's existing rule nor the Proposed Rule would have required a creditor to take any action to assess whether any consumer-applicant is a covered borrower. And nothing in the Department's final rule requires a creditor to conduct a covered-borrower check. Moreover (if the creditor elects to conduct that check), the final rule does not prescribe any method for a covered-borrower check.

To underscore the Department's consistent policy regarding a covered-borrower check, the Department has modified § 232.5 to state, at the outset: ''A creditor is permitted to apply its own method to assess whether a consumer is a covered borrower.'' [148] Under the Department's final rule, as under the existing rule and the Proposed Rule, a creditor who seeks to ascertain whether consumer-applicants are covered borrowers may use a ''simple check box on credit applications,'' as one commenter suggests,[149] or any other method that suits its business operations.

Nevertheless, the Department still believes that a creditor should be afforded a degree of certainty regarding whether an extension of consumer credit is being made to a covered borrower, and to accomplish that purpose adopts new safe-harbor consistent with the provision contained in the Proposed Rule. The Department continues to believe that the dynamic between creditors and borrowers in actual transactions has led to widespread misuses of the individual's self-certification statement,[150] which also have resulted in adverse effects on Service members or their dependents who make false statements. Accordingly, the Department has adopted a safe-harbor provision designed to relieve a Service member or his or her dependent from making any statement regarding his or her status as a covered borrower [151] in the course of a transaction involving consumer credit. Only if a creditor chooses to have a legally conclusive—but not the only factually conclusive—mechanism to determine whether a consumer seeking to obtain consumer credit is a covered borrower would the creditor need to use one or both of the methods set forth in § 232.5(b)(2), and maintain a record of the information so obtained, as set forth in § 232.5(b)(3).[152]

The Department also recognizes the reasonable concerns, raised in many comments on the Proposed Rule, regarding the various interests of creditors in using the MLA Database and the potential costs associated with changing systems for processing consumer credit applications to do so. For example, one commenter expresses the view that a small entity might not have the ''financial resources'' to use the MLA Database and thus ''recommend[s] that small entities be allowed to continue to operate under a safe harbor that requires military members and their dependents to self-identify.'' [153] Consistent with the general provision that affords a creditor one year to comply with the requirements of the final rule, § 232.13(b) provides that a creditor may continue to operate under the existing safe harbor for identifying a

[146] Associations, Dec. 18, 2014, at 27. The thrust of the Associations' criticism in this sentence is that the use of the MLA Database would ''overtax an already unreliable system and inconvenience all consumer credit applicants.'' The Department addresses this criticism by allowing a creditor to use the existing safe harbor for up to one year after the effective date of the final rule. *See* 12 CFR 232.13(b).

[147] *See, e.g.,* Penn State Federal Credit Union, Dec. 12, 2014, at 1 (''The method of identifying servicemembers and dependents to comply with the rule should be changed. Instead of forcing lenders to check the [MLA Database] for every extension of consumer credit to any individual, servicemembers and dependents could self-identify.''); Small Business Administration (''SBA'') Office of Advocacy, Dec. 18, 2014, at 4 (''Requiring small entities to check every customer to determine if he or she is a military member or a military dependent could become burdensome. The business may need to train its staff on how to use the [MLA Database]. If the [MLA Database] is not operating, the small entity may lose a non-military customer while it is trying to ascertain whether the customer is a covered borrower.'')

[148] 32 CFR 232.5(a).

[149] Penn State Federal Credit Union, Dec. 12, 2014, at 1.

[150] As the Department observed when issuing the Proposed Rule, some spouses of active duty Service members may not understand that they are ''dependents'' covered under the MLA and might unwittingly incorrectly complete the covered borrower identification statement. 79 FR 58614.

[151] In this regard, the Department notes that even under the elective verification method, an activated member of the National Guard or Reserves is required to provide a copy of the military orders calling the covered member to military service, upon request of the creditor. 32 CFR 232.5(b).

[152] In this regard, a creditor would not need to use the MLA Database when processing a consumer's application for a loan that is not consumer credit, such as a residential mortgage loan.

[153] SBA Office of Advocacy, Dec. 18, 2014, at 4. Similarly, the Associations contend (though without offering any data that could support their views) that § 232.5 of the Proposed Rule ''will impose significant costs on all depository institutions, especially small institutions, related to the necessary changes to operating systems, security, procedures, and staff training, and the continuing costs associated with compliance monitoring and examination.'' Associations, Dec. 18, 2014, at 27.

covered borrower (as set forth in § 232.5(a) of the regulation established by the Department and effective on October 1, 2007) for up to one year after the effective date of the regulation.

2. Use of MLA Database or Consumer Report Obtained From a Nationwide Consumer Reporting Agency Permitted

The Department adopts a new safe harbor in § 232.5(b) that permits a creditor to legally conclusively determine whether a consumer is a covered borrower by using information obtained either: (i) Directly or indirectly from the MLA Database or (ii) in a consumer report from a nationwide consumer reporting agency or a reseller who provides such a consumer report. If the creditor uses one of these two methods (or both, as the creditor may elect), the creditor's determination would be conclusive with respect to that transaction or account involving consumer credit, so long as the creditor maintains a record of the information so obtained.

As the Department stated when issuing the Proposed Rule, commercial information-services providers reasonably might be anticipated to supply information products to financial institutions that would include covered-borrower checks as part of the products used to process loan applications. Nothing in § 232.5(b)(2)(i) prohibits or restricts a creditor from using a commercially-provided product containing information obtained from the MLA Database to conduct a covered-borrower check.[154] To make this aspect of the rule more clear, the Department adopts § 232.5(b)(2)(i) to state that ''a creditor may verify the status of a consumer by accessing information relating to that consumer, if any, *obtained directly or indirectly* from the database maintained by the Department'' (emphasis added).[155]

Nevertheless, several commenters encourage the Department to provide greater flexibility to creditors that may wish to use commercially provided information with underlying data supported by the Department's database. For example, the American Financial Services Association suggests that ''[i]f the Department proceeds with the proposed safe harbor, the Department should clarify that a creditor may take advantage of the safe harbor by conducting a covered borrower check using a commercially provided information product whose underlying data is derived from the MLA Database.'' [156] In addition to permitting the use of information obtained from the MLA Database, the Department should provide a second method for verifying the status of covered borrowers. In § 232.5(b)(2)(ii), the Department allows a creditor to use information relating to a consumer contained in a consumer report obtained from a nationwide consumer reporting agency, or a reseller of such a consumer report (*i.e.,* a reseller who obtains the underlying report from a nationwide consumer reporting agency). The Department believes that information contained in a consumer report should be permitted to be used for the purposes of the safe harbor in § 232.5(b) because the Fair Credit Reporting Act (''FCRA'') [157] imposes stringent requirements on the assembly of information for, disclosure of, and use of a consumer report; the Department believes that, taken together, these requirements should be sufficient to provide the degree of accuracy necessary for a creditor to make a legally conclusive determination regarding the status of a consumer for purposes of compliance with the MLA. In particular, the Department believes that a covered borrower would not face a material risk of being mis-identified as not having that status by a creditor's use of a consumer report because, under the FCRA, a consumer reporting agency must ''follow reasonable procedures to assure the maximum possible accuracy of the information concerning the individual about whom the report relates.'' [158] The Department has crafted § 232.5(b)(2)(ii) broadly to allow a creditor to ''[use] information relating to that consumer, if any, contained in a consumer report.'' Although the MLA Database may be one source of information nationwide credit reporting agencies might draw upon, nothing in this subparagraph requires the information contained in the consumer report bearing on the covered-borrower check to be derived solely from the MLA Database.[159] A creditor may use information contained in a consumer report obtained from a nationwide consumer reporting agency, or from a reseller who obtains the underlying consumer report from a nationwide consumer reporting agency, even if the nationwide consumer reporting agency has developed data from sources other than the MLA Database that bears on the status of the consumer vis-à-vis a covered borrower.

Nevertheless, at this time the Department is concerned that, despite the requirements of (and enforcement mechanisms that apply under) the FCRA, all consumer reporting agencies might not have sufficiently robust systems in place that would provide the degree of accuracy for covered-borrower checks that would warrant granting a safe harbor to their client-creditors. The Department observes that certain supervisory and regulatory mechanisms currently apply primarily (or exclusively) to nationwide consumer reporting agencies that reasonably can be expected to lead those entities to maintain sufficiently robust systems that would provide the degree of accuracy for covered-borrower checks. Consistent with the Department's approach to incrementally adopt and, as appropriate, amend its regulation to implement the protections of the MLA, the Department at this time is restricting the source of the consumer report that is eligible for the safe harbor in § 232.5(b)(2)(ii) to a nationwide consumer reporting agency or a reseller who obtains such a report (from a nationwide consumer reporting agency). As the Department gains more experience observing the effects of its regulation and continues to consult with the Federal Agencies, the Department may, as appropriate, review and consider whether to amend this provision of the regulation.

3. Modification To Use Information Solely at the Time of Processing an Application

Several entities contend that under the safe-harbor provisions proposed in § 232.5, in conjunction with the definition of ''covered borrower,'' in § 232.3(g), a creditor would have needed to conduct ''at least two checks of the

[154] However, even if the Department's rule implementing the MLA does not restrict a creditor from using a commercially provided information product to conduct a covered-borrower check, a commercial entity seeking to use the MLA Database and to re-sell data obtained from the MLA Database must comply with the terms and conditions for use of the database.

[155] Moreover, nothing in § 232.5(b)(2)(i) restricts a consumer reporting agency (including a nationwide consumer reporting agency) from providing information obtained exclusively from the MLA Database.

[156] American Financial Services Association (''AFSA''), Comment, Dec. 22, 2014, at 16–17. See also, Equifax, Dec. 26, 2014, at 4 (''Companies like Equifax have decades of experience running and maintaining data bases, and would be a superior choice to having the Department attempt to expand, run and maintain a database . . . .''); Nat'l Assoc. of Consumer Credit Administrators, Dec. 12, 2014 at 5 (''Our Association supports the creation of a safe harbor for creditors which conduct covered-borrower checks using a product supported by the MLA Database.'')

[157] 15 U.S.C. 1681–1681x.

[158] 15 U.S.C. 1681e(b).

[159] In this regard, the Department notes that a nationwide consumer reporting agency that provides to its client-creditors consumer reports containing covered-borrower data derived solely from the MLA Database may enable those creditors to use either of the two methods for the safe harbor in § 232.5(b).

[MLA Database] per applicant, one upon receiving the application, and the other at the point the applicant 'becomes obligated' on a transaction or establishes an account.'' [160] In § 232.3(g) of the Proposed Rule, the Department proposed to define the term ''covered borrower,'' in part, as a consumer who, *at the time the consumer becomes obligated on a consumer credit transaction or establishes an account for consumer credit,* [meets other criteria]'' (emphasis added); and in proposed § 232.5(b)(2) of the Proposed Rule, the Department described the process of obtaining information from the MLA Database ''when a creditor enters into a transaction or establishes an account for consumer credit.'' The likelihood that a creditor seeking to use the safe harbor under § 232.5(b) would need to check the MLA Database or use a consumer report more than once—that is, at the time of processing the application for consumer credit and at least once thereafter—is heightened for credit card accounts because, as the Associations observe, ''[c]onsumers typically do not become 'obligated' on credit cards . . . until the first transaction or a certain period after delivery of the card, as recognized under [Regulation Z].'' [161]

As the Department stated when issuing the Proposed Rule, the safe-harbor provisions of § 232.5(b) were designed to allow a creditor to be ''free from liability under the MLA at the outset of establishing an account for credit—and throughout the lifespan of that particular account—relating to that consumer.'' [162] In the context of explaining how the safe-harbor provisions would apply in the case of a consumer who opens multiple accounts for consumer credit, the Department stated that ''[i]n order to benefit from the safe-harbor provision under proposed § 232.5(b), a creditor must check the MLA Database whenever a consumer applies for a new consumer credit product or establishes a new account consumer credit.'' [163] The Department recognizes the potential ambiguity that could arise, particularly for consumer credit that is established—that is, when the consumer ''becomes obligated'' for the loan, as described in the definition of ''covered borrower'' (§ 232.3(g))—at a time weeks or months after the consumer applies for the loan—that is, when the Department contemplates that a creditor likely would use information from the MLA Database or information contained in a consumer report.

The Department concludes that the final rule should be clarified to allow a creditor to have a legally conclusive mechanism to determine whether a consumer is a covered borrower at the time that the consumer is *seeking to obtain* consumer credit or when the creditor develops or processes a firm offer of credit, subject to a 60-day expiration period (in the event the consumer delays responding to that offer). Consistent with the Department's authorities to prescribe a rule to implement 10 U.S.C. 987, the Department clarifies this aspect of the potential application of § 232.5(b), first by modifying the scope of the definition of ''consumer credit'' in § 232.3(f)(2)(v), and second by modifying the timing provisions of § 232.5(b)(3).

4. Actual-Knowledge Clawback From Safe-Harbor in Proposed § 232.5(c)

Apart from the reliance on information from the MLA Database as a safe harbor, several entities raised concerns about the Department's proposal to provide an exception (in proposed § 232.5(c)) from that safe-harbor provision based on the creditor's actual knowledge that the consumer is a covered borrower. One credit union, for example, states: ''Reviewing multiple record systems to comply with the 'actual knowledge' requirement is impractical; it would likely entail manual review by credit union staff to ensure records are thoroughly and accurately searched. This would cause significant delays to the loan application and underwriting processes, and increased costs for financial products and services—both undesirable consequences for consumers.'' [164] Similarly, the Associations believe that the presence of the exception for a creditor's actual knowledge would lead ''all credit unions and banks . . . to create an independent internal system to capture and centralize any documentation that might suggest that the customer is in the service or the spouse or dependent of a servicemember.'' [165]

After considering the potential benefits of affording protections under the MLA to a covered borrower who is mis-identified through the creditor's use of the MLA Database or through some other method, the Department concludes that a creditor who conducts a covered-borrower check in reliance on information obtained from the MLA Database or from a consumer report obtained from a nationwide consumer reporting agency, and determines at the outset that a consumer-applicant is not a covered borrower should be provided a safe harbor from liability under the MLA—even if, in fact, that consumer is a covered borrower. If a creditor were to use either or both of the methods in § 232.5(b)(2) to ascertain the status of a consumer who applies for consumer credit, that creditor would demonstrate its best efforts under the circumstances to comply with the MLA, as implemented by the Department's regulation, and should receive, therefore, protection from liability if the database contains incorrect information about that consumer. Accordingly, the Department has determined that § 232.5(c) of the Proposed Rule should not be retained in the final rule.

Under § 232.5 of the final rule, no inference may be drawn concerning the validity of a creditor's own method—that is, a method other than one of the methods in § 232.5(b)(2)—to assess whether a consumer is a covered borrower. If a dispute regarding the requirements of the MLA were to arise in a case when the creditor had used its own method to assess the status of a consumer, then the issue of whether the consumer is or had been a covered borrower is a question of fact, and the parties would be subject to the rules of evidence, including the burdens of production, that apply to that case. More specifically, the absence of the actual-knowledge exception to the safe-harbor provision (as had been proposed § 232.5(c)) in light of the absence of any requirement to use any method to identify a consumer as a covered borrower (*see* § 232.5(a) of the final rule) shall not be construed to create any presumption in favor of a creditor that elects to use its own method to ascertain whether a consumer is a covered borrower.

A comment on behalf of certain credit card issuers seeks clarification regarding the potential effects of certain ''customer management actions, such as credit line increases.'' [166] The Department believes that an action by a creditor within an existing account, such as to increase the available credit that a consumer may draw upon in an account, does not alter the status of the

[160] Schwartz & Ballen LLP, Dec. 23, 2014, at 5. *See also, e.g.,* Associations, Dec. 18, 2014, at 28 (''[A] depository institution will have to query the database multiple times with regard to open-end credit, such as credit cards.'')

[161] Associations, Dec. 18, 2014, at 28.

[162] 79 FR 58615.

[163] 79 FR 58615.

[164] Navy Federal Credit Union, Dec. 15, 2014, at 2. *See also* Michigan Credit Union League & Affiliates, Dec. 26, 2014, at 3 (''Depending on the complexity of the institution, the credit union may have to review multiple record systems to comply with the 'actual knowledge' requirement and will likely entail manual reviews by credit union staff to ensure records are thoroughly and accurately searched.'').

[165] Associations, Dec. 18, 2014, at 28.

[166] L. Chanin, Dec. 23, 2014, at 20.

creditor's prior determination for that account. The Department has adopted a new provision, in § 232.5(b)(3), to clarify this aspect of the operation of the safe harbor. However, the Department maintains that, in order to benefit from the safe-harbor provision under § 232.5(b), a creditor must use a method in § 232.5(b)(2) whenever extending a new consumer credit product or newly establishing an account for consumer credit, including a new line of consumer credit that might be associated with a pre-existing transactional account held by the borrower. For example, if a consumer initially opens a checking account with a bank, and then, later, applies for an overdraft line of credit associated with that checking account and which carries a cost in excess of the interest-rate limit, in order to receive the benefit of the safe harbor for purposes of that new line of consumer credit, the bank must, for example, use information obtained from the MLA Database when processing the consumer's application for (or at the time of establishing) the overdraft line of credit, even if the bank previously had used information from the MLA Database at the time the consumer established the checking account and did not find the consumer in the database.

IV. Section-by-Section Description of the Regulation

Section 232.1 Authority, purpose, and coverage

The Department adopts this section as proposed.

Section 232.2 Applicability

The Department adopts this section as proposed, with a few amendments, including an example, to clarify that the protections of 10 U.S.C. 987 apply only when the consumer continues to hold the status as a covered borrower.

The Department proposed to add new subsection (a), stating: ''Nothing in this part applies to a credit transaction or account relating to a consumer who is not a covered borrower at the time he or she becomes obligated on a credit transaction or establishes an account for credit.'' The Department continues to believe that defining the scope of the regulation to apply only to a covered borrower when he or she enters into a transaction or establishes an account for consumer credit is consistent with the language and structure of 10 U.S.C. 987.[167] Interpreting 10 U.S.C. 987 as applying only to a covered borrower who holds that status when he or she agrees to obtain the consumer credit is fair to the creditor who, at the outset of the transaction, should be in a position to know the status of its counterparty to the agreement.[168] Correspondingly, 10 U.S.C. 987 should apply only when the consumer (who is a covered borrower at the outset of the transaction, or when establishing an account, for consumer credit) continues to be a covered borrower. A comment on behalf of certain credit card issuers observes that the Proposed Rule ''does not address account 'roll-off'—*i.e.,* whether the MLA protections continue to apply once the service member is no longer on active duty or exits the military.'' [169] The Department has modified § 232.2(a)—as well as the definition of ''covered borrower'' in § 232.3(g), as discussed below—to clarify that the regulation does not apply to a transaction or account for credit relating to a consumer (which otherwise would be consumer credit) when the consumer no longer is a covered borrower.

The Department adopts corresponding revisions to certain other provisions of the regulation, notably §§ 232.3(f) and 232.5(b)(2), for the sake of clarity and consistency with this policy.

The Department adopts § 232.2(b) as proposed.

Section 232.3 Definitions

(a) Affiliate. The Department adopts the term ''affiliate'' as proposed. As previously explained, this definition is designed to prevent evasion of the rule, specifically with respect to an entity that would not, when considered alone, qualify as a creditor, but, when considered together with its affiliates, would be engaged in extending credit, as described in § 232.3(i)(3).

(b) Billing cycle. The Department adopts the term ''billing cycle'' as proposed.

(c) Bureau. The Department adopts the term ''Bureau'' as proposed.

(d) Closed-end credit. The Department adopts the term ''closed-end credit'' as proposed.

(e) Consumer. The Department adopts the term ''consumer'' as proposed.

(f) Consumer credit. As discussed above, the Department defines ''consumer credit'' consistent with the relevant provisions of the Bureau's Regulation Z.

Sections 232.3(f)(2)(i)–(iii) provide exceptions to ''consumer credit'' that track the exceptions to that term in the MLA.

The Department's existing rule, as well as the Proposed Rule, interpreted 10 U.S.C. 987(i)(6)(A) to exclude from consumer credit ''any credit transaction secured by an interest in the *covered borrower's* dwelling,'' [170] whereas the statutory provision flatly excludes ''a residential mortgage.'' A few comments ask the Department to modify § 232.3(f)(2)(i) in order that other types of transactions secured by property, such as the dwelling of another person, would be eligible for the exclusion.[171] The Department concludes that subparagraph (f)(2)(i) should reflect the language and the scope of the exclusion in the MLA—''a residential mortgage''—and amends that provision accordingly.

Certain credit products may, or may not, be covered under the Department's definition of ''consumer credit,'' depending, for example, on whether the particular credit product is subject to a ''finance charge,'' which the Department likewise defines consistent with the meaning of that term in Regulation Z. Most, if not all, ''deposit advance'' products would (when offered to a covered borrower) be covered as consumer credit because this type of product typically involves credit extended by a creditor primarily for personal, family, or household purposes for which the borrower pays any fee or charge that is, or is expected to be, repaid from funds available in the borrower's asset account held by that creditor. Likewise, consistent with Regulation Z,[172] an overdraft line of credit with a finance charge would (when offered to a covered borrower) be covered as consumer credit to the extent

[167] *See, e.g.,* 10 U.S.C. 987(a) (imposing conditions on ''[a] creditor who *extends* consumer credit''); 10 U.S.C. 987(c) (requiring certain information to be provided to a covered borrower ''before the issuance of credit''); 10 U.S.C. 987(e) (declaring that ''[i]t shall be unlawful for any creditor *to extend* consumer credit to a [covered borrower]'' that involves certain restrictions or conduct) (emphases added).

[168] In this regard, the Department explained that its longstanding policy regarding this aspect of the scope of 10 U.S.C. 987 is consistent with the provision set forth in § 987(f)(3). (''Any credit agreement, promissory note, or other contract prohibited under this section is void from the inception of such contract.''). In proposing § 232.2(a), the Department explained that ''10 U.S.C. 987 should not be interpreted so as to impose restrictions on an existing agreement between a creditor and a consumer involving a credit transaction primarily for personal, family, or household purposes that spring to life when the consumer becomes a covered borrower when he or she begins active duty service in the military.'' 79 FR 58616.

[169] L. Chanin, Dec. 23, 2014, at 20.

[170] *See* proposed 12 CFR 232.3(f)(2)(i), 79 FR 58637 (emphasis added).

[171] *See, e.g.,* Wolters Kluwer Financial Services, Dec. 23, at 1 (asking the Department to ''consider whether these transactions pose the type of 'debt trap' to [covered borrowers], and if not, amend the restriction ''in order to limit unnecessary regulatory burden'').

[172] *See* 12 CFR 1026.4(c)(3) (imposing certain conditions on a charge for overdraft services that, if not satisfied, would make that charge a ''finance charge'').

that product consists of credit extended by a creditor primarily for personal, family, or household purposes to pay an item that overdraws an asset account and for which the borrower pays any fee or charge, but only if (A) the extension of credit for such an item and (B) the imposition of the fee or charge were previously agreed upon in writing. On the other hand, an overdraft service typically would not be covered as consumer credit because Regulation Z excludes from ''finance charge'' any charge imposed by a creditor for credit extended to pay an item that overdraws an asset account and for which the borrower pays any fee or charge, unless the payment of such an item and the imposition of the fee or charge were previously agreed upon in writing.[173]

Consistent with the Department's existing rule, § 232.3(f)(2)(iv) excludes from the scope of ''consumer credit'' any credit transaction that is an exempt transaction for the purposes of Regulation Z (other than a transaction exempt under 12 CFR 1026.29) [174] or otherwise is not subject to disclosure requirements under Regulation Z. The Department continues to believe that the exclusions in § 232.3(f)(2)(iv) are appropriate because these types of exempted credit do not pose risks to Service members and their dependents, and a creditor who already complies with Regulation Z should not be required to independently assess whether certain types of credit exempt under that rule could be subject to the requirements of the MLA.

As discussed when issuing the Proposed Rule,[175] the Department has removed the provision in the existing rule that had provided an exclusion for ''credit secured by a qualified retirement account as defined in the Internal Revenue Code.'' [176]

As discussed in section III.D., the Department adopts § 232.5(b) in order to afford a creditor a degree of certainty regarding whether an extension of consumer credit is being made to a covered borrower. Accordingly, and pursuant to the Department's authorities to prescribe regulations defining the scope of ''consumer credit,'' [177] the Department adopts an exclusion in § 232.3(f)(2)(v) that gives effect to a creditor's election to use the method of conducting a covered-borrower check, and by complying with the recordkeeping requirement, under § 232.5(b).

(g) Covered borrower. In general, the Department has adopted the definition of ''covered borrower'' as proposed. The Department proposed to revise the definition of ''dependent'' to reflect the language of 10 U.S.C. 987(i), as amended by § 663 of the 2013 Act and, with respect to this provision, one commenter states that the definition of ''dependent'' should include surviving spouses, as described in subparagraphs (B) and (C) of 10 U.S.C. 1072(2).[178] The Department has no discretion to expand the scope of the term ''dependent'' to include surviving spouses, and believes that the definition of ''dependent'' hereby adopted in the final rule appropriately carries out the intent to simplify the process for determining which family members are covered under 10 U.S.C. 987.

For the reasons discussed in connection with the modification to § 232.2(a), the Department has modified the definition of ''covered borrower,'' by adding a new subparagraph (4), to clarify that a consumer who had been a covered borrower ceases to hold that status when the consumer no longer is a covered member or a dependent of a covered member.

(h) Credit. The Department adopts the term ''credit'' as proposed.

(i) Creditor. The Department adopts the term ''creditor'' as proposed. As stated in the Proposed Rule, the Department interprets the statutory provision of ''engaged in the business of extending consumer credit'' [179] consistent with the corresponding provision of the Department's existing rule, which refers to the definition of ''creditor'' in Regulation Z.[180]

(j) Department. The Department adopts the definition for the Department of Defense as proposed.

(k) Dwelling. The definition of ''dwelling'' is not changed from the Department's existing rule.[181]

(l) Electronic fund transfer. The Department adopts the term ''electronic fund transfer'' as proposed.

(m) Federal credit union. The Department adopts the term ''Federal credit union'' to have the same meaning as in the FCU Act. As discussed in section III.D., this term is part of the exclusion from the MAPR for an application fee charged by a Federal credit union (or insured depository institution).

(n) Finance charge. The Department adopts the term ''finance charge'' as proposed.

(o) Insured depository institution. The Department adopts the term ''insured depository institution'' to have same meaning as in the Federal Deposit Insurance Act. As discussed in section III.D., this term is part of the exclusion from the MAPR for an application fee charged by an insured depository institution (or Federal credit union).

(p) Military annual percentage rate (MAPR). The Department adopts the definition of the term ''MAPR'' as proposed, which requires the cost of credit to be expressed as an annual rate and requires the MAPR to be calculated in accordance with § 232.4(c).

(q) Open-end credit. The Department adopts the term ''open-end-credit'' as proposed.

(r) Person. The Department adopts the term ''person'' as proposed.

(s) Regulation Z. The Department adopts the term ''Regulation Z'' as proposed.

(t) Short-term, small amount loan. For the reasons described in section III.D., the Department adopts a new term, ''short-term, small amount loan,'' to define the qualifying closed-end loan for the exclusion from the MAPR for an application fee charged by a Federal credit union or insured depository institution.

Section 232.4 Terms of Consumer Credit Extended to Covered Borrowers

1. Sections 232.4(a)–(c): In General

As proposed, the Department adopts § 232.4(a), which tracks the restrictions under 10 U.S.C. 987(a).

Section 232.4(a)(2) tracks the restriction under 10 U.S.C. 987(a)(2), which provides that a creditor who extends consumer credit to a covered borrower shall not require the borrower to ''pay interest with respect to the extension of such credit, except as . . . authorized by applicable State or Federal law.'' As stated in the Proposed Rule,[182] the Department understands that this condition on an extension of consumer credit possibly could be interpreted to restrict a financial institution, such as a national bank, based in one state from charging interest to covered borrowers residing in another state, which imposes a limit on the interest rate that may be charged, ''except as . . . authorized by [that

[173] *See* 12 CFR 1026.4(c)(3).

[174] *See* 12 CFR 1026.29, regarding state application for Bureau exemption of a class of transactions within the state.

[175] *See* 79 FR 58616–58617.

[176] 32 CFR 232.3(b)(2)(iv) (2014).

[177] 10 U.S.C. 987(h)(2)(D)–(E); 987(i)(6).

[178] Nat'l Military Family Assoc., Dec. 18, 2014, at 2. 10 U.S.C. 1072(2)(B)–(C) (defining ''dependent'' to mean ''the unremarried widow'' of a member or the ''unremarried widower'' of a member, respectively).

[179] 10 U.S.C. 987(i)(5)(A)(i).

[180] 32 CFR 232.3(e) (''*Creditor* means a person who . . . and who otherwise meets the definition of 'creditor' for purposes of Regulation Z.'').

[181] 32 CFR 232.3(f).

[182] 79 FR 58617.

other] State.'' The Department believes that, other than the limit imposed in § 232.4(b), nothing in 10 U.S.C. 987 or this regulation should be construed so as to affect the federal law governing the interest rate a financial institution may charge.[183]

Section 232.4(b) tracks the interest-rate limit of 10 U.S.C. 987(b).

Section 232.4(c) provides the framework for calculating the MAPR by: First, in § 232.4(c)(1), describing each of the charges that must be included in the MAPR; and second, in § 232.4(c)(2), prescribing the rules for computing the MAPR based on those charges.

Relative to the corresponding provisions of the Department's existing rule,[184] the Department amends the language of § 232.4(b) and § 232.4(c)(1)(ii), to reflect the broader scope of consumer credit subject to the regulation, such as by referring to the sale of credit-related ancillary products in connection with ''the credit transaction *for closed-end credit* or an *account for open-end credit*'' (emphasis added).

As stated in the Proposed Rule,[185] the Department has crafted § 232.4(c)(1)(i)–(ii) to generally reflect the charges that must be included as ''interest'' under 10 U.S.C. 987(i)(3), and subject to the conditional exclusion for bona fide fees, as explained further below. Several comments raised concerns regarding the Department's proposal to modify the treatment of fees for credit insurance products, debt cancellation contracts, or debt suspension agreements that are voluntarily entered into by covered borrowers.[186] The Debt Cancellation Coalition, for example, acknowledges that 10 U.S.C. 987(h) and 987(i) grants discretion to the Department to prescribe regulations regarding the elements of, and method of computing the ''annual percentage rate'' of ''interest'' that is subject to the interest-rate limit in 10 U.S.C. 987(b), and urges the Department to exclude fees for voluntary debt cancellation contracts or debt suspension agreements from the ''calculation of MAPR as long as the requirements under TILA and Regulation Z are satisfied.'' [187] Alternatively, the Debt Cancellation Coalition argues that the Department should, ''[a]t the very least,'' modify the rule to clarify that any fee for a debt cancellation contract or debt suspension agreement must be included in the MAPR only when that product is ''sold at or before consummation of the credit transaction for closed-end credit or upon account opening for open-end credit.'' [188] The Debt Cancellation Coalition explains that, unless a charge for debt cancellation or debt suspension agreement that must be included in the MAPR is limited to an initial charge, a creditor would face a ''near impossible'' condition when attempting to compute the MAPR because the fee(s) for those products would vary from month to month.[189]

Aon Integramark similarly argues that under the Department's existing rule a fee for a debt cancellation contract is not included in the MAPR unless one of three conditions is met, consistent with the treatment of that type of fee under Regulation Z. In this regard, Aon Integramark observes that in § 232.3(h)(1) of the existing rule,[190] the cost elements set forth in subparagraphs (i)–(iii) must be included in the MAPR only ''if they are financed, deducted from the proceeds of the consumer credit, or otherwise required to be paid as a condition of the credit.'' [191] This commenter explains that the existing rule ''strikes the proper balance by allowing members of the military to purchase debt cancellation on a voluntary basis without including the cost in the MAPR.'' [192] Aon Integramark urges the Department to align the treatment of debt cancellation contracts in the final rule with the treatment of those products in the existing rule by amending § 232.4(c)(1)(i)—but not § 232.4(c)(1)(ii) (which relates to credit-related ancillary products)—by adding at the end of that subparagraph (i) the words '' 'if they are financed, deducted from the proceeds of the consumer credit, or otherwise required as a condition of the credit.' ''[193] If this amendment were to be adopted, a fee for a credit insurance product, debt cancellation contract, or debt suspension agreement would be excluded from the computation of the MAPR if the covered borrower voluntarily agrees to obtain that product, contract, or agreement.[194]

The Department recognizes that, by eliminating the condition that certain charges be included in the computation of the MAPR ''if [those charges] are financed, deducted from the proceeds of the consumer credit, or otherwise required as a condition of the credit,'' [195] the Department is expanding the scope of the elements that must be included in the MAPR. The Department believes that eliminating this condition in § 232.4(c)(1)—thereby requiring voluntary credit insurance products to be included—reasonably interprets the definition of ''interest'' in the MLA, which generally (and subject to the Department's rulemaking authorities) must include ''*all* cost elements associated with the extension of credit, *including* fees, service charges, renewal charges, credit insurance premiums, any ancillary product sold with any of extension of credit. . . .[196] Correspondingly, the MLA defines the ''annual percentage rate'' of interest—another term integral to the law's interest-rate limit—as ''*all* fees and charges, *including* charges for single premium credit insurance and other ancillary products sold in connection with the credit transaction. . . .[197] The Department recognizes, and commenters acknowledge, that the MLA grants discretion to the Department to prescribe regulations regarding the method for calculating the applicable MAPR, including the ''maximum allowable amount of all fees, and the types of fees, associated with any such extension of credit,'' [198] as well as ''other criteria or limitations as the Secretary of Defense determines appropriate, consistent with the provisions of [the MLA.] [199] Upon review of the comments submitted on the Proposed Rule and in light of its experience administering the existing rule, the Department has elected to exercise its discretion by generally requiring any fees for credit insurance

[183] In the case of a national bank, for example, *see* 12 U.S.C. 85; 12 CFR 7.4001 (2015).

[184] 32 CFR 232.3(h)(1)(ii)–(iii) (2013).

[185] 79 FR 58617.

[186] *See, e.g.,* Aon Integramark, Nov. 11, 2014; Debt Cancellation Coalition, Dec. 15, 2014; Navy Federal Credit Union, Dec. 15, 2014.

[187] Debt Cancellation Coalition, Dec. 15, 2014, at 5. The Debt Cancellation Coalition explains that Regulation Z requires a creditor to meet certain requirements in order for a charge or premium for one of these products to satisfy the relevant exclusion from the finance charge, and these requirements generally aim to allow the consumer to voluntarily purchase the product.

[188] Debt Cancellation Coalition, Dec. 15, 2014, at 6.

[189] Debt Cancellation Coalition, Dec. 15, 2014, at 6.

[190] 32 CFR 232.3(h)(1) (2013).

[191] Aon Integramark, Nov. 11, 2014, at 2. *See also* Debt Cancellation Coalition, Dec. 15, 2014, at 3 (''The MAPR includes fees for [debt cancellation contracts], but only 'if they are financed, deducted from the proceeds of the consumer credit, or otherwise required to be paid as a condition of credit.'')

[192] Aon Integramark, Nov. 11, 2014, at 3.

[193] Aon Integramark, Nov. 11, 2014, at 3.

[194] The Department observes that there is a near-absence of support in the comments for an exclusion from the elements that must be included in the MAPR for voluntarily agreed to credit-related ancillary products.

[195] 32 CFR 232.3(h)(1) (2013).

[196] 10 U.S.C. 987(i)(3) (emphasis added).

[197] 10 U.S.C. 987(i)(4) (emphasis added).

[198] 10 U.S.C. 987(h)(2)(B)–(C).

[199] 10 U.S.C. 987(h)(2)(E).

products or for credit-related ancillary products to be included in the MAPR.

As stated when issuing the existing rule, the Department remains concerned that covered borrowers are sold credit insurance products ''without having these credit insurance products placed in the context of the Service member's employment status or his or her current level of insurance coverage.'' [200] By eliminating the condition in § 232.3(h)(1) of the existing rule (''if [those charges] are financed, deducted from the proceeds of the consumer credit, or otherwise required as a condition of the credit''), as set forth in § 232.4(c)(1) of the Proposed Rule, the Department is more fully carrying out its existing policy.

Insofar as some commenters urge the Department to align its treatment of credit insurance, debt cancellation, or debt suspension products vis-à-vis the computation of the MAPR with the treatment of those products under Regulation Z, that regulation provides for exclusions from the scope of the finance charges that must be disclosed for voluntarily agreed to ''credit life, accident, health, or loss-of-income insurance,'' [201] as well for ''debt cancellation or debt suspension coverage in the event of the loss of life, health, or income or in the case of accident'' [202]—all conditions that a covered borrower already is substantially insured for, or otherwise substantially provided benefits for, by the military services. The Department believes that most, if not all, of the credit insurance products, debt cancellation contracts, or debt suspension agreements customarily offered to consumers are not suitable for a covered borrower because the military services already provide insurance or other benefits to a Service member that would adequately provide financial resources even if an event of coverage (*e.g.,* disability) were to occur to the borrower. For example, a Service member currently holds health insurance as part of his or her benefits in the Service and, if that Service member were to become ill, the Service member still would be employed, thereby allowing him or her (or the relevant dependent who relies on the Service member's income) to continue to make payments on the debts incurred without triggering a condition of the credit insurance. Accordingly, the Department adopts § 232.4(c)(1)(i) to require all fees for credit insurance products, debt cancellation contracts, or debt suspension agreements to be included in the MAPR, consistent with the scope of 10 U.S.C. 987(i)(3)–(4).[203]

The Department has determined to modify § 232.4(c)(1)(ii), relative to that provision of the Proposed Rule and § 232.3(h)(1)(iii) of the existing rule, to require a creditor to include in the MAPR ''fees for credit-related ancillary products sold in connection with and either at or before consummation of the [consumer credit].'' As the Department explained when issuing the Proposed Rule, when § 232.3(h)(1)(iii) was adopted in 2007, including in the MAPR only the ''credit-related ancillary products'' sold ''either at or before consummation of the credit transaction'' [204] was designed to be consistent with the scope of consumer credit, which covers only a narrow band of closed-end credit products. However, nothing in the MLA necessarily limits the inclusion in the MAPR of these charges only to those that are sold at the outset of the credit transaction. Particularly insofar as consumer credit now encompasses open-end credit products, the Department has concluded that the MLA should be interpreted to require a creditor to include in the MAPR the fee for any ancillary product ''sold with any extension of credit to a [covered borrower]'' so long as that ancillary product is ''associated with the extension of credit'' [205]—which could arise at any time in an ongoing, open-end account for consumer credit. Accordingly, the Department has determined to amend § 232.4(c)(1)(ii) so as to require the inclusion in the MAPR of any fee for a credit-related ancillary product sold in connection with the credit transaction for closed-end credit or (at any time in connection with) an account for open-end credit, so long as the consumer was a covered borrower at the time the account was established.[206]

Section 232.4(c)(1)(iii) describes the charges that must be included in the MAPR in light of the definition of consumer credit, which would chiefly consist of ''[f]inance charges,'' consistent with Regulation Z. In general, a charge that is excluded as a ''finance charge'' under Regulation Z also would be excluded from the charges that must be included when calculating the MAPR. As a result, whereas the Department's existing rule had provided exclusions from the MAPR for late payment fees [207] and taxes required to be paid,[208] § 232.4(c) omits these provisions because these charges (as well as other charges) are not finance charges under Regulation Z.[209]

However, the Department recognizes that, under Regulation Z, a wide range of charges that a creditor may impose in connection with a credit product are excluded as ''finance charges,'' particularly an application fee and a participation fee.[210] If these exclusions from the definition of finance charge were to be maintained in the context of consumer credit covered under the MLA, a creditor would have a strong incentive to evade the interest-rate limit of 10 U.S.C. 987(b) by shifting the costs of a credit product by lowering the interest rate and imposing (or increasing) one or more of these excluded fees. To guard against this obvious result, the Department specifically has included any application fee and any participation fee as charges that generally must be included in the MAPR.[211] The exception for a bona fide fee (other than a periodic rate) charged to a credit card account apply to the charges set forth in § 232.4(c)(1)(iii).

Section 232.4(c)(1)(iv) clarifies that, even if a charge set forth in paragraphs (c)(1)(i)–(iii) of this section would be excluded from the finance charge under Regulation Z, that charge nevertheless must be included in the calculation of the MAPR.

2. Elements of the MAPR and Treatment of Items Under the Conditional Exclusion for Bona Fide Fees

One commenter observes, for example, that ''if a voluntary debt cancellation fee is charged to a credit

[200] 72 FR 50587.

[201] *See* 12 CFR 1026.4(d)(1).

[202] *See* 12 CFR 1026.4(d)(3).

[203] Moreover, the Department is permitted to establish the elements that must be included in the MAPR under 10 U.S.C. 987(h)(2)(E), which directs the Department to establish ''[s]uch other criteria or limitations as the Secretary of Defense determines appropriate, consistent with the provisions of this section.''

[204] 32 CFR 232.3(h)(1)(iii) (2013).

[205] 10 U.S.C. 987(i)(3) (defining '' 'interest' '' generally as including ''all cost elements associated with the extension of credit'').

[206] Moreover, amending the scope of § 232.4(c)(1)(ii) by eliminating the timing condition is consistent with the scope of § 232.4(c)(1)(i) (which tracks § 232.3(h)(1)(ii) of the existing regulation), which does not impose a condition based on the timing of a sale or charge for a credit insurance premium.

[207] 32 CFR 232.3(h)(2)(i) (excluding from the MAPR ''[f]ees or charges imposed for actual unanticipated late payment, default, delinquency, or similar occurrence'').

[208] 32 CFR 232.3(h)(2)(ii) (excluding from the MAPR ''[t]axes or fees prescribed by law that actually are or will be paid to public officials for determining the existence of, or for perfecting, releasing, or satisfying a security interest'').

[209] *See* 12 CFR 1026.4(c).

[210] *See* 12 CFR 1026.4(c)(1) and (c)(4).

[211] *See also* 72 FR 50587 (explaining the need to define the MAPR so that covered credit products ''cannot evade the 36 percent [interest-rate] limit by including low interest rates with high fees associated with origination, membership, administration, or other cost that may not be captured in the TILA definition of APR'').

card account one month, other bona fide fees such as a reasonable annual fee or an ATM fee must also be included in the MAPR calculation.'' [212]

The Department now recognizes that the Proposed Rule left ambiguous the treatment of the charges set forth in § 232.4(c)(1)(i)–(ii) under the exclusion for bona fide fees. The Department intends for the charges set forth in § 232.4(c)(1)(i)–(ii) to be included in the MAPR irrespective of whether any other fee may be a bona fide fee eligible for the exclusion in § 232.4(d). Thus, the charges set forth in § 232.4(c)(1)(i)–(ii) must be treated separately from any fees excluded under § 232.4(d). Correspondingly, even if a creditor imposes one or more charges described in § 232.4(c)(1)(i)–(ii)—which always must be included in the MAPR—the creditor still would be able to exclude other, bona fide fees that meet the conditions in § 232.4(d). The Department has included, in § 232.4(d)(iii), examples to illustrate the interaction between certain charges that always must be included in the MAPR (*e.g.,* a fee for a credit insurance premium) and the availability of the conditional exclusion for bona fide fees.

3. Computing the MAPR

The final rule contains two provisions for computing the MAPR,[213] both of which track the methods already established in Regulation Z.

First, for closed-end credit, the rule requires a creditor to follow ''the rules for calculating and disclosing the 'Annual Percentage Rate (APR)' for credit transactions under Regulation Z,'' based on the charges required for the MAPR, as set forth in § 232.4(c)(1). In general, the requirements for calculating the APR for closed-end credit under Regulation Z are found in § 1026.22(a)(1), and include the explanations and instructions for computing the APR set forth in appendix J to part 1026.

For example, the MAPR for single advance, single payment transactions, such as some types of deposit advance loans, must be computed in accordance with the rules in Regulation Z, such as by following the instructions described in paragraph (c)(5) of appendix J. Based on the formula provided in paragraph (c)(5) of appendix J, in the case of a single advance, single payment transaction loan extended to a covered borrower for a period of 45 days, and for which the advance is $500 and the single payment required consists of the principal amount plus a finance charge of $28.44, for a total payment of $528.44, the MAPR would be 46.14 percent. In this example, the resultant MAPR would exceed the interest-rate limit imposed by 10 U.S.C. 987(b), as set forth in § 232.4(b) of the regulation.

Second, for open-end credit, a creditor generally must calculate the MAPR using the methods prescribed in § 1026.14(c)-(d) of Regulation Z, which relates to the ''effective annual percentage rate'' (''effective APR'').[214] Section 1026.14(c) of Regulation Z provides for the methods of computing the annual percentage rate under three scenarios: (1) When the finance charge is determined solely by applying one or more periodic rates; (2) when the finance charge includes a fixed charge that is not due to application of a periodic rate, other than a charge with respect to a specific transaction; and (3) when the finance charge includes a charge relating to a specific transaction during the billing cycle.

For example, suppose a creditor offers a line of credit to a covered borrower primarily for personal, family, or household purposes (commonly referred to as a ''personal line of credit''), and permits the borrower to repay on a monthly basis. Upon establishing the personal line of credit, the covered borrower borrows $500. The creditor charges a periodic rate of 0.006875 (which corresponds to an annual rate of 8.25 percent), plus a fee of $25, charged when the account is established and annually thereafter. Under these circumstances, pursuant to § 1026.14(c)(2) of Regulation Z the creditor would calculate the MAPR as follows: ''dividing the total amount of the finance charge for the billing cycle''—which is $3.44 (corresponding to (0.006875) × ($500)), plus $25—''by the amount of the balance to which it is applicable''—$500—and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year''—12 (since the creditor allows the borrower to repay monthly), which is 68.26 percent. In this example, even though the periodic rate (0.006875) would comply with the interest-rate limit under § 232.4(b), the resultant MAPR would be in excess of that limit because the amount borrowed is low at the time the annual fee is imposed. If the covered borrower instead borrows a higher amount, then the creditor still could impose the $25 annual fee and comply with § 232.4(b); for example, if the amount initially borrowed is $1,400, then the resultant MAPR would be 24.73, well below the 36 percent limit.

In the case of open-end credit extended through a credit card account, a creditor likewise would be required to calculate the MAPR using the methods prescribed in § 1026.14(c)–(d) of Regulation Z. For example, if a creditor extends credit to a covered borrower through a credit card account and the borrower incurs a finance charge relating to a specific transaction, such as a cash advance transaction, during the billing cycle, then the creditor would calculate the MAPR under the instructions set forth in § 1026.14(c)(3) of Regulation Z. However, in the case of a credit card account the creditor may exclude, pursuant to § 232.4(c)(1)(iii) and § 232.4(d), any bona fide fee from the finance charges that otherwise must be accounted for; thus, if a charge for the cash advance transaction fits within the exclusion for a bona fide fee under § 232.4(d), then that charge would not be included when computing the MAPR for that billing cycle.

In general, a creditor reasonably could be expected to estimate at the outset of a billing cycle whether charges to a covered borrower can produce an MAPR in excess of the limit in § 232.4(b), particularly because the creditor already would know the periodic rate and whether the non-periodic fees are covered by the exclusion for a bona fide fee under § 232.4(d). Nevertheless, under certain circumstances, a creditor might not know at the outset of a billing cycle whether the borrower's use of an open-end line of credit will lead to a finance charge that—through a combination of rates and fees—exceeds the interest-rate limit of the MLA. However, at the end of a billing cycle the creditor would be able to calculate the total charges included in the MAPR and waive an amount necessary to comply with the 36-percent limit of § 232.4(b).

Several comments contend that the requirement in § 232.4(c)(2)(ii) of the Proposed Rule, to apply the standards prescribed in § 1026.14(c)–(d) of Regulation Z, as the method to compute the MAPR for open-end credit is

[212] Navy Federal Credit Union, Dec. 15, 2014, at 2–3.

[213] 10 U.S.C. 987(h)(1) (authorizing the Department to prescribe regulations to carry out the MLA); 10 U.S.C. 987(h)(2)(B) (authorizing the Department to establish ''[t]he method for calculating the applicable annual percentage rate of interest on such obligations, in accordance with the limit established under [the MLA]'').

[214] A creditor subject to § 1026.40 of Regulation Z is not required to comply with § 1026.14(c) (''[that type of] creditor may, at its option, disclose an effective annual percentage rate pursuant to § 1026.7(a)(7) and compute the effective annual percentage [in accordance with the subparagraphs of § 1026.14(c)]''). However, for the purposes of complying with the Department's rule when computing a MAPR for open-end credit, any creditor subject to the Department's regulation must comply with that § 1026.14(c), subject to § 232.4(c)(2)(ii)(B) (in the event that there is no balance during a billing cycle).

inappropriate. A comment on behalf of certain credit card issuers, for example, argues that ''[u]se of the historical, or effective, APR was originally intended as a disclosure tool to enhance consumer understanding of the cost of credit,'' not as a method to calculate fees on open-end credit transactions.[215] These credit card issuers state:

> After years of study, the [Board] published a final rule in 2009 that eliminated the requirement in Regulation Z for card issuers to calculate and disclose the APR for each billing cycle. The [Board's] decision to eliminate the historical APR was based on several factors, including extensive consumer testing which found that the effective APR is not helpful to consumers because it does not enable consumers to meaningfully compare costs from month to month or for different products. [216]

These credit card issuers further state that ''[t]he fact that the MAPR rate cap would be reached in some [billing] cycles and not in others depending, in part, on when a service member engages in a transaction would create a rule that bans the identical fee in one cycle and permits it in another cycle.'' [217] ''This approach would,'' these credit card issuers allege, ''be very confusing to service members who clearly would not understand when a fee is or is not assessed for a service such as a cash advance.'' [218]

The Associations likewise assert:

> The proposed MAPR [calculation] simply does not work for the same reasons that the 'effective APR' did not work and was discarded by the Federal Reserve. The MAPR will have the same distortions, creating a flawed measurement of the cost of credit. . . . To illustrate, assume a $4 transaction fee and a $100 draw made at the beginning of the month on an overdraft line of credit. This would translate to a minimum 48 percent MAPR—before interest is included. The MAPR could be much higher, depending on when the line was used and when the balance paid.[219]

When in 2009 the Board amended Regulation Z to create an exemption from the requirement in TILA, thereby relieving a creditor from disclosing the effective APR, the Board interpreted TILA as follows: ''The statutory requirement of [disclosing] an effective APR is intended to provide the consumer with an annual rate that reflects the total finance charge, including both the finance charge due to application of a periodic rate (interest) and finance charges that take the form of fees. This rate, like other APRs required by TILA,'' the Board explained, ''presumably was intended to provide consumers information about the costs of credit that would help consumers compare credit costs and make informed credit decisions and, more broadly, strengthen competition in the market for consumer credit.'' [220] The Board found, in part, that ''[d]isclosure of the effective APR on periodic statements does not significantly assist consumers in credit shopping, because the effective APR disclosed on a statement on one credit card account cannot be compared to the nominal APR disclosed on a solicitation or application for another credit card account.'' [221] The Board also stated—again from the perspective of assessing whether a *disclosure* required to be provided under Regulation Z could assist a consumer in comparing the costs of credit card programs or compare the costs of an existing credit card account across billing cycles—that ''the effective APR for a given cycle is unlikely to accurately indicate the cost of credit in a future cycle, because if any of several factors (such as the timing of transactions and payments and the amount carried over from the prior cycle) is different in the future cycle, the effective APR will be different even if the amounts of the transaction and the fee are the same in both cycles.'' [222] Significantly, the Board did not create an exemption from the requirement in TILA that a creditor disclose the effective APR because the creditor could not compute that figure from one billing cycle to the next or because the prescribed method of computation had been demonstrated to be susceptible to error. Rather, the Board's action fundamentally rested on its assessment of the balance of costs and benefits associated with requiring the use of the effective APR to communicate the costs of open-end credit to consumers so that they could, for example, ''meaningfully compare costs from month to month or for different products.'' [223]

That the standards for computing the effective APR still stand in Regulation Z (albeit as an optional, not required, form of disclosure to a consumer) is a testament to their value for computing the cost of open-end credit during a given billing cycle on an annualized basis. The Department's reliance, in § 232.4(c)(2)(ii), on the standards set forth in Regulation Z [224] is solely for the purpose of calculating the MAPR for open-end credit so that the costs of credit can be determined vis-à-vis the interest-rate limit of the MLA—not for communicating that figure to a covered borrower. None of the comments disparaging the Department's reliance on these standards in Regulation Z dispute the accuracy of those standards. Instead, these comments take issue with the implications of applying those standards, together with the constituent elements (*e.g.,* the definition of ''interest'' in 10 U.S.C. 987(i)(3) and the charges that must be included in the MAPR under § 232.4(c)(1)), to certain open-end credit products that some creditors currently provide: ''a small foreign transaction fee,'' for example, ''depending on the existing balance and repayment date, could easily cause the MAPR on a credit card to exceed 36 percent;'' [225] or ''a card issuer may not be able to assess [a cash advance fee] in the case of [a given] billing cycle.'' [226] Those implications flow from the hard truth of the mathematics under the interest-rate limit established by 10 U.S.C. 987(b).

Section 232.4(c)(2)(ii)(B) generally would prohibit a creditor from imposing a charge in an open-end credit plan for any billing cycle during which there is no balance. However, this provision includes an exception for a participation fee (which otherwise would be required to be included under § 232.4(c)(1)(iii)(B)) because the Department concludes that there might be circumstances in which a creditor should be allowed to charge a bona fide fee for maintaining an open-end line of credit for a covered borrower. Still, recognizing that a creditor could structure a high-cost, open-end line of credit to fit within this exception by substantially increasing the participation fee, the Department has adopted a provision that limits that fee to $100 per annum, regardless of the billing cycle in which the participation fee is imposed. The Department believes that $100 is the highest reasonable amount that a creditor could charge as a bona fide participation fee, during a billing cycle in which there is no balance, for the purposes of keeping the line of credit open to the covered borrower. Furthermore, § 232.4(c)(2)(ii)(B) contains a provision to clarify that the $100-per annum limitation on the amount of the participation fee does not apply to a

[215] L. Chanin, Dec. 23, 2014, at 18.

[216] L. Chanin, Dec. 23, 2014, at 18.

[217] L. Chanin, Dec. 23, 2014, at 19.

[218] L. Chanin, Dec. 23, 2014, at 19.

[219] Associations, Dec. 18, 2014, at 34–35. *See also* Schwartz & Ballen LLP, Dec. 24, 2014, at 6 and Attachment.

[220] Truth in Lending, 74 FR 5,244, 5,316–17 (Jan. 29, 2009).

[221] 74 FR at 5319.

[222] 74 FR at 5319.

[223] 74 FR at 5319.

[224] 12 CFR 1026.14(c)–(d).

[225] Associations, Dec. 18, 2014, at 35. *But see* § 232.4(d), which provides a conditional exclusion that is designed to apply to the ''small foreign transaction fee'' the Associations describe in this scenario.

[226] L. Chanin, Dec. 23, 2014, at 19.

bona fide participation fee charged to a credit card account that would be eligible for the exclusion under § 232.4(d).

4. Conditional Exclusion From the MAPR for Bona Fide Fees Charged to a Credit Card Account

The Department believes that credit card products warrant special consideration under the MLA. As discussed above, § 232.4(d) provides the conditional exclusion, including standards relating to the conditions, that allows a creditor to exclude bona fide fees charged to a credit card account from the MAPR. The Department believes that the condition for excluding a bona fide fee from the MAPR—namely, that the fee must be ''reasonable''—would fairly allow Service members and their dependents to continue to have access to credit card products *and* limit the opportunity for a creditor to exploit the exclusion for those products.

However, as set forth in § 232.4(d)(4)(ii) (and apart from the fees described in § 232.4(c)(1)(i)–(ii), as discussed in part (2) (''Elements of the MAPR and Treatment of Items Under the Conditional Exclusion for Bona Fide Fees'')), a creditor who imposes any fee that is not a bona fide fee or that fails to meet the condition of being reasonable must include the total amount of those fees, including any bona fide fees, in the MAPR. Thus, if a creditor charges one unreasonable fee in a credit card account for a covered borrower, the creditor must include the total amount of the fees—including any fee(s) that otherwise may be eligible for the exclusion—in the MAPR. As discussed above, the ''reasonable'' condition for a bona fide fee, as proposed, is intended to be applied flexibly so that, in general, creditors may continue to offer a wide range of credit card products that carry reasonable costs expressly tied to specific products or services and which vary depending upon the covered borrower's own choices regarding the use of the card.

One comment states that the Department should further restrict the scope of the bona fide fees that may be excluded under § 232.4(d)(1) in order to exclude ''transaction fees for cash advances.'' [227] This comment explains that a cash advance fee should be identified as an ineligible bona fide fee (in § 232.4(d)(2)) because cash advance services ''provide no benefit other than accessing a credit line'' and, thus, ''do not meet the rationale that the [Department] has laid out for exempting certain credit card fees from the general rule (*i.e.,* that certain credit card costs are related to benefits of the use of the card that are not related to the use of the credit).'' [228] The Department recognizes that when a covered borrower obtains a cash advance drawn against a credit card account, the borrower appears to be solely borrowing funds; however, on closer inspection, when a bona fide cash advance fee is imposed, the transaction crucially involves the use of the card for the delivery of cash, and in many cases the cardholder-covered borrower conducts that transaction at a location not operated by the creditor (*e.g.,* a so-called ''foreign ATM''). Accordingly, at this time,[229] the Department concludes that a bona fide cash advance fee is eligible for the conditional exclusion under § 232.4(d).

Section 232.5 Identification of Covered Borrowers

The Department has modified § 232.5(a) to more clearly provide that a creditor is permitted to apply its own method, as the creditor may elect, to assess whether a consumer is a covered borrower.

As discussed above, § 232.5 provides two mechanisms for a creditor to unilaterally assess the status of a consumer who applies for consumer credit in order to make a legally conclusive determination that a consumer is not a covered borrower: The creditor may use information from the MLA Database or from a consumer report obtained from a nationwide consumer reporting agency. For either mechanism, the creditor may make a determination regarding a consumer-applicant's status generally when the creditor enters into a transaction or establishes an account that is (or could be) consumer credit. Under either mechanism, a creditor must timely create and thereafter maintain a record of the information so obtained. Due to this timing constraint in § 232.5(b), a creditor who is an assignee has no occasion to avail itself of the safe harbor afforded in this section by separately assessing the status of an existing borrower for the purpose of determining that the borrower is not a covered borrower.

The Department realizes that several purposes would be served by preserving the use of the MLA Database for bona fide inquiries regarding the status of a consumer as a covered borrower in respect of an upcoming or pending application for credit—that is for the purposes of complying, *ex ante,* with this rule. In particular, the Department has an interest in appropriately conserving the Department's resources for the MLA Database, which would facilitate access for many different creditors, as the circumstances for upcoming or pending applications dictate. Accordingly, the Department adopts a prohibition in § 232.5(b)(2)(i)(A) against using any database maintained by the Department to ascertain the status of a consumer as a covered borrower with respect to a pre-existing transaction or account involving an extension of credit, and that prohibition applies to any creditor, including an assignee.

Section 232.5(b)(3) clarifies that a creditor is permitted to conduct a covered-borrower check by using one or both of the methods set forth in § 232.5(b)(2), and, if so, must timely create and keep the record of that information obtained. The creditor needs to undertake this covered-borrower check only once—namely, only at the time that (i) a consumer initiates the transaction, (ii) a consumer applies to establish the account, or (iii) the creditor develops or processes, with respect to a consumer, a firm offer of credit that (among the specific criteria used by the creditor for the offer) includes the status of the consumer as a covered borrower. In order to facilitate a creditor's process for responding to a consumer's inquiry about a loan—which could occur days or a few weeks before the consumer's application for that loan—as well as to reduce the traffic on the MLA Database, § 232.5(b)(3)(i)–(ii) permit the creditor to make a determination and keep a record of the information so obtained 30 days prior to the date of the transaction or the date the consumer applies to establish an account. Many commenters observe that a creditor who, for example, issues a credit card could conduct a covered-borrower check at the time that the consumer applies for the card, but that under the Proposed Rule a creditor would need to conduct another covered-borrower check at or around the time that the consumer becomes obligated on the credit (by using the card), which typically occurs later.

The Department has designed § 232.5(b)(3) in order to enable a

[227] Pew, Dec. 23, 2014, at 7.

[228] *Id.*

[229] As the Department states in section III, in the course of periodically consulting with the Federal Agencies and in light of other factors the Department may find, as appropriate, the Department may review the scope and effects of its regulation; when undertaking that process, the Department may revisit the factors that could warrant specifically restricting (or otherwise specifically including) certain types of fees that would be eligible for the conditional exclusion provided in § 232.4(d).

creditor to conduct only one covered-borrower check within the permitted safe harbor at an early stage of the transaction or the relationship with the consumer, including at the time that the creditor develops a firm offer of credit to be provided to the consumer. However, in the scenario which describes what is commonly referred to as a ''prescreened'' offer of credit (set forth in § 232.5(b)(3)(iii)), the Department has placed a limitation on the amount of time that may lapse between the creditor's delivery of the prescreened offer and the creditor's reliance on its covered-borrower check that formed part of the basis of the offer. The Department believes that there will be many cases when a consumer who is not a covered borrower at the time that a creditor delivers its prescreened offer (which offer is predicated, in part, on that criterion) later responds to that offer, including after becoming a covered borrower. The Department has crafted a limitation in § 232.5(b)(3)(iii) in the interests of balancing the need to provide reasonable certainty to a creditor in using the safe harbor in § 232.5(b) and providing a bright-line standard to that effect,[230] and affording the protections of the MLA to the consumer who (still prior to the onset of the transaction or account but much later than that creditor's offer) becomes a covered borrower. Accordingly, § 232.5(b)(3)(iii) provides that creditor may rely on its initial covered-borrower check so long as the consumer responds to that offer not later than 60 days after the date that the creditor had provided that offer to the consumer. If the consumer responds to the creditor's offer later than 60 days after the date that the creditor had provided that offer to the consumer, then the creditor may not rely upon its initial determination in developing that offer; instead, the creditor may (but still is not required to) act on the consumer's response as if the consumer is initiating the transaction or applying to establish the account (as described in subparagraph (i) or (ii) of § 232.5(b)(3)).

Section 232.6 Mandatory Loan Disclosures

The Department amends § 232.6 of the regulation to simplify the information that a creditor must provide to a covered borrower when issuing consumer credit and to facilitate a creditor's oral delivery of the required disclosures, consistent with the requirements of 10 U.S.C. 987(c). In particular, the Department has determined: first, to eliminate the requirement in the existing rule for information to be provided ''clearly and conspicuously;'' second, to require a creditor to provide a ''statement'' of the MAPR that describes the charges the creditor may impose, instead of the periodic rate of the MAPR itself ''and the total dollar amount of all charges included in the MAPR,'' as the existing rule requires; third, to modify the Proposed Rule so that, for any transaction or account involving consumer credit, a creditor may elect to orally provide the required disclosures to the covered borrower either in person or by providing a toll-free telephone number that the borrower can use for that purpose; and, fourth, to eliminate the requirement in the existing rule that a creditor provide a specific statement regarding protections available to covered borrowers under federal law.

Section 232.6(a) requires a creditor to provide three categories of information to a covered borrower ''at the time the borrower becomes obligated on the transaction or establishes an account for the consumer credit,'' namely:

- A statement of the MAPR applicable to the extension of consumer credit;
- Any disclosure required by Regulation Z, which shall be provided only in accordance with the requirements of Regulation Z that apply to that disclosure; and
- A clear description of the payment obligation of the covered borrower, as applicable. A payment schedule (in the case of closed-end credit) or account-opening disclosure (in the case of open-end credit) provided pursuant to paragraph (a)(2) of this section satisfies this requirement.''

Section 232.6(d) requires a creditor to provide to a covered borrower the disclosures required under § 232.6(a)(1) and (a)(3) (which correspond to the items numbered above) both (i) in writing and in a form the borrower can keep and (ii) orally. When orally providing the required disclosures, a creditor may elect to provide the disclosures in person, as the circumstances surrounding the establishment of the transaction or account involving consumer credit may permit, or to provide a toll-free telephone number that the borrower can use for that purpose.

1. Clear and Conspicuous Requirement

The Department's existing rule requires each of these categories of information to be provided ''clearly and conspicuously'' to a covered borrower.[231] When issuing the Proposed Rule, the Department stated that, even though the MLA does not require any information to be provided ''clearly and conspicuously,'' there might be some benefits to covered borrowers by requiring certain information to be provided in a manner that, relative to other terms and conditions relating to the extension of or account for consumer credit, makes that information clear and conspicuous.[232] In light of the scope of the Proposed Rule, the Department proposed that a creditor should be relieved from the obligation to present the categories of information required under 10 U.S.C. 987(c)(1)(A) and 987(c)(1)(C) in a manner that is clear and conspicuous. Staff of the FTC urge the Department to retain the requirement that information be delivered to a covered borrower in a manner that is clear and conspicuous.[233] According to the staff of the FTC, if the existing clear-and-conspicuous requirement is eliminated, information required by the MLA to be provided to a covered borrower could be buried in fine print or hidden in one or more documents, among unrelated terms and conditions.[234]

The Department realizes that by eliminating the requirement to provide certain information in a manner that is clear and conspicuous there is a risk that a creditor might minimize the prominence of the statement of the MAPR or the clear description of the covered borrower's payment obligations amidst other disclosures, contract documents, statements, or marketing materials; in that circumstance, an ordinary covered borrower might not appreciate those items that, under the MLA, are intended to assist the borrower. Nonetheless, the Department has determined that, under the final rule, the interests of an ordinary covered borrower still would be served because: (i) Insofar as § 232.6(a)(3) permits a creditor to provide the relevant disclosure pursuant to Regulation Z as a mechanism for providing the ''clear description of the payment obligation of the borrower,'' the disclosure could be delivered in a manner which is clear and conspicuous; and (ii) even if the borrower is provided a description of

[230] *See, e.g.,* L. Chanin, Dec. 23, 2014, at 19 (urging the Department to establish a ''bright-line'' standard for the timing dimensions relevant to the use of the safe harbor).

[231] 32 CFR 232.6(a).

[232] When adopting its rule in 2007, the Department addressed the disclosure requirements of Regulation Z, *see, e.g.,* 72 FR 50588, but did not address the purposes of imposing a clear-and-conspicuous requirement under 10 U.S.C. 987(c).

[233] Staff of the FTC, Dec. 22, 2014, at 8–9. *But see* Bellco Credit Union, Dec. 19, 2014, at 6 (''removing the clear and conspicuous requirement for the disclosure would not affect the presentation of the disclosure'').

[234] Staff of the FTC, Dec. 22, 2014, at 9.

the charges that the creditor may impose to calculate the MAPR that is not clear and conspicuous, the creditor separately must adhere to the requirements of the rule when computing the MAPR. In this regard, a covered borrower could overlook the statement of the MAPR, yet remain protected by the substantive requirements that limit the costs associated with the borrower's transaction or account involving consumer credit.

2. Statement of the MAPR

Section 232.6(a)(1) requires a creditor to provide a ''statement'' of the MAPR, instead of ''[t]he MAPR applicable to the extension of consumer credit, and the total dollar amount of all charges included in the MAPR,'' as required under § 232.6(a)(1) of the existing rule. When adopting this requirement in 2007, the Department recognized that the disclosure of the figures relating to the MAPR would apply only to the discrete forms of closed-end credit defined as ''consumer credit,'' and therefore interpreted the language of 10 U.S.C. 987(c)(1)(A) to require an annual percentage rate of interest. Nonetheless, the Department then recognized ''the potential confusion inherent in mandating the disclosure of two differing annual percentage rates (the MAPR required by [its] regulation and the APR required by TILA).'' [235] As stated in the Proposed Rule, the Department now believes that this same ''potential confusion'' would be significantly magnified in the context of a wider range of closed-end and open-end credit products that, under this final rule, would be covered under the MLA.

Section 987(c)(1)(A) of the MLA does not require the disclosure of a particular annual percentage rate or the ''amount of all charges'' applicable to the extension of consumer credit. Rather, 10 U.S.C. 987(c)(1)(A) requires a ''*statement* of the annual percent rate of interest applicable to the extension of credit'' (emphasis added), and 10 U.S.C. 987(c)(2) independently requires ''[s]uch disclosures [to] be presented in accordance with terms prescribed by the regulations . . . to implement the [TILA].'' [236] Taken singly and in conjunction with each other, these provisions of section 987(c) reasonably should be interpreted as requiring a ''statement'' regarding the MAPR and, separately, disclosures regarding the particular costs of credit relating to a transaction of or account established for consumer credit that are ''in accordance with the terms'' of Regulation Z.

In addition, section 987(i)(4) of the MLA provides that the term '''annual percentage rate' has the same meaning as in section 107 of [TILA], as implemented by regulations of the [Bureau].'' That term also includes ''all fees and charges,'' including certain charges that may be exempt from the term ''finance charge'' under Regulation Z.[237] The Department believes that, in light of section 987(i)(4) ('''annual percentage rate' has the same meaning as in section 107 of [TILA], as implemented by the [Bureau]''), section 987(c)(1)(A) of the MLA (''A statement of the annual percentage rate of interest'') should be interpreted so as not to require a creditor to calculate and disclose to a covered borrower a definitive figure for the ''annual percentage rate'' of interest applicable to the consumer credit that could include additional charges that must be counted as ''interest,'' and thereby would be materially different from the figure the creditor is required (under section 987(c)(1)(B) of the MLA) to compute and disclose under TILA. Instead, the Department believes that the appropriate approach to interpret the tension between sections 987(i)(4), 987(c)(1)(A), and 987(c)(1)(B) is to subject a creditor to one set of requirements for calculating and disclosing the costs of the extension of credit, namely, the requirements under TILA. One clear and beneficial consequence of interpreting these ambiguous provisions of the MLA under this approach is that a creditor is not required to provide to a covered borrower two different numerical disclosures, which inevitably would lead to confusion.[238]

In light of the scope of the definition of consumer credit, which encompasses open-end credit products, the Department exercises its discretion under the MLA [239] to interpret 10 U.S.C. 987(c)(1)(A) more straightforwardly to require, in § 232.6(a)(1), a creditor to provide ''statement of the MAPR'' which may be satisfied (under § 232.6(c)) by a description of ''the charges the creditor may impose, in accordance with this part and subject to the terms and conditions of the agreement, relating to the consumer credit to calculate the MAPR.'' Section 232.6(c)(1) also clarifies that a creditor is *not* required to ''describe the MAPR as a numerical value or to describe the total dollar amount of all charges in the MAPR that apply to the extension of consumer credit.'' The Department concludes that the disclosure of the items relating to the costs of consumer credit (*e.g.,* a periodic rate and other finance charges) that apply to a particular transaction or account, including the format of those items, should be governed under Regulation Z, consistent with the provisions of 10 U.S.C. 987(c)(1)(B) and 987(c)(2). Accordingly, under the final rule, a creditor should be able to streamline its compliance with these requirements under 10 U.S.C. 987(c) by providing to a covered borrower the same disclosures the creditor must (in any event) provide to a consumer under Regulation Z, plus a statement of the MAPR. In order to facilitate compliance with that latter requirement, § 232.6(c)(3) provides a model statement that a creditor could use.

Section 232.6(c)(2) provides that a creditor may include a statement of the MAPR in its agreement with the covered borrower for the transaction of or account established for consumer credit. Consistent with the Department's interpretation of its existing regulation,[240] § 232.6(c)(2) expressly provides that the statement of the MAPR is not required in any advertisement relating to consumer credit.

3. One-Time Delivery of Information

Section 232.6(b) establishes rules relating to transactions involving a creditor and assignee or multiple creditors. More specifically, § 232.6(b)(1) provides that the information required under the MLA is ''not required to be provided to a

[235] 72 FR 50589.

[236] 10 U.S.C. 987(c)(2). As enacted, the MLA refers in this section to regulations ''issued by the Board of Governors of the Federal Reserve System'' (Board) to implement TILA. Subject to certain exceptions, notably under section 1029(c) of the Consumer Financial Protection Act of 2010, 12 U.S.C. 5519(c), the Board's authorities to prescribe rules implementing the federal consumer financial laws have been transferred to the Bureau. 12 U.S.C. 5581. Accordingly, the Department now generally looks to the rules prescribed by the Bureau implementing TILA, except with respect to certain creditors. *See* proposed § 232.3(p) (describing the application of the Board's Regulation Z, 12 CFR part 226, to certain creditors).

[237] *See* 12 U.S.C. 1026(c).

[238] In this regard, the Department also recognizes that many creditors likely would adopt disclosures and contract documents that would be designed to be provided to both consumers who are not entitled to the protections under the MLA and to covered borrowers. The Department's proposed interpretation of sections 987(i)(4), 987(c)(1)(A), and 987(c)(1)(B) of the MLA, which would require a creditor to provide the cost disclosures only required by TILA, would reduce the general confusion to *non*-covered borrowers assessing the costs of credit products that are not covered by the MLA.

[239] 10 U.S.C. 987(h)(1) (authorizing the Department to prescribe regulations to carry out the MLA); 10 U.S.C. 987(h)(2)(A) (authorizing the Department to prescribe regulations establishing ''[d]isclosures required of any creditor that extends consumer credit to a [covered borrower]'').

[240] 72 at 50589.

covered borrower more than once for the transaction or the account established for consumer credit with respect to that borrower.'' Accordingly—and particularly in light of the general timing requirement for providing disclosures when the transaction occurs or the account originally is established [241]—a creditor who is an assignee is not required to provide the information described in paragraphs (a)(1) and (a)(3) of § 232.6. (However, the disclosures required by Regulation Z, described in proposed § 232.6(a)(2), would remain subject to Regulation Z, and not the one-time delivery provision in proposed § 232.6(b)(1).) Relative to the Proposed Rule, § 232.6(b)(2) has been modified to clarify that only one of two or more creditors involved in a transaction for consumer credit must provide the disclosures, and the multiple creditors are permitted to agree among themselves as to which creditor may provide the information required under the MLA.

4. Methods of Delivery

Section 232.6(d) establishes rules relating to the methods of delivery, which are substantively similar to the provisions of the existing rule and, yet, allow for greater flexibility. Under § 232.6(d)(1), a creditor must provide the information required under the MLA ''in writing in a form the covered borrower can keep.'' And under § 232.6(d)(2), consistent with the structure of the existing rule,[242] a creditor must orally provide the information required by paragraphs (a)(1) and (a)(3) of § 232.6(a). However, in order to satisfy the requirement to orally provide certain disclosures, a creditor may provide the information in person or provide a toll-free telephone number that a covered borrower can use to obtain the information. Thus, whereas the Proposed Rule would have permitted the provision of a toll-free telephone number only in the context of a mail transaction, an internet transaction, or a credit transaction conducted at the point-of-sale in connection with the sale of a nonfinancial product or service, the final rule allows a creditor to use that method for any transaction or account involving consumer credit.

Under 10 U.S.C. 987(c)(1), a creditor must provide to a covered borrower certain information ''orally and in writing,'' but 10 U.S.C. 987(c)(2) provides that ''[s]uch disclosures shall be presented in accordance with terms prescribed [in Regulation Z].'' By requiring the disclosures to be ''presented in accordance with'' Regulation Z, the MLA is ambiguous as to the nature of the requirement to ''orally'' provide the disclosures because, in general, Regulation Z requires the disclosures required by TILA only to be presented to a consumer ''in writing, in a form that the consumer may keep.'' [243] Regulation Z contains certain provisions that allow for disclosures to be made orally, but only in the context of ''an oral response to a consumer's inquiry.'' [244] More generally, even though the MLA provides that a creditor must ''orally'' provide certain information ''before the issuance of the credit,'' the law applies that requirement to ''any extension of consumer credit (including any consumer credit originated or extended through the internet).'' Thus, the law is conspicuously vague as to precisely when (or even whether) the creditor must orally deliver the information to a covered borrower (say, in person or over the telephone), since the technological constraints of conducting a credit transaction ''through the internet'' make oral delivery of disclosures an impossibility.

In light of the ambiguities in 10 U.S.C. 987(c), and particularly in the context of conducting transactions involving consumer credit ''through the internet,'' the Proposed Rule had tracked the existing rule by allowing a creditor who is conducting a mail or internet transaction to provide to a covered borrower a toll-free telephone number that the borrower could use to obtain the oral disclosures.[245] The Department recognized that when a creditor is not present to interact orally with a covered borrower—including when obtaining consumer credit at the point-of-sale for a nonfinancial product or service—the creditor should be permitted to provide a toll-free telephone number on or with the written disclosures so that the borrower may obtain the oral disclosures.

Several comments raise general concerns about the requirement to orally provide the disclosures required by the MLA. The Associations, for example, state that in many transactions, creditors will face difficulties ''persuad[ing] covered borrowers to listen to the oral disclosures at the time an account is opened, especially if they are not in a private setting. In addition, providing oral disclosures will require specialized training to ensure that the depository institution employee, at the right time, first identifies the customer as a covered borrower, and then, second, provides the oral disclosures.'' [246] The Associations urge the Department to modify the requirement so that the use of the toll-free telephone to provide the required disclosures is permitted in any ''bank [or] credit union branch setting.'' [247] Another commenter similarly argues that, if possible, the term ''consumer credit'' should be defined ''so that oral disclosures are not required, unless requested by the Service member prior to the Service member becoming obligated on the transaction or [establishing] an account for the consumer credit.'' [248] Still another comment states that ''at the very least, the Department should allow a toll-free number to be provided in all transactions, not just mail transactions, internet transactions, and transaction conducted at the point of sale in connection with the sale of a nonfinancial product or service.'' [249]

The Department concludes that the requirement in 10 U.S.C. 987(c) to deliver certain disclosures ''orally . . . before the issuance of the credit'' should be interpreted in a manner that provides a creditor straightforward mechanisms to do so at that time. Moreover, the Department has determined that a creditor should be afforded the latitude to develop the same (or consistent) systems to orally provide the required disclosures—regardless of the particular context of the transaction or account involving consumer credit (*e.g.,* an in-person, mail, or internet transaction)—in order to promote reliability and economy of those systems so that covered borrowers can actually receive the disclosures. Accordingly, the Department adopts § 232.6(d)(2) so that the essential mandate of 10 U.S.C. 987(c)(1)—orally provide the disclosures—remains intact, yet allows a creditor to fulfill that mandate either by (i) providing the information directly, ''in person'' or (ii) including a toll-free telephone number that a covered borrower can use to obtain the oral disclosures. Section 232.6(d)(2)(iii) clarifies that if a creditor elects to provide the toll-free number, then the creditor must include that number on either (i) the application form that the creditor has directed the consumer to use for that transaction or account

[241] 12 CFR 232.6(a) (''before or at the time the borrower becomes obligated on the transaction or establishes an account for the consumer credit'').

[242] *See* 10 U.S.C. 987(c)(1) (requiring information to be provided ''orally'').

[243] 12 CFR 1026.5(a)(1)(i) (open-end credit); *see also* 12 CFR 1026.17(a)(1) (closed-end credit).

[244] 12 CFR 1026.

[245] *See* 79 FR 58639 (§ 232.6(d)(2)).

[246] Associations, Dec. 18, 2014, at 53.

[247] Associations, Dec. 18, 2014, at 53.

[248] Bellco, Dec. 19, 2014, at 6–7.

[249] AFSA, Dec. 22, 2014, at 15.

involving consumer credit or (ii) a written disclosure that the creditor provides in order to meet the requirement in § 232.6(d)(1).

5. Refinancing a Covered Loan

Section 232.6(e) keeps intact the current provision, currently found in § 232.6(c) of the existing rule, that requires ''a new statement''—to correspond with the statement of the MAPR under proposed § 232.6(a)(1)—and ''disclosures under this section only when the transaction for that credit would be considered a new transaction that requires disclosures under Regulation Z.''

6. Elimination of Disclosure Under § 232.6(a)(4)

Under the Proposed Rule, § 232.6(a)(4) would have required a creditor to provide to a covered borrower a specific statement regarding protections for Service members and their dependents under federal law and resources that may be available to assist them with financial matters (''Statement of Federal Protections''). Consistent with the Department's stance when proposing its initial regulation in 2007,[250] the Department intends to develop this regulation so that its provisions are true to the intent of the MLA without creating a system that is so burdensome that the creditor cannot comply. The Department recognizes that, whereas a ''statement'' of the MAPR is required by 10 U.S.C. 987(c)(1)(A), the Statement of Federal Protections under § 232.6(a)(4) is solely a function of the Department's discretion to require a creditor to provide certain disclosures.[251] In light of other aspects of the Department's rule, the Department concludes that these two, potentially duplicative disclosure requirements could create a system that would be relatively burdensome for a creditor to comply with. The Department recognizes the need to consider balancing the interests of covered borrowers in receiving useful information with the interests of creditors in reducing compliance burdens; thus, the Department has taken certain steps to reduce the overall amount of and to simplify the information relating to extensions of consumer credit. Accordingly, the Department has determined to eliminate § 232.6(a)(4) of the Proposed Rule, which would have required a creditor to provide the Statement of Federal Protections.

Section 232.7 Preemption

Section 232.7 revises the corresponding section of the Department's existing regulation to reflect amendments to 10 U.S.C. 987(d)(2) enacted in section 661(a)(1) of the 2013 Act. In particular, § 232.7(b)(1) is amended to reflect the prohibition against a state to authorize creditors to charge covered borrowers rates of interest for ''*any consumer credit or* loans'' that are higher than the legal limit for residents of the state (emphasis added). To mirror the language in 10 U.S.C. 987(d)(2), § 232.7(b)(1) also revises the term ''rates of interest'' to ''annual percentage rates of interest.'' Additionally, the Department amends § 232.7(b)(2) to clarify that the prohibition against a state to permit a violation or waiver of any state law protections on the basis of a covered borrower's nonresident or military status to protections ''covering consumer credit,'' consistent with the amendment in section 661(a)(2) of the 2013 Act.

Section 232.8 Limitations

1. Rollover Restriction

When the Department adopted its initial regulation in 2007, § 232.8(a) provided an exception from the prohibition, set forth in 10 U.S.C. 987(e)(1), that applies to a creditor who rolls over, renews, or refinances consumer credit that had been extended to a covered borrower by the same creditor. The exception in the existing rule allows the same creditor to renew or refinance consumer credit to the covered borrower if ''the new transaction results in more favorable terms to the covered borrower, such as a lower MAPR.'' [252] Comments on the Department's initial proposal had expressed concerns that the more-favorable-terms standard was ''too subjective and would create uncertainty about what terms are 'more beneficial,'' and ''suggested that financial institutions might err on the side of caution and forego entering transactions that could benefit the borrower in order to avoid any potential liability.'' [253] Whereas the exception adopted in the existing rule was made in the context of a narrow band of products within the three categories defined as consumer credit, this final rule extends the scope of consumer credit and thereby increases the potential risks associated with any perceived ambiguity in the more-favorable-terms standard.

Section 232.8(a) tracks the language of the rollover restriction of 10 U.S.C. 987(e)(1),[254] and, consistent with this provision in the Proposed Rule, limits the application of that restriction to a relatively narrow group of creditors. More specifically, the Department is exercising its discretion to define a creditor for the purposes of 10 U.S.C. 987 [255] by defining the term ''creditor'' for the purposes of § 232.8(a) to mean ''a person engaged in the business of extending consumer credit subject to applicable law to engage in deferred presentment transactions or similar payday loan transactions (as described in the relevant law), *provided however,* that the term does not include a person that is chartered or licensed under Federal or State law as a bank, savings association, or credit union.'' Restricting the application of the rollover restriction to creditors who are engaged in the business of ''deferred presentment transactions or similar payday loan transactions (as described in the relevant law)'' is consistent with the structure, language, and intent of the restriction, which is designed to apply to a creditor who rolls over, renews, repays, refinances, or consolidates consumer credit that the creditor itself already extended to a covered borrower, thereby ensnaring the borrower in the debt trap that the Department described in its 2006 Report.[256] The Department believes that payday lenders commonly engage in these rollover transactions. Moreover, the Department believes that restricting the application of the rollover restriction to that specified class of creditors would permit most creditors,

[250] When proposing its initial regulation in April 2007, the Department addressed the disclosure requirements under § 232.6(a) and stated: ''As with other aspects of the statute, the Department's intention has been to develop a regulation that is true to the intent of the statute without creating a system that is so burdensome that the creditor cannot comply.'' 72 FR 18165.

[251] 10 U.S.C. 987(h)(2)(A).

[252] 32 CFR 232.8(a)(1).

[253] 72 FR 50589.

[254] In addition, the Department proposes to substantially preserve the provision which currently states: ''This part shall not apply to a transaction permitted by this paragraph when the same creditor extends consumer credit to a covered borrower to refinance or renew an extension of credit that was not covered by this part because the consumer was not a covered borrower at the time of the original transaction.''

[255] 10 U.S.C. 987(h)(1) (authorizing the Department to prescribe regulations to carry out the MLA); 10 U.S.C. 987(i)(5)(A)(ii) (authorizing the Department to establish ''additional criteria [for the definition of creditor] as are specified for such purpose in regulations prescribed under [the MLA]'').

[256] *See* 2006 Report, at 14. *See also* Consumer Financial Protection Bureau, *Payday Loans and Deposit Advance Products* 24–25 (April 2013), available at *http://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf* (discussing the sustained use of payday loans, and stating that for consumers who conducted at least seven payday loan transactions in a year, the majority of those transactions ''were taken on a nearly continuous basis.'').

including a wide range of banks, thrifts, and credit unions, to extend other forms of consumer credit, such as workout loans and other refinancing transactions, to their covered-borrower customers, particularly when lower interest rates are available to those customers.

2. Vehicle Title Restriction

In the course of reviewing various comments regarding the scope of the limitations in 10 U.S.C. 987(e),[257] as would be implemented in the rule, the Department recognizes that neither the existing rule nor the Proposed Rule gives effect to the provision of the MLA that restricts a creditor from ''[using] . . . the title of a vehicle as security for the obligation.'' [258] New § 232.8(f) gives effect to that restriction of the MLA, but lifts the application of that limitation for certain classes of creditors. Upon review of the broad scope of the restriction in 10 U.S.C. 987(e)(5), the Department has determined that if the restriction against using the title of a vehicle as security for consumer credit were to apply to any creditor, without limitation, then many covered borrowers undoubtedly would be denied opportunities to favorably re-finance existing auto loans, particularly to take advantage of falling interest rates. The Department finds that a comprehensive restriction against using the title of a vehicle as security for consumer credit would operate too severely against covered borrowers and, accordingly, exercises its authorities under the MLA to establish a reasonable limitation on this provision.[259] More specifically, the Department has determined that certain classes of lenders should remain available to conduct refinancing transactions for consumer credit that involve the use of the title of a vehicle as security, and that the appropriate classes of lenders for this purpose are banks, thrifts, and credit unions supervised by federal or state regulators.[260] Accordingly, the Department retains the core element of the statutory restriction and exercises its discretion to define a ''creditor'' for the purposes of 10 U.S.C. 987 [261] by defining the creditor in § 232.8(f) to not include ''a person that is chartered or licensed under Federal or State law as a bank, savings association, or credit union.''

3. Other Restrictions of 10 U.S.C. 987(e)

The Department adopts § 232.8(e) as proposed.

The Department adopts § 232.8(f) as proposed (now re-designated as paragraph (g) in light of the new § 232.8(f)), and notes that while this provision tracks the language of the prohibition of 10 U.S.C. 987(e)(6), the provision also contains an exemption for a unique class of creditors. More specifically, the Department has concluded to exercise its discretion to define a creditor for the purposes of 10 U.S.C. 987 [262] by excluding—only for the purposes of § 232.8(f)—from the term ''creditor'' military welfare societies and the relief societies, as described in 10 U.S.C. 1033(b)(2) and 37 U.S.C. 1007(h)(4) and: Army Emergency Relief, the Air Force Aid Society, the Navy-Marine Corps Relief Society, and the Coast Guard Mutual Assistance. Federal law provides that a loan to a Service member from one of these specified Relief Societies may be repaid through deductions from the pay of the borrowing Service member.[263]

As the Department explained when issuing the Proposed Rule, the specified Relief Societies provide essential emergency financial assistance to Service members. The specified Relief Societies make low- and no-cost loans, as well as grants, to Service members repayable through an allotment of military pay.[264] Recognizing the unique and important role of the specified Relief Societies, and the long history of the specified Relief Societies in supporting the welfare of Service members and their families, the Department encourages Service members facing financial need to utilize the services provided by the specified Relief Societies.

In light of the specialized operations of each of the specified Relief Societies, which currently depend crucially on the use of an allotment from a Service-member borrower's pay, and consistent with the Department's regulations on deductions from pay under 37 U.S.C. 1007, the Department has determined to exclude the Relief Societies specified in 10 U.S.C. 1033(b)(2) and 37 U.S.C. 1007(h)(4) from the definition of ''creditor'' only for the purposes of the prohibition in § 232.8(f).

In all other respects, § 232.8 substantially preserves the language of the existing provisions of § 232.8. However, the Department amends the structure of § 232.8 by eliminating subsection § 232.8(b) (and making other conforming amendments) because the definition of ''creditor,'' in § 232.3(i)(2), includes an assignee of a covered creditor.

Section 232.9 Penalties and Remedies

The Department adopts § 232.9 as proposed.

Section 232.10 Administrative Enforcement

The Department adopts § 232.10 as proposed.

Section 232.11 Servicemembers Civil Relief Act Provisions Unaffected

The Department adopts § 232.11 as proposed.

Section 232.12 Effective Dates

In general, the Department adopts § 232.12 as proposed, particularly to reflect the effective dates of amendments to the MLA enacted in the 2013 Act. The Department has modified the dates set forth in this section in order to clarify the relationships between the effective dates (including the effective date of this final rule) and

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[257] *See, e.g.,* Associations, Dec. 18, at 44–51.

[258] 10 U.S.C. 987(e)(5).

[259] *See* 10 U.S.C. 987(h)(2)(E) (expressly authorizing the Department to prescribe regulations that include ''[s]uch other criteria or limitations as the Secretary of Defense determines appropriate, consistent with the provisions of this section'') and 10 U.S.C. 987(i)(5)(ii) (expressly authorizing the Department to establish ''such additional criteria'' to define a ''creditor'' for ''such purpose in [the Department's] regulations'').

[260] In this regard, the final rule contains a distinction between (i) a ''Federal credit union'' or insured depository institution'' that is eligible to apply the exclusion in § 232.4(c)(1) with respect to an application fee charged for a short-term, small amount loan and (ii) a bank, savings association, or credit union described in §§ 232.8(a) and 232.8(f). The Department has concluded that the purposes of §§ 232.8(a) and 232.8(f) are different from scope and purpose of the exclusion in § 232.4(c)(1), and correspondingly there should be a broader range of banks, thrifts, and credit unions designated in §§ 232.8(a) and 232.8(f).

[261] 10 U.S.C. 987(h)(1) (authorizing the Department to prescribe regulations to carry out the MLA); 10 U.S.C. 987(i)(5)(A)(ii) (authorizing the Department to establish ''additional criteria [for the definition of creditor] as are specified for such purpose in regulations prescribed under [the MLA]'').

[262] 10 U.S.C. 987(h)(1) (authorizing the Department to prescribe regulations to carry out the MLA); 10 U.S.C. 987(i)(5)(A)(ii) (authorizing the Department to establish ''additional criteria [for the definition of creditor] as are specified for such purpose in regulations prescribed under [the MLA]'').

[263] 37 U.S.C. 1007(h).

[264] *See* Army Emergency Relief: *http://www.aerhq.org/dnn563/Portals/0/AERAnnualReport2012.pdf*, ''[i]n 2012, AER provided more than $68.6 million in no-interest loans and grants to 55,342 Soldiers and Families and their Families;'' Air Force Aid Society: *http://www.afas.org/file/documents/2012-Annual-Report.pdf*, ''2012 direct assistance totaled nearly $18 million, and includes more than 40,000 assists to Airmen and their families;'' Navy-Marine Corps Relief Society *http://b.3cdn.net/nmcrs/45f955f5204f8ca1df_mlbruu7ib.pdf*, ''FY12 63,392 Clients received financial assistance, $41.8 million;'' Coast Guard Mutual Aid: *http://www.cgmahq.org/Financial/AnnualReports/2012.pdf*, ''[o]verall in 2012, CGMA distributed more than $4.27 million in direct financial assistance to over 5,900 Coast Guard individuals and their families.''

the compliance dates set forth in new § 232.13.

Section 232.12(a) amends the language of § 232.11 of the existing rule to reflect the amendments adopted in the final rule.

Section 232.12(b) provides a general rule that the definitions, conditions, and requirements of the existing rule apply to transactions involving consumer credit that are consummated or established prior to the compliance date. Relative to the Proposed Rule, the language in § 232.12(b) has been revised to clarify that the ''definitions, conditions, and requirements'' of the existing rule apply. The Department believes that this provision is equitable, particularly to avoid the potential injustice and operational difficulties that could arise if new requirements under the final rule were to apply to pre-existing transactions or accounts involving consumer credit to covered borrowers. Section 232.12(c) provides exceptions to allow certain provisions of § 232.7(b) and § 232.9(e), as discussed below, to become effective prior to the effective date of the final rule.

Section 232.12(d) provides that ''the amendments to 10 U.S.C. 987(d)(2) enacted in section 661(a) of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239, 126 Stat. 1785), as reflected in § 232.7(b) of this part, shall take effect on January 2, 2014.'' Section 661(c)(2)(A) of the 2013 Act provides, in relevant part, that the amendments enacted in section 661(a) of that Act shall take effect on ''the date that is one year after the date of enactment of this Act.'' [265] As a result, only the amendments made in § 232.7(b)(1)—adding the phrase ''any consumer credit'' before ''loans''—and § 232.7(b)(2)—adding the phrase ''covering consumer credit'' after ''State consumer lending protections''—are effective as of January 2, 2014.

Section 232.12(e) provides that civil-liability provisions adopted in § 232.9(e) ''shall apply with respect to consumer credit extended on or after January 2, 2013.'' This subsection reflects the effective date, established in section 662(c) of the 2013 Act, of the civil-liability provisions enacted in section 662(a) of that Act. The term ''consumer credit'' for purposes of this § 232.12(e) applies to the definition of consumer credit in force as of the date that the consumer and the creditor enter into the transaction or establish the account for that credit.

[265] 10 U.S.C. 987 note.

Section 232.13 Compliance Dates

As discussed in section I.C., many comments on the Proposed Rule state that, if the Department were to adopt a final rule along the lines of the Proposed Rule, creditors would need a substantial period of time to modify their operations in order to comply with the rule. For example, the Associations state that creditors generally would need 18 months to comply with the rule, if adopted as proposed,[266] and another comment states that ''[the Department] should allow as long an implementation period as reasonable to provide adequate time for credit unions and others to implement necessary changes.'' [267]

The Department concludes that, particularly because the protections of the MLA will apply to a wider range of credit products, a creditor should be afforded a reasonable period of time to adjust its operations and, if necessary, the terms and conditions of its loan product(s) offered to covered borrowers in order to comply with the regulation. Accordingly, under § 232.13(a), a creditor must comply with the requirements of the rule with respect to a consumer credit transaction or account for consumer credit consummated or established on or after October 3, 2016.[268]

Consistent with the Department's determination regarding the 12-month period that allows a creditor to adjust its operations and loan product(s) to comply with the rule, a creditor also is permitted to use the existing safe harbor when assessing whether a consumer-applicant is a covered borrower.

Upon the compliance date, the rule permits—and does not require—a creditor to use information obtained from the MLA Database or information contained in a consumer report obtained from a nationwide consumer reporting agency in order to conclusively determine whether a consumer-applicant is a covered borrower. A creditor who uses one (or both) of the methods set forth in, and complies with the recordkeeping requirements of, § 232.5(b) when conducting a covered-borrower check will be afforded the new safe harbor.

The Department concludes that consumer credit should not include credit extended in a credit card account under an open-end (not home-secured) consumer credit plan until October 3, 2017. Section 232.13(c)(2) allows the Secretary (or an official of the Department duly authorized by the Secretary) to extend, up to an additional year, the expiration of the exemption for a credit card account. Thus, until October 3, 2017 (or potentially a longer period of time), the requirements relating to the computation of the MAPR for a credit card account, as set forth in § 232.4, would not apply. When the exemption expires, the conditional exemption for any ''bona fide'' fee charged to a credit card account, as set forth in § 232.4(d) would apply.

[266] Associations, Dec. 18, 2014, at 58.

[267] Missouri Credit Union Assoc., Nov. 25, 2014, at 3.

[268] The Department has determined that the final rule shall be effective on October 1, 2015.

V. Regulatory Analyses

A. Analysis Under Executive Orders 12866 and 13563

In accordance with the requirements of Executive Orders 12866 [269] and 13563 [270] (''E.O. 12866'' and ''E.O. 13563''), the Department has assessed the expected costs associated with the amendments to its existing rule. This final rule extends the protections of 10 U.S.C. 987 to a broader range of closed-end and open-end credit products offered or extended to covered borrowers. In addition, the Department provides a sensitivity analysis that examines potential benefits of the final rule.

1. Executive Summary

E.O. 12866 and E.O. 13563 direct executive agencies, including the Department, to assess the anticipated present and future benefits and costs of available regulatory alternatives—including both quantitative measures and qualitative measures—using the best available techniques. A determination has been made that this rule is a significant regulatory action, as defined in E.O. 12866 and as supplemented by E.O. 13563, in that this final rule might have an annual effect on the economy of $100 million or more. Accordingly, this regulation has been reviewed by the Office of Management and Budget (''OMB''). This rule, as well as any proposed revisions to this rule, are part of the Department's retrospective review plan under E.O. 13563 completed in August 2011. The Department's full plan and retrospective review reports is available at: *http://www.regulations.gov/#!docketDetail;D=DOD-2011-OS-0036*. The regulatory impact assessment prepared by the Department for this regulation is provided below.

The Department anticipates that the final rule might impose costs of

[269] Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993).

[270] Improving Regulation and Regulatory Review, 76 FR 3,821 (Jan. 21, 2011).

approximately $106 million during the first year—that is, during the first year after the rule is effective and prior to the general date on which a creditor must comply with the rule (pursuant to § 232.13(a)). The Department expects that, during this first-year, phase-in period, creditors will take steps to adapt their systems to comply with the requirements of the MLA and the Department's final rule. After that first-year, phase-in period—that is, when a creditor generally must comply with the rule—and on an ongoing basis, the Department estimates the annual compliance cost would be approximately $30 million. The Department provides a sensitivity analysis examining scenarios in which the rule is expected to reduce the incidence of involuntary separation of Service members where financial distress is a contributing factor; the benefits under these scenarios range from $14 million to $133 million annually.

The MLA, as implemented by the Department's existing rule as well as under this final rule, provides two broad classes of requirements applicable to a creditor: First, the creditor may not impose an MAPR greater than 36 percent in connection with an extension of consumer credit to a covered borrower (''interest-rate limit''); second, when extending consumer credit, the creditor must satisfy certain other terms and conditions, such as providing certain information (*e.g.,* a statement of the MAPR), both orally and in a form the borrower can keep, before or at the time the borrower becomes obligated on the transaction or establishes the account, by refraining from requiring the borrower to submit to arbitration in the case of a dispute involving the consumer credit, and by refraining from charging a penalty fee if the borrower prepays all or part of the consumer credit (collectively, ''other MLA conditions'').

The interest-rate limit results in a transfer payment because the amount of interest revenue to be foregone by a creditor—that is, the amount of interest revenue that a creditor otherwise could receive by imposing an MAPR of greater than 36 percent—necessarily corresponds to the amount saved by the covered borrower.

The Department recognizes that the voluntary mechanisms a creditor may use for identifying covered borrowers, as well as the requirements to provide certain disclosures, lead to various types of compliance costs for creditors, and the estimated cumulative amount of those quantified costs on an ongoing, annual basis is approximately $30 million. These conditions are anticipated to impose direct financial costs on a creditor that are not reasonably expected to be offset by any quantifiable, financial benefit to a covered borrower. For example, the Department believes that, for the purposes of conducting this assessment under E.O. 12866 and E.O. 13563, the estimated costs on creditors associated with the requirement to provide to covered borrowers a statement of the MAPR is not offset by any financial benefit to the borrowers, even though borrowers generally do obtain some non-quantifiable benefits from receiving the statement. Similarly, the Department expects that creditors will face compliance costs when assessing whether consumer-applicants are covered borrowers and maintaining records of that information, as provided in § 232.5(b), and consumers reasonably can be assumed to be indifferent to the functions associated with conducting covered-borrower checks and not receive any readily quantifiable, financial benefits thereof. The Department believes, as discussed in section III.F., there are benefits to a system for conducting a covered-borrower check that minimizes, or eliminates, the opportunity for a covered borrower to make a false statement regarding his or her status when applying for consumer credit. Likewise, the Department recognizes that the final rule could impose certain types of costs on covered borrowers, including a potential reduction in access to available credit. Nevertheless, as discussed in sections II.C. and II.D., the majority of Service members have access to reasonably priced (as well as low-cost) credit, and, as long as they wisely use those resources, they are likely not to need high-cost loans to fulfill their credit needs.

The annual ongoing estimates of the costs relate to each year following the first-year, phase-in period. This figure includes compliance costs for creditors that, with respect to credit card accounts under open-end (not home secured) credit plans would not be required to comply with the rule for an additional period of time, pursuant to § 232.13(c). The Department elects to conservatively estimate the activities of all creditors because the costs associated with credit card accounts eventually would be accounted for in the annual costs of the final rule.

Furthermore, the Department expects that creditors could adjust their systems on an incremental basis and makes no judgment about when creditors will undertake various activities and when the costs associated with this adjustment could accrue. The assessment provided here is designed solely for the purposes of evaluating the Department's action under E.O. 12866 and E.O. 13563, and is intended only to serve as an exposition of the regulatory costs of the amendments adopted in the final rule.

The scenario analysis that examines the anticipated benefit of the Department's regulation are the savings attributable to lower recruiting and training expenses associated with the reduction in involuntary separation of Service members where financial distress is a contributing factor. Each separation of a Service member is estimated to cost the Department $58,250, and the Department estimates that each year approximately 4,640 to 7,580 Service members are involuntarily separated where financial distress is a contributing factor. If the Department's proposed regulation could reduce the annual number of involuntary separations where financial distress is a contributing factor from between 5 to 30 percent, the savings to the Department could be in the range of approximately $13.51 million to $132.52 million each year.

Figure 1 (which also appears in the Executive Summary, in section I.E.) provides a summary of the anticipated benefits and (costs) of the Department's amendments to the MLA regulation,[271] and the estimates are provided for the first year, on an annual (ongoing basis), and for a ten-year period, applying discount rates of both 7 percent and 3 percent, consistent with guidance issued by OMB.[272] The Department also has assessed non-quantified effects of this regulation, and those effects are listed in Figure 2.

[271] For the sake of brevity and clarity, the estimated savings to creditors, as discussed below, are not included in the computations represented in Figure 1.

[272] *See* OMB Circular A–4 (Regulatory Planning and Review), at 31–34 (recommending, for regulatory analysis, providing estimates of net benefits using discount rates of both 3 percent and 7 percent), available at *http://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf.*

FIGURE 1—SUMMARY OF ESTIMATED EFFECTS OF FINAL RULE

[2015 dollars in millions]

		First year, set-up costs (Oct. 1, 2015–Sept. 30, 2016)	Annual, ongoing (October 1, 2016 and thereafter)	PV 10-year, 7% discount rate	PV 10-year, 3% discount rate
Sensitivity Analysis: Benefits to the Department.	Low	$0	$14	$96	$129
	High	0	133	940	1,263
Primary Analysis: Costs to Creditors of Compliance.	.....	(106)	(30)	(185)	(259)
Sensitivity Analysis: Transfer Payments	Low	n/a	100	616	856
	High	n/a	119	740	1,022

FIGURE 2—NON-QUANTIFIED EFFECTS OF THE FINAL RULE

- Potential costs of increased telephone call volume for creditors that elect to provide oral disclosures by making a toll-free telephone number available to covered borrowers;
- Potential savings for creditors covered under the existing rule from reduction in transaction time for checking covered borrower status through batch processing instead of individual self-identification;
- Costs of creditors that elect to acquire new or to update existing technological capacity;
- Costs of implementing the prohibition against requiring waiver of otherwise applicable provisions of the MLA;
- Legal costs associated with defending alleged violations of the MLA;
- Marginal costs associated with adding MLA coverage to existing supervisory examinations;
- Marginal costs associated with modifying existing open-end credit existing open-end credit insurance, debt suspension plans, and credit related ancillary products to comply with the interest-rate limit;
- Costs associated with reviewing, adjusting, and implementing systems and control processes to calculate the MAPR and, if necessary, waive fees when the costs of the credit during a given billing cycle exceed the interest-rate limit for open-end credit products, other than credit card accounts;
- Costs associated with reviewing, adjusting, and implementing systems and control processes to calculate the MAPR and waive fees for credit card issuers that impose unreasonable or non-bona-fide non-periodic fees;
- Costs associated with a reduction in the availability of credit with MAPRs in excess of the interest-rate limit;
- Costs associated with complying with the prohibition against compelled arbitration; and
- Costs associated with the fact that financial institutions are, in general, subject to an array of state and federal laws, including the MLA.

2. Need for the Regulation and Consideration of Alternatives

The Department amends its existing rule primarily for the purpose of extending the protections of 10 U.S.C. 987 to a broader range of closed-end and open-end credit products. More specifically, as discussed above, the Department amends its rule so that, in general, consumer credit covered under the MLA [273] is defined consistently with credit that for decades has been subject to the protections under TILA, namely: Credit offered or extended to a covered borrower primarily for personal, family, or household purposes, and that is (i) subject to a finance charge or (ii) payable by a written agreement in more than four installments.[274]

In developing this final rule, the Department has consulted with the Federal Agencies (pursuant to 10 U.S.C. 987(h)(3)), and in the course of that process has considered a range of alternatives to the provisions contained in this regulation. For example, in developing the provisions for the conditional exclusion for credit card accounts, the Department has considered a complete exemption from the definition of ''consumer credit'' for credit extended to a covered borrower under a credit card account. The Department similarly has considered whether exclusions from the MAPR for all non-periodic fees should be permitted for credit card accounts in order to preserve current levels of access to those products for covered borrowers.

Similarly, in developing the provisions relating to a creditor's assessment of a covered borrower, the Department considered alternatives to the creditor's use of information obtained directly or indirectly from the MLA Database in order to obtain the benefit of a safe harbor under § 232.5(b). In this regard, the Department considered alternative provisions relating to a creditor's use of information obtained from the MLA Database, and adopts an additional mechanism that a creditor may use to avail itself of the safe harbor in § 232.5(b). The Department also considered whether to retain a safe harbor for a creditor's use of the covered borrower identification statement, but declines to retain that mechanism after the general compliance date.

The Department believes that this final rule is appropriate in order to address a wider range of credit products that currently fall outside the scope of the existing rule, streamline the information that a creditor must provide to a covered borrower when consummating a transaction involving consumer credit, and provide a more straightforward mechanism for a creditor to conclusively determine—via a safe harbor—whether a consumer-applicant is a covered borrower. In this regard, as discussed in section III.F., the Department is aware of misuses of the covered borrower identification statement whereby a Service member (or covered dependent) falsely declares that he or she is not a covered borrower. The Department believes that, if a creditor elects to conduct a covered-borrower check by using information obtained from the MLA Database or information in a consumer report obtained from a nationwide consumer reporting agency, a Service member or his or her dependent would be relieved from making any statement regarding his or her status as a covered borrower.

[273] The forms of ''consumer credit'' that may be covered by the MLA are subject to certain exceptions, notably for a residential mortgage. 10 U.S.C. 987(i)(6)(A) and 987(i)(6)(B).

[274] *See* 12 CFR 1026.1(c)(1)(iii) (limiting the coverage of the regulation, in relevant part, to credit that is subject to a finance charge or is payable by a written agreement in more than four installments).

3. Affected Entities and Baseline Conditions

The Department estimates that approximately 37,500 creditors will fall within the parameters of this regulation.[275] The Department arrives at this estimate through a combination of statistics compiled by the U.S. Department of Labor (''DOL''), the FDIC, and the NCUA. DOL estimates an annual average number of consumer lending establishments at 14,882.[276] DOL also estimates annual average number of all other nondepository credit intermediation establishments at 9,609.[277] The FDIC reports there are 6,444 insured depository institutions.[278] The NCUA reports there are 6,554 credit unions.[279] The Department does not have data on the number of creditors with financial products that fall within the parameters of the existing rule because available sources of information do not differentiate between lenders that offer loan products that fall within the three narrowly defined product categories and lenders that do not. Nevertheless, the Department's estimate of the number of affected entitles represents a significant increase in comparison to the likely baseline condition of entities affected under the existing rule.

4. Estimate of Anticipated Costs Associated With Identification of Covered Borrowers and Provision of Mandatory Disclosures

The Department believes that creditors who offer consumer credit products that are subject to the modified regulation will face several types of compliance costs. For the purposes of this regulatory impact assessment, the Department has focused its quantitative assessment of costs on two areas that, based on the Department's experience, are reasonably likely to impose costs: First, the disclosures required by the MLA to be provided by a creditor to a covered borrower (under § 232.6); and, second, employing one of the methods available for conducting covered-borrower checks—through the use of information obtain from the MLA Database or the use of information in a consumer report obtained from a nationwide consumer reporting agency—and the retention of related records, as provided in § 232.5(b).

The Department recognizes that this assessment does not capture all possible compliance costs associated with the final rule. Indeed, the Department anticipates that a creditor who chooses to extend credit with a cost that may exceed the interest-rate limit or implicate the limitations in § 232.8 would need to adjust its computer and software systems to calculate the MAPR, develop new policies and procedures, or train staff on new procedures for identifying covered borrowers. Further, creditors likely would select different techniques for meeting compliance obligations under the final rule. The costs to each creditor could vary depending on the business decisions made by that creditor.

Acknowledging the limits of the assessment and pursuant to the directive of E.O. 12866 and E.O. 13563, the Department has sought to quantify the important potential costs of the final rule and to identify important non-quantified potential costs and benefits.[280] In considering whether to amend its existing rule, the Department sought comment on all aspects of the Proposed Rule and on the estimates made in this assessment. In particular, the Department sought specific data relating to the benefits and costs of amending the regulation, as proposed. The Department requested that commenters provide information on the type of costs and the magnitude of costs that might be borne by creditors by providing relevant data and studies.

Fewer than two dozen of the comments on the Proposed Rule contain estimates of potential costs or benefits with the proposal to modify the existing rule. Comments focus on the cost to creditors of updating their systems to comply with the interest-rate limit and set-up and ongoing costs associated with the optional safe harbor proposed for conducting a covered-borrower check,[281] and potential costs associated with a potential decline in the availability of credit to covered borrowers.[282] In addition, some comments provide examples of high-cost credit currently marketed to Service members and their families,[283] and other comments describe the benefits to Service members and to the Department in reducing financial distress among the military force,[284] underscoring the need to modify the existing rule.

Disclosures. Under the existing rule, a creditor who extends to a covered borrower one or more of the three consumer credit products covered by the regulation must ''clearly and conspicuously'' disclose: (i) A numerical value for the MAPR applicable to the extension of credit, including the total dollar amount of all charges included in the MAPR; (ii) any disclosures required by Regulation Z; (iii) a clear description of the payment obligation (which may be satisfied by a payment schedule provided pursuant to Regulation Z); and (iv) a Statement of Federal Protections. A creditor must provide the information orally and in writing prior to consummation of the credit transactions. The creditor may provide, with the written disclosures, a toll-free telephone number that the borrower may use to obtain the oral disclosures.

Section 232.6 of the final rule amends the provisions relating to the information required by the MLA, first, to simplify the information that a creditor must provide to a covered borrower when extending consumer credit, and, second, to streamline the methods of orally providing the required disclosures. More specifically, the final rule: Relieves a creditor of the obligation to disclose ''clearly and conspicuously'' the information required by the MLA; relieves a creditor

[275] At the time that the Department assessed the Proposed Rule, the Department estimated that approximately 40,000 creditors that would fall within the parameters of the proposal. The revised estimate of 37,500 reflects changes in the overall number of establishments within the same categories from the Bureau of Labor Statistics, the FDIC, and the NCUA.

[276] *See* DOL, Bureau of Labor and Statistics, Quarterly Census of Employment and Wages, NAICS 522291 Consumer Lending (Annual Average for 2013).

[277] DOL, Bureau of Labor and Statistics, Quarterly Census of Employment and Wages, NAICS 522291 Consumer Lending, NAICS 522298 All Other Nondepository Credit Intermediation (Annual Average for 2013).

[278] FDIC, DIC Institution Directory, available at *http://www2.fdic.gov/IDASP/* (reporting 6,444 insured institutions as of March 26, 2015).

[279] NCUA, 2013 Annual Report, available at *http://www.ncua.gov/Legal/Documents/Reports/AR2013.pdf.*

[280] In considering the costs associated with updating computer programs, the Department relies on analysis from the Government Accountability Office (GAO) examining the costs of implementing changes to minimum payment disclosures for credit card accounts. There, GAO found that credit card issuers were unable to provide precise estimates of, among others, the cost of computer programming to provide the revised disclosures. GAO found that estimates of the computer programming cost varied widely, from $5,000 to $1 million. For large issuers, GAO concluded that these one-time costs would be very small when compared with large issuers' net income. For smaller issuers, GAO concluded that work to implement changes would be done largely by third-party processors, accustomed to reprogramming required to managing cardholder data and processing billing statements. U.S. Gov't Accountability Office, GAO–06–434, *Credit Cards: Customized Minimum Payment Disclosures Would Provide More Information to Consumers, but Impact Could Vary* (April 2006).

[281] *See, e.g.,* Associations, Dec. 18, 2014; TSYS, Dec. 24, 2014.

[282] *See, e.g.,* AFSA, Dec. 22, 2014; Just Military Loans, Dec. 26, 2014.

[283] *See, e.g.,* Texas Appleseed, Dec. 2, 2014; North Carolina Justice Center, Dec. 26, 2014.

[284] *See, e.g.,* Military Officers Association of America, Dec. 17, 2014; The Military Coalition, Dec. 11, 2014.

of the obligation to provide the Statement of Federal Protections; no longer requires a creditor disclose a numerical value for the MAPR or ''the total dollar amount of all charges'' and, instead, requires a creditor to provide a description of the charges that the creditor may impose; and provides a generally applicable mechanism through which a creditor may orally provide the required disclosures by permitting a creditor to provide a toll-free number to orally deliver those disclosures. In order to facilitate compliance, the final rule provides a model statement that a creditor could use to fulfill the requirement to provide a statement of the MAPR. Consistent with the Department's interpretation of its existing rule, the final rule expressly provides that the statement of the MAPR would not be required in any advertisement relating to consumer credit.

The Department estimates that there are approximately 238 million transactions each year in which creditors would provide the required information,[285] generally included as part of their standard credit agreements. The Department assumes that all creditors, other than creditors who offer only residential mortgage loans or loans expressly to finance the purchase of personal property (neither of which loans is consumer credit), will provide these disclosures, and believes that, based on these assumptions, approximately 37,500 creditors would be subject to the regulation.[286]

(a) Statement of the MAPR

For creditors who currently provide disclosures to covered borrowers (under the existing rule), the final rule is expected to reduce some of their compliance costs by eliminating the requirement to disclose a numerical value for the MAPR. The Department largely maintains for the final rule the estimates generated in developing the Proposed Rule, and updates that estimate to reflect more recent wage and dollar value figures.[287] The Department estimates that eliminating the requirement under the existing rule to disclose a numerical value for the MAPR would reduce the compliance costs for creditors who currently offer forms of consumer credit by $73,065 per year. Over 10 years, the Department estimates that the total savings to this class of creditors would be between $0.51 million (at a 7 percent discount rate) and $0.62 million (at a 3 percent discount rate).

The requirement that creditors provide a statement of the MAPR, which may be satisfied through the use of a model statement, is anticipated to cost all creditors approximately $24.01 million during the first year, principally due to the costs of modifying the documents given to covered borrowers (such as a contract for consumer credit).[288] One commenter notes that some creditors may need to redesign their disclosure forms to make room for the statement of the MAPR.[289] The Department estimates that, on an ongoing basis, providing the statement of the MAPR would require one-quarter of a printed page when included in standard account disclosures.

The Department assumes that creditors will update standard account disclosures for all consumer credit accounts and that the printing and paper costs are five cents per page.[290] The Department estimates that the ongoing costs for additional printing would be approximately $2.98 million per year.[291] Over 10 years, the total costs to creditors of providing a printed statement of the MAPR would be between $18.12 million (at a 7 percent discount rate) and $25.38 million (at a 3 percent discount rate).

Under the framework of the Proposed Rule, the Department had estimated that the cost of providing the statement of the MAPR orally at the time of sale in face-to-face transactions would be $0.69 million per year. Several commenters urge the Department to modify § 232.6 to permit a creditor to satisfy its obligation to orally provide disclosures by providing a toll-free telephone number, as the Department has permitted for transactions conducted over the internet. In the final rule, the Department adopts § 232.6(d)(2) to allow a creditor to orally provide the required disclosures by providing to the covered borrower a toll-free telephone number, subject to certain conditions, and this option is permitted for all channels for conducting transactions or establishing accounts involving consumer credit. Solely for the purposes of its analyses under E.O. 12866 and E.O. 13563 and the other analyses in this section, the Department believes that the vast majority of creditors will avail themselves of this mechanism for orally providing the required disclosures.

While commenters urge the Department to permit creditors to provide oral disclosure through a toll-free number, these commenters do not provide any estimate of the costs or savings associated with this provision.

[285] The Department's methodology for estimating the number of accounts that will be affected each year is discussed in greater detail at the text accompanying note 280, infra. To estimate the number of consumer credit transactions each year, the Department relies on data from the Federal Reserve Bank of New York's Consumer Credit Panel. *See* Federal Reserve Bank of New York, *Quarterly Report on Household Debt and Credit* (February 2015). For the six months prior to the first quarter of 2013, there were approximately 175 million credit inquiries. The Department assumes that 68 percent of these inquiries were for credit accounts that would be consumer credit under § 232.3(f). This estimate does not differentiate between credit applications and accounts established. If most creditors only supply the required information as part of account agreements which are provided at the time of account opening, then the overall number of transactions involving the provision of that information would be lower than this estimate.

[286] The Department bases this estimate on relevant numbers of establishments published by the DOL's Bureau of Labor and Statistics, the FDIC, and the NCUA. *See* DOL, Bureau of Labor and Statistics, Quarterly Census of Employment and Wages, NAICS 522291 Consumer Lending, NAICS 522298 All Other Nondepository Credit Intermediation (Annual Average for 2013) (the annual average number of establishments for consumer lending is 14,882; the annual average number of all other nondepository establishments for credit intermediation is 9,609); FDIC Institution Directory, available at *http://www2.fdic.gov/IDASP/* (reporting 6,444 insured institutions as of March 26, 2015); and NCUA 2013 Annual Report, available at *http://www.ncua.gov/Legal/Documents/Reports/AR2013.pdf* (reporting 6,554 credit unions).

At the time that the Department assessed the Proposed Rule, there were approximately 40,000 creditors that fell within these parameters; the updated estimate of the affected creditors reflects the change in the overall number of establishments within the same categories from the Bureau of Labor and Statistics, the FDIC, and the NCUA.

[287] The Department also has revised wage compensation estimates to include an adjustment for the non-wage component of employee compensation.

[288] The Department estimates that set-up for the statement of the MAPR will take 20 hours, and that staff time for the set-up of the disclosure will be 50 percent data entry and information processing workers, 40 percent supervisors of office and administrative support workers, and 10 percent legal counsel. DOL, Bureau of Labor and Statistics, Occupational Employment and Wages, Table 1 (May 2014) (mean hourly wage for data entry and information processing workers is $15.48; mean hourly wage for supervisors of office and administrative support workers is $26.15; mean hourly wage for legal counsel is $64.17), available at *http://www.bls.gov/oes/current/oes_nat.htm#23-0000.* The Department further estimates a non-wage component of compensation to be an additional 30 percent of estimated wages. The Department, therefore, calculates a total estimated wage cost of approximately $18.47 million by multiplying the mean hourly wage by the portion of time for each classification of worker expected to be involved in modifying the documents. The Department's total estimated cost reflects an additional 30 percent adjustment for non-wage compensation.

[289] Nat'l Pawnbrokers Assoc., Nov. 24, 2014, at 17.

[290] The Department relies on estimates of paper and printing costs recently published by the DOL. Reasonable Contract or Arrangement Under Section 408(b)(2)—Fee Disclosure, 77 FR 5632–5654 (Feb. 3, 2012).

[291] The Department reaches this estimate by computing the cost of the additional printing and paper for the disclosure, calculated by multiplying the number of transactions (238 million) by the cost per page ($.05) and the portion of the page used for the disclosure (0.25 page).

Nonetheless, the Department, for purposes of assessing the final rule under E.O. 12866 and E.O. 13563, provides qualitative analysis of the potential costs that creditors could incur as a result of this final rule. For those creditors who choose to orally provide disclosures via a toll-free telephone number, the costs associated with the final rule include establishing a toll-free number (in the event that a creditor does not already have a such a line available for consumers), updating the script used by staff, and training staff in connection with questions that consumers might raise about the disclosures. Additionally, creditors could experience some increase in call volume and costs associated with providing oral disclosures or other aspects of this rule. Due to the lack of available data, the Department has not quantified the potential costs of any increase in call volume due to the disclosures required by the MLA to be provided to covered borrowers in transactions or accounts involving consumer credit.

(b) Statement of Federal Protections

Under the Proposed Rule, like the existing rule, a creditor would have been required to provide to a covered borrower the Statement of Federal Protections. Because the Proposed Rule would have applied the protections of 10 U.S.C. 987 to a broader scope of credit transactions, an additional 20,000 creditors would have been required to provide the Statement of Federal Protections. In the final rule, the Department determines that, in balancing the interests of covered borrowers in receiving useful information with the interests of creditors vis-à-vis facilitating compliance and reducing the costs associated thereto, eliminating the requirement that creditors provide a Statement of Federal Protections best serves these purposes. This modification will relieve those creditors that offer consumer credit subject to the existing rule from the obligation to provide a Statement of Federal Protections when providing that credit to Service members and their dependents. Relieving creditors of the obligation to provide a Statement of Federal Protections will reduce some costs for those creditors that currently extend consumer credit subject to the existing rule. However, the Department believes that, due to the relatively low number of creditors who currently offer loans subject to the existing rule, the impact of this amendment generally will be relatively minor; therefore, the Department does not account for the estimated reduction in burden in this analysis of the final rule.

Figure 3a provides a summary of the anticipated benefits and (costs) associated with the disclosures under the Department's modified regulation.

FIGURE 3a—ESTIMATED BENEFITS AND COSTS OF DISCLOSURES UNDER THE FINAL RULE

[2015 dollars in millions]

	First year, set-up costs	Annual, ongoing	PV 10-year, 7% discount rate	PV 10-year, 3% discount rate
Cost savings of eliminating requirement to disclose numerical MAPR	$0	$0.07	$0.51	$0.62
Set up costs of Statement of the MAPR	(24)	n/a	n/a	n/a
Ongoing costs of Statement of the MAPR (oral and printed)	0	(3)	(18)	(25)
Total Net Costs	(24)	(3)	(18)	(25)

Identification of Covered Borrowers. The Department has modified the mechanisms through which a creditor may avail itself of a safe harbor for identifying covered borrowers. The final rule permits, though does not require, a creditor to unilaterally assess the status of a consumer-applicant, rather than relying on the applicant to complete a self-declaration form. The final rule permits a creditor to definitively conduct a covered-borrower check either by using information obtained from the MLA Database or by using information in a consumer report obtained from a nationwide consumer reporting agency, and (when finding that the consumer is not a covered borrower) timely creating and thereafter maintaining a record of the information so obtained.

Solely for the purposes of its assessment in this section V., the Department assumes that all creditors, other than creditors who offer only residential mortgage loans or loans expressly to finance the purchase of personal property (neither of which loans is consumer credit), will establish processes to use one of the mechanisms for conducting a covered-borrower check described in § 232.5(b). As described above, the Department believes that approximately 37,500 creditors would be subject to the final rule. The Department believes that setting up a process to use information obtained from the MLA Database or to use information in a consumer report obtained from a nationwide consumer reporting agency and to retain records of that information will take each creditor 70 hours of labor time. The actual cost for each creditor will depend on that entity's business decisions. For example, if one or more of the nationwide consumer reporting agencies incorporate information about covered borrower-status into consumer reports, a creditor that already obtains a consumer report from one of those nationwide consumer reporting agencies (or that report from a reseller) during the credit origination process might choose to use information provided as part of the report to avail itself of the safe harbor in § 232.5(b). Another creditor, particularly one that does not already have the agreements and technological connections in place to obtain consumer reports from a nationwide consumer reporting agency, may instead choose to use information from the MLA Database, as permitted in § 232.5(b). And a third creditor, particularly one that offers credit products that comply with the MLA and this final rule, may choose to forgo the use of a method described in § 232.5(b) when determining the status of a consumer-applicant.

Nonetheless, assuming that each of the approximately 37,500 creditors subject to the final rule establishes a process for availing itself of one of the safe harbors under § 232.5(b) and that each creditor will incur 70 hours of labor time in doing so, the Department estimates that the total costs relating to setting up the processes to use the methods set forth in § 232.5(b) would be $84.02 million.[292] Some creditors may

[292] The Department estimates that staff time to set up access to one of the safe harbor mechanism and the processes to record and retain information will

incur additional costs related to adjusting or updating their technological capacity or systems in order to avail themselves of one of the methods for conducting covered-borrower checks in § 232.5(b), including ''costs associated with integrating the MLA [D]atabase with the lenders' database that ensure the security and protection of both'' [293] and training staff on use of the MLA Database.[294] The Department believes that these additional costs depend on the business judgment and practices of each creditor, such as whether the loan application process is performed manually and whether multiple ''databases'' interact with each other, and therefore declines to estimate the overall costs of such potential additional costs associated with the voluntary mechanism for identifying covered borrowers. The Department also recognizes that certain costs may be particular to the type of creditor and practices in that market. For example, the National Pawnbrokers Associations shared the report of one member estimating that as many as 4,000 pawn stores across the country do not have computers and would, therefore, need to purchase such equipment in order to take advantage of the safe harbor in § 232.5(b).[295]

The Department contemplates that a creditor could use batch processing to conduct covered borrower checks of a portfolio of potential customers. For example, a depository institution or credit union that offers open-end lines of credit with an MAPR in excess of 36 percent might choose to use batch processing capacity in the MLA Database before offering or extending those types of loans, and thereby take advantage of the safe harbor in § 232.5(b), to identify potential covered borrowers within its account portfolio. As with making an individual inquiry of the MLA Database, making a batch inquiry of the MLA Database can be done by a creditor (or nationwide consumer reporting agency) free of charge. Nonetheless, the comments on the Proposed Rule do not provide any data as to the costs to creditors associated with identifying covered borrowers through batch processing on the MLA Database. In light of the absence of data relating to batch processing for covered-borrower checks, the Department does not estimate the costs of conducting those checks. The Department observes that a creditor who currently offers consumer credit products (as defined by the existing rule), typically requires all consumer-applicants to complete the self-declaration form, and for that type of creditor, replacing the self-declaration form with a process to use information obtained from the MLA Database or information in a consumer report from a nationwide consumer reporting agency is estimated to result in a savings from transaction time, printing and paper costs, as well as a reduction in legal risks. In assessing the Proposed Rule, the Department estimated that the elimination of the self-certification procedure would result in savings for creditors who currently offer consumer credit products covered by the existing rule. The Department maintains those estimates in assessing the final rule, and updates the figures for 2015 dollars. The Department estimates that the savings in printing and paper for those creditors who offer consumer credit products covered under the existing rule will be $0.29 million per year; over 10 years, the Department estimates a savings of between $1.77 million (at a 7 percent discount rate) and $2.48 million (at a 3 percent discount rate). As in the Proposed Rule, the Department has not quantified the expected savings for creditors with respect to the potential reduction in transaction time or legal risk.

For the purposes of its assessments in this section V., the Department expects that the final rule will prompt all creditors who offer consumer credit with an MAPR of more than 36 percent (which would include some creditors who offer credit products with credit insurance premiums or fees for credit-related ancillary products sold in connection with the consumer credit) to assess the status of consumer-applicants as potential covered borrowers. The Department estimates that of the estimated 238 million covered credit applications each year,[296] there will be approximately 100 million applications when creditors choose to query the MLA Database as a single-record check. In assessing the Proposed Rule, the Department had estimated, using then-current data, that there would be approximately 70 million applications each year in which creditors would conduct a single-record inquiry of the MLA Database. A comment on behalf of certain credit card issuers suggests, instead, that there would be 100 million such transactions each year.[297] The Associations assert that there would be between 450 million and 700 million inquiries made of the MLA Database in total each year.[298] In arriving at those figures, the Associations assume that ''the regulation may require multiple inquires'' for each account.[299] Mindful of the potential ambiguity in the Proposed Rule, the Department has clarified in the final rule that a creditor who uses one of the methods described in § 232.5(b) for conducting a covered-borrower check may do so solely by using the qualifying information at one time, relatively early in the process of conducting a transaction or establishing an account involving consumer credit. In light of this revision, the overall estimate from the Associations would be between 225 million and 350 million. Nonetheless, the Department is unable to determine from the estimates provided by the Associations how many of these inquiries would be conducted as a single-record check of the MLA Database or how many would be conducted through a batch-processing method. The Department believes that many creditors that impose periodic rates of 36 percent or less, impose only reasonable and bona fide non-periodic fees, and do not market credit-related ancillary products may choose to forego covered-borrow checks because their credit products may be extended to covered borrowers and civilians alike. Furthermore, many creditors that already request consumer reports on applicants from a nationwide credit reporting agency may choose to determine covered borrower status through the procedure set out in § 232.5(b)(2)(ii). In light of these factors and after review of the information provided in the comments, the Department believes that the estimate of 100 million transactions more accurately assesses the costs associated

be 50 percent data entry and information processing workers, 40 percent supervisors of office and administrative support workers, and 10 percent legal counsel. DOL, Bureau of Labor and Statistics, Occupational Employment and Wages Table 1 (March, 2015) (mean hourly wage for data entry and information processing workers is $15.48; mean hourly wage for supervisors of office and administrative support workers is $26.15; mean hourly wage for legal counsel is $64.17). The Department estimates total wages to be approximately $64.63 million. The Department arrives at an estimated total cost by including an additional non-wage component of compensation of 30 percent of estimated wages.

[293] Associations, Dec. 18, 2014, at 57.

[294] SBA Office of Advocacy, Dec. 18, 2014, at 4.

[295] Nat'l Pawnbrokers Assoc., Nov. 24, 2014, at 14.

[296] The Department estimates 238 million relying on data from the Federal Reserve Bank of New York's Consumer Credit Panel. *See,* Federal Reserve Bank of New York, *Quarterly Report on Household Debt and Credit* (February 2015). For the six months prior to the first quarter of 2015, there were approximately 175 million credit inquiries. The Department assumes that 68 percent of these inquiries were for credit accounts that would be consumer credit under § 232.3(f).

[297] L. Chanin, Dec. 23, 2014, at 21.

[298] Associations, Dec. 18, 2014, at 32.

[299] Associations, Dec. 18, 2014, at 31.

with conducting a covered-borrower check under the final rule.[300]

For each of the uses of a record to conduct a covered-borrower check, the inquiry and record retention is expected to add approximately 60 seconds to each new consumer credit transaction.[301] The Department estimates that the total cost to creditors for using information obtained from the MLA Database or using information in consumer reports obtained from nationwide consumer reporting agencies and retaining records relating to consumer-applicants would be approximately $27.75 million per year;[302] over 10 years, the total cost of using the MLA Database would be between $169.01 million (at a 7 percent discount rate) and $236.76 million (at a 3 percent discount rate).

Because modern credit applications, whether conducted online or in person, involve highly automated systems for underwriting, the Department expects that many creditors—including creditors who issue credit cards—will choose to develop systems that would make the marginal increase in time for using information from the MLA

Database relatively low. The Department does not estimate the potential costs associated with computer programming or including a covered-borrower check in automated underwriting.[303]

Figure 3b provides a summary of the anticipated benefits and (costs) associated with the covered-borrower checks under the final rule.

FIGURE 3B—ESTIMATED BENEFITS AND COSTS OF COVERED-BORROWER CHECKS UNDER THE FINAL RULE

[2015 dollars in millions] *

	First year, set up costs	Annual, ongoing	PV 10-year, 7% discount rate	PV 10-year, 3% discount rate
Benefits of Eliminating Printing and Paper Costs for Self-Certification	$0	$0.29	$1.77	$2.48
Set-up Costs to Use MLA Database	(84)	n/a	n/a	n/a
Covered-Borrower Checks	0	(28)	(169)	(236)
Total	(84)	(28)	(167)	(234)

* Assumes 100 million credit checks per year.

4. Anticipated Costs Associated With Other MLA Conditions

The Department recognizes that the preceding quantitative assessment does not capture all possible compliance costs associated with the final rule. The Department believes that some of the compliance costs due to the other MLA conditions are not material to the quantifiable aspects of this regulatory impact assessment because some costs are minimal (relative to the creditor's other compliance costs or the creditor's overall costs of operations when providing consumer credit) or not amenable to measurement.[304] By addressing such costs in a qualitative analysis rather than attempting to provide a quantitative assessment, the Department does not discount the potential costs that attempting to comply with the other MLA conditions might impose on creditors; rather, the Department recognizes the potential for costs in addition to those included within the quantitative analysis and had taken into account the impact on creditors of complying with all aspects of the modified rule.

In considering whether to amend its regulation, the Department sought comment on all aspects of the Proposed Rule and on the estimates made in its assessment. In particular, the Department sought specific data relating to the benefits and costs of amending the regulation, as proposed, including costs to implement measures to adjust computer systems and to train personnel. The Department requested that commenters provide information on the type of costs and the magnitude of costs that might be borne by creditors by providing relevant data and studies.

The Associations state that the analysis of the Proposed Rule ''grossly underestimates the intrinsic costs of the expansion in coverage of the proposed rule, as well as the cost of particular provisions.'' [305] This Department

[300] If creditors were to individually check covered-borrower status 225 million times per year, then the regulation in this respect would impose estimated annual costs of approximately $62.44 million per year. In this scenario, the 10-year cost associated with covered borrower checks would be approximately $532.7 million at a 3 percent discount rate and $380.28 million at a 7 percent discount rate. If creditors were to individually check covered borrower status 350 million times per year, then the regulation in this respect would impose estimated annual costs of approximately $97.13 million per year. In this scenario, the 10-year costs associated with covered borrower checks would be approximately $828.5 million at a 3 percent discount rate and $591.45 at a 7 percent discount rate.

[301] The National Pawnbrokers Association shared the report of one member who found that querying the MLA Database took ''less than 20 seconds from start to finish.'' (Nat'l Pawnbrokers Assoc., Nov. 24, 2014, at 15). In contrast, AFSA shares the report of a ''small business'' that had estimated that querying the MLA Database would take ''about five to 10 minutes per loan application.'' (AFSA, Dec. 22, 2014, at 7). And a comment submitted on behalf of certain credit card issuers suggests that checking the MLA Database could cause a ''delay'' for the transaction in question and for ''the transactions of any other consumer in line behind that consumer seeking to engage in a transaction, even if the consumer is not apply for credit.'' (L. Chanin, Dec. 23, 2014, at 22). In light of these divergent estimates and the lack of other data, the Department elects to maintain the estimate of the transaction time developed when the Proposed Rule was assessed.

[302] The Department calculates the estimated wage costs of 21.35 million per year by multiplying the expected number of transactions involving a single-record inquiry (100 million) by the mean hourly wage for financial tellers ($12.81) and the additional transaction time expected (1/60th of an hour) based on wage information in the DOL, Bureau of Labor and Statistics, Occupational Employment and Wages Table 1 (May, 2014). The Department arrives at a total cost estimate by including an additional non-wage component of compensation of 30% of estimated wages.

[303] In considering the costs associated with updating computer programs, the Department relies on analysis from GAO examining the costs of implementing changes to minimum payment disclosures for credit card accounts. There, GAO found that credit card issuers were unable to provide precise estimates of, among others, the cost of computer programming to provide the revised disclosures. GAO found that estimates of the computer programming cost varied widely, from $5,000 to $1 million. For large issuers, GAO concluded that these one-time costs would be very small when compared with large issuers' net income. For smaller issuers, GAO concluded that work to implement changes would be done largely by third-party processors, accustomed to reprogramming required to managing cardholder data and processing billing statements. U.S. Gov't Accountability Office, GAO–06–434, *Credit Cards: Customized Minimum Payment Disclosures Would Provide More Information to Consumers, but Impact Could Vary* (April 2006).

[304] For example, the Department believes that the costs associated with the prohibition against requiring a covered borrower to waive his or her rights under any otherwise applicable provision of law (as provided in § 232.8(b)) is not material to this regulatory impact assessment because the potential costs of this prohibition are negligible.

[305] Associations, Dec. 18, 2014, at 56.

appreciates that creditors represented by the Associations have a ''culture of compliance'' that ''demands an associated caution when implementing regulations.'' [306] Indeed, in analyzing the final rule—as throughout the rulemaking proceeding—the Department's estimates and judgments about how the final rule is likely to operate when implemented reflect the Department's expectation that creditors subject to the final rule will take steps to comply with each one of the other MLA conditions.

The Associations describe certain, specific costs other than those accounted for in the qualitative analysis that the Department should take into account in assessing the cost of complying with the final rule, namely, costs associated with: (a) Reviewing, revising, and replacing contracts for all credit contracts; (b) reviewing and revising contracts to comply with the prohibition on the waiver of legal rights; (c) reviewing, adjusting, and implementing systems to calculate the MAPR and waiving fees when the costs of the credit during a given billing cycle exceeds the interest-rate limit, as well as ''significant systems and operations changes'' to comply with the interest-rate limit for open-end credit products; (d) class actions that ''the regulation itself will attract;'' (e) being subject to supervisory examination; and (f) implementing and maintaining a ''shadow control process'' for MAPR compliance.[307] The Associations do not provide estimates for the magnitude of any of these costs.

The Department believes that many creditors will incur costs with implementing changes to their business operations and, on an ongoing basis, maintaining systems to comply with the other MLA conditions. The Department believes that many creditors will review and revise their credit contracts in order to comply with the MLA conditions going forward and that there will be costs associated with this process. For example, the Department expects that creditors will review and, as needed, revise contracts currently in use in order to comply with the prohibition on requiring a covered borrower to waive legal rights under the Servicemembers Civil Relief Act or other laws. The Associations report that one bank has six basic account agreements and ''approximately 180 ancillary original documents in its library;'' [308] the Department expects that banks and other creditors will incur costs in conducting this type of review. On an ongoing basis, the Department believes that creditors will revise contracts so that when new contracts are prepared, the MLA conditions already are included.

Credit card issuers who offer consumer credit at costs in excess of the interest-rate limit and who wish to avail themselves of the conditional exclusion for bona fide fees will need to update computer systems for these products in order to calculate the MAPR. Depending on the business practices of the creditor, these programs could be ''complex and sophisticated'' and could ''require ongoing transaction monitoring and crediting processes.'' [309]

In assessing the Proposed Rule, the Department considered, though did not quantify, the costs associated with the MLA's prohibition on requiring a Service member or his dependent to submit to arbitration in the case of a dispute related to an extension of consumer credit. Under the existing rule, the prohibition against requiring a covered borrower to submit to arbitration applies only to certain payday loans, vehicle title loans, and refund anticipation loans. Under the final rule, the prohibition against requiring arbitration applies to agreements for a significantly broader range of credit products, such as credit cards and deposit advance loans. In assessing the final rule, the Department continues to recognize that extending the application of the prohibition in § 232.8(c) likely will lead to costs, primarily as a result of the significantly broader range of creditors affected by that prohibition. The Associations suggest that the prohibition on requiring arbitration will itself attract class action lawsuits, though do not provide an estimate of those costs.[310] Nevertheless, commenters addressing the limitation do not provide specific information about the costs associated with complying with the prohibition against compelling arbitration, and the Department has not attempted to quantify the costs associated with those compliance measures.

The Department also recognizes that the fact of a regulation may cause a creditor to incur certain costs associated with the need to ''know and implement'' the laws applicable to certain activity in the market and the process of supervisory examination.[311] Indeed, the credit market is highly regulated today and many creditors are subject to supervision by state or federal regulators. The expanded scope of consumer credit under the final rule is expected to cause many creditors to be subject to the requirements of the MLA. Nonetheless, the presence of regulation or supervision itself is not due to any requirement imposed by this final rule. Even though the Department identifies and accounts for the most direct forms of compliance costs due to the amendments to the existing rule, the Department does not endeavor to quantify the costs associated with the fact that financial institutions are, in general, subject to an array of state and federal laws.

5. Sensitivity Analysis on Potential Benefits

Each year, thousands of well-trained Service members are compelled to leave military service where financial distress contributes to the revocation of their security clearances. The Department has direct experience with this process of involuntary separation, which generally involves a Service member becoming over-extended in debt—which occurs due to a wide range of factors—defaulting on one or more credit agreements (either by making late payments or by failing to make payments), and experiencing a deterioration in the credit score or credit history prepared by a consumer reporting agency for that individual. The individual's deteriorating creditworthiness presents an exposure to the Department that the individual poses a security risk, which ultimately warrants separation.

As discussed in sections II.B., II.C., and II.D., the Department makes a significant investment in recruiting, training, and progressing each qualified Service member. Losing a qualified soldier, sailor, airman, or Marine can cause a loss of mission capability, and there are substantial costs associated with replacing that Service member. Even though, for the purposes of this regulatory impact assessment under EO 12866 and EO 13563, the most direct effect of the interest-rate limit is a transfer payment, a secondary—yet no less direct—effect is the reduction in the overall amount of debt owed to creditors by covered borrowers. The Department believes applying the interest-rate limit to a broader range of credit products will reduce the overall amount of debt owed to creditors; as a result, regardless of the original occasions for incurring debts, Service members reasonably may be expected to have a lower incidence of financial distress, and a correspondingly lower incidence of involuntary separation where financial distress is a contributing factor. Thus,

[306] Associations, Dec. 18, 2014, at 56.

[307] Associations, Dec. 18, 2014, at 56–58.

[308] Associations, Dec. 18, 2014, at 58.

[309] L. Chanin, Dec. 23, 2014, at 18.

[310] Associations, Dec. 18, 2014, at 58.

[311] Associations, Dec. 18, 2014, at 56.

the Department believes that the savings of the Department's costs associated with replacing Service members who are involuntarily separated constitute benefits to the Department for the purposes of this regulatory impact assessment—entirely independently of the transfer payment flowing from the interest-rate limit. More generally, the anticipated improvements in military readiness and Service-member retention lie at the core of 10 U.S.C. 987.

Military Readiness and Service Member Retention. The most substantial—as well as meaningfully quantifiable—benefit of the Department's regulation will be the reduction in involuntary separations among Service members when financial distress is a contributing factor. The Department also anticipates that the regulation will entail non-quantifiable benefits, reducing stress for Service members or their families, which currently affects approximately 60 percent of military families who report experiencing stress related to their financial condition.[312]

The Department estimates that each separation costs the Department $58,250.[313] The Department estimates the potential impact of the regulation by using two alternative approximations of the current number of separations attributable to financial distress.

(1) Estimate One

For the years 2004 through 2013, there was an average of 54,293 involuntary separations per year. Of those involuntary separations that were due to legal or standard-of-conduct issues—an average of 18,961 per year—the Department estimates that approximately half are attributable to a loss of security clearance, and, of these, 80 percent are due to financial distress.[314] Based on this data and these assumptions, the Department estimates that, going forward, there would be approximately 7,580 separations each year where financial distress is a contributing factor.

(2) Estimate Two

In 2005, there were 1,999 revocations of security clearances as a result of financial problems in the Navy and Marine Corps,[315] and in those two branches, there was a total of 23,392 involuntary separations.[316] For the purposes of formulating an estimate of the potential impact of financial distress, the Department believes that the rate of involuntary separation due to financial distress across all of the services reasonably could be based on the 2005 data relating to the Navy and Marine Corps. Assuming that 8.5 percent of involuntary separations occur because of a security clearance revocation as a result of financial problems,[317] the Department estimates that, going forward, there would be approximately 4,640 separations each year where financial distress is a contributing factor.[318]

The Department estimates that the 10-year cost of involuntary separations due to financial distress is between $1.646 billion and $3.769 billion. However, the Department believes that these calculations significantly underestimate the impact of involuntary separations due to financial distress on Service-member retention and military readiness, primarily because the loss of security clearance is only one way that financial distress leads to separation from military service. Furthermore, involuntary separation is only one of the ways to detect the impact of financial distress on military readiness; excessive debt—which is less manageable at higher rates of interest—likewise can impair a Service member's eligibility to deploy or to reenlist.

The Department acknowledges that the final rule will not entirely eliminate financial distress among Service members. However, the Department expects that extending the protections of 10 U.S.C. 987 to a broader range of credit products will significantly reduce the incidence of derogatory items in the credit files of Service members (maintained by consumer reporting agencies), and thereby improve the Service members' respective capacities to manage and pay debts.

The Department estimates that the final rule will reduce the separations associated with financial distress. To assess the anticipated savings reasonably attributable to a reduction in involuntary separations, the Department has used three estimates of the possible reduction in involuntary separations: 5 percent,[319] 17.5 percent,[320] and 30 percent.[321] The Department believes that estimating between 5 percent and 30 percent reduction in the total number of these separations is reasonable in light of the conservative assumptions relating to the separations due to financial distress.

The Department estimates that the final rule will result in savings from involuntary separations due to financial distress of between $13.51 million and $132.52 million per year. Over 10 years, the rule will save the Department between $95.81 million and $1.263 billion. Figure 4 provides a summary of the anticipated savings that reasonably could be attributable to reduction in involuntary separations where financial distress is a contributing factor.

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[312] Blue Star Families, *The 2014 Military Family Lifestyle Survey* 35 (May 2014).

[313] U.S. Gov't Accountability Office, GAO–11–170, *Military Personnel: Personnel and Cost Data Associated with Implementing DOD's Homosexual Conduct Policy* (January 20, 2011) (estimating that each separation costs the Department $52,800 in 2009 dollars). The cost of $58,250 is calculated in 2015 dollars, using the DOL, Bureau of Labor Statistics, Consumer Price Index, All Urban Consumers (CPI–U), available at *ftp://ftp.bls.gov/pub/special.requests/cpi/cpiai.txt.*

[314] U.S. Dep't of Defense, *Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents* 39 (August 9, 2006), available at *http://www.defense.gov/pubs/pdfs/Report_to_Congress_final.pdf.*

[315] Amy Klamper, ''Double Whammy,'' Seapower Magazine, Navy League of the United States (June 2006), available at *www.seapowermagazine.org/archives/june/2006/double-whammy.html.*

[316] Military OneSource, 2005 Demographic Report, at 35.

[317] Thus, in this estimate two, the overall rate of involuntary separations due to financial distress is computed as follows: (1,999)/(23,392) = 0.085.

[318] Thus, in this estimate two, the Department computes the total number of separations per year as follows: (54,293)/(.085) = 4,640.

[319] *See, generally,* Scott Carrell & Jonathan Zinman, *In Harm's Way? Payday Loan Access and Military Personnel Performance* (August 2014) (estimating a 5 percent increase in negative personnel outcomes for Service members with access to high-cost payday loans.) The Department uses this study to estimate a low-end of the possible reduction in separations. This estimate likely is less reliable than other estimates of separations included in this analysis because the study does not directly measure the impact of high-cost loans on borrower personnel outcomes.

[320] *See, generally,* Department of Navy, Personnel Security Appeals Board, CY 2011 Activity Report at 7 (in 2011, 47 percent of denied appeals of revoked security clearances were due to financial problems) available at *www.ncis.navy.mil/securitypolicy/PSAB/PSAB%20Activity%20Reports/CY11%20PSAB%20Activity%20Report.pdf*); Consumer Federation of America, et al, DOD–2013–OS–0133–0030, at 3 (noting that for the Department of Navy the portion of denied appeals of revoked security clearances due to financial distress declined from 57 percent in 2006 to 47 percent in 2011). The Department uses the percentage of the decline (17.5) as a midpoint estimate.

[321] *See, generally,* Jean Ann Fox, *The Military Lending Act Five Years Later,* Consumer Federation of America (2012) at 16–17 (for the Department of the Navy, overall denied appeals of revoked security clearances declined by 30 percent from 2006 to 2010).

FIGURE 4—SCENARIO ANALYSIS OF COSTS SAVINGS FROM REDUCTIONS IN SEPARATIONS

[2015 dollars in millions]

	Annual	10-year, 7% discount rate	10-year, 3% discount rate
Estimate One: 7,840 separations per year*			
Separations Reduced by 30%	$133	$940	$1,263
Separations Reduced by 17.5%	78	550	739
Separations Reduced by 5%	22	157	210
Estimate Two: 4,640 separations per year			
Separations Reduced by 30%	81	575	773
Separations Reduced by 17.5%	47	336	452
Separations Reduced by 5%	14	96	129

*7840 = 18961*0.5*0.8

In addition to reducing the quantifiable costs associated with separations where financial distress contributed, the Department believes that the regulation will reduce non-quantifiable costs associated with financial strains on Service members. High-cost debt can detract from mission focus, reduce productivity, and require the attention of supervisors and commanders. As one commenter observed the Service member's ''mission can easily be jeopardized if he or she is worried about financial burdens back home.'' [322] Additionally, the protections afforded to covered borrowers under the MLA might, over time, improve the Department's capabilities to retain Service members, offering further non-quantifiable benefits.[323] In this regard, one study found that access to extremely high-cost debt decreases military readiness by increasing the presence of unfavorable credit information in the files of consumer reporting agencies, and by producing a significant decline in job performance, reducing the overall eligibility of Service members for reenlistment.[324]

6. Estimate of Amount of Transfer Payments

The Department believes that the interest-rate limit and the corresponding provisions governing computation of the MAPR entails some costs to creditors, particularly creditors who might need to adjust their systems to compute the MAPR in accordance with the standards of the final rule. However, there are no reliable data that would allow the Department to develop a quantifiable estimate of the costs associated with compliance with the interest-rate limit and the provisions governing computation of the MAPR. In this regard, for example, the Associations assert that calculating the MAPR will be ''a significant challenge and costly,'' even in light of ''the sophisticated technology of today's world.'' [325] To this point, the Associations provide the reports of ''initial inquiries with depository institutions'' suggesting that developing or, as appropriate, modifying computer systems ''would be extremely complicated and disruptive of the information technology schedules.'' [326] Additionally, for ''[s]mall mid-sized depository institutions . . . [there are] few attractive options in the likely case that their third-party processor does not offer the capability'' to calculate the MAPR and waive fees, as necessary.[327] In contrast, one such third-party processor suggests that ''the calculation [of the MAPR] would still be performed during the statement billing cycle with remediation calculations made on those accounts exceeding the 36% MAPR.'' [328] Neither comment provides data or an estimate of the costs associated with making the adjustments to processing systems or the ongoing costs of calculating the MAPR or waiving fees, as may be necessary. Thus, for the purposes of this analysis under E.O. 12866 and E.O. 13563, the Department has assessed the effects of the interest-rate limit only in terms of the amount of the transfer payments relating to certain consumer credit products.

Even though the interest-rate limit of 10 U.S.C. 987(b) results in transfer payments from various creditors to covered borrowers, and thus does not affect the benefits-cost analysis under E.O. 12866 and E.O. 13563, the Department has estimated the amounts involved in these payments.[329] For the purposes of assessing the amounts involved in the transfer payments, the Department has considered estimates of the current cost of credit and usage rates for four types of consumer credit, namely: (i) Credit card products, (ii) payday loans, (iii) auto title loans, and (iv) installment loans.[330]

[322] *See, e.g.,* The Military Coalition, Dec. 11, 2014, at 1.

[323] *See, e.g.,* Military Officers Association of America, Dec. 17, 2014, at 2 (observing that ''retention of highly qualified and experiences service members and their families is beneficial to the morale, well-being and readiness of the force, which in turn redounds to maintaining a strong national defense.'').

[324] Scott Carrell & Jonathan Zinman, *In Harm's Way? Payday Loan Access and Military Personnel Performance* (August 2014) at § 6 (Conclusion), available at *http://www.econ.ucdavis.edu/faculty/scarrell/payday.pdf* (''Overall the results are consistent with DoD's assertion that payday borrowing has adverse effects on military readiness. We find that payday loan access produces a significant decline in overall job performance (as measured by a 3.9% increase in reenlistment ineligibility), and a concomitant decline in retention. We also find that a measure of severely poor readiness (the presence of an Unfavorable Information File) increases by 5.3%.'').

[325] Associations, Dec. 18, 2014, at 36.

[326] Associations, Dec. 18, 2014, at 36.

[327] Associations, Dec. 18, 2014, at 37.

[328] TSYS, Dec. 24, 2014, at 2.

[329] One commenter argues that the Department's estimate of the cost of modifying the existing rule should account for credit that would not be extended to covered borrowers because a creditor would choose to not extend credit in compliance with the interest-rate limit. This commenter states estimates that the annual ''cost'' to service members of this forgone credit availability would be $70 million each year, with a 10-year cost ''somewhere between $355.8 million (7% discount) and $520.9 million (3% discount).'' Just Military Loans, Dec. 26, 2014, at 9. The Department acknowledges that reduction of availability of credit is a cost, but is not able to quantify this cost at this time due to lack of data.

[330] By using estimates related to these four credit products, the Department does not assume that these types of credit are the *only* credit products on the market today and used by Service members. For example, a comment from the National Pawnbrokers Association describes pawn transactions that also would be covered by the final rule, suggesting that subjecting these transactions to the interest-rate limit would result in ''smaller-dollar returns against each dollar's worth of collateral value'' or for pawnbrokers purchase items outright, rather than loaning against them, in transactions with Service members (Nat'l Pawnbrokers Assoc., Nov. 24, 2014, at 10). Rather, the Department focuses on credit card products,

Continued

In the credit card market, the Department believes that most creditors should be able to comply with the limitation on the MAPR by continuing to offer credit card products with minimal or no alternations to their current pricing practices. In this regard, few, if any, creditors who offer credit card products charge periodic rates that exceed the interest-rate limit of 10 U.S.C. 987(b) and § 232.4(b). Taking into account the exclusion for bona fide fees under § 232.4(d), the Department expects that nearly all of the amount of the transfer payments in credit card products will be due to revenues that would be foregone from credit insurance, debt cancellation, and credit-related ancillary products sold to covered borrowers.

The Department estimates the amount of the transfer payments by taking the difference of the cost of credit for a typical credit card with a credit insurance or debt cancellation product and 36 percent MAPR, less the payout rate on a credit insurance or debt protection product. To calculate the range of possible transfer payments associated with credit card products, the Department estimates an amount per account, and then makes a high- and low-end estimate of the number of Service members with credit cards who also carry a credit insurance or debt cancellation product that would cause the MAPR to exceed the 36-percent threshold.

The Department is aware that there are other credit-related ancillary products that may be sold in connection with, and either at or before, the account opening. The Department has not estimated the amount of the transfer payments that might be associated with those credit-related ancillary products.

To estimate the amount of the transfer payment for each credit card account, the Department assumes that 78 percent of Service members have a credit card,[331] revolving an average balance of $5,000.[332] The Department further assumes that a typical debt-cancellation product costs $1.10 per $100 of balance and has a payout rate of 21 percent.[333] Assuming that a borrower makes only the minimum payment each month on this card while paying 28 percent APR, a creditor who offers a credit card with these terms could charge a fee for a credit insurance or debt cancellation product of no more than $0.67 per $100 of balance per month, a price of 8 percent interest per year. For a credit card with a credit insurance or debt cancellation product carrying standard prices, the amount transferred from a creditor to a covered borrower—that is, when the creditor complies with the 36-percent MAPR limit and foregoes revenue that the borrower thereby saves—would be $886 per card over 10 years.[334]

Second, from an examination of credit card offers, the Department estimates that between 44 and 100 percent of the 78 percent of Service members who have a credit card account have a card with an APR sufficiently high that if the creditor also sells a credit insurance or debt cancellation product, the cost of credit could exceed the limit in 10 U.S.C. 987(b). The Department assumes that 7 percent of these accounts actually use credit insurance or debt cancellation; therefore the estimates are based on the assumption that between 3 percent and 7 percent of the 78 percent of Service members holding credit cards have a credit insurance or debt cancellation product.[335]

At the high-end, assuming that 78 percent of Service members have a credit card that, given typical costs, might exceed the interest-rate limit if the borrower purchases credit insurance or debt cancellation and pays a penalty APR, and that 7 percent of these borrowers actually do purchase such a product, the amount that would be transferred is estimated to be $6.72 million per year.[336] Over 10 years, the discounted amount that would be transferred would be between $53.91 million (at a 7 percent discount rate) and $60.92 million (at a 3 percent discount rate).

At the low-end, assuming that 44 percent of Service members have a credit card that, given typical fees, might exceed the interest-rate limit if the borrower purchases credit insurance or debt cancellation and pays a penalty APR, and that 7 percent of these borrowers actually do purchase such a product, the amount that would be transferred is estimated to be $2.96 million per year.[337] Over 10 years, the discounted amount that would be transferred would be between $23.72 million (at a 7 percent discount rate) and $26.80 million (at a 3 percent discount rate).

For non-credit card credit products that are subject to the final rule, the Department estimates the amount that would be transferred due to the interest-rate limit by considering three segments of that market for consumer credit: Payday loans, auto title loans, and non-purchase money installment loans. The Department assumes that approximately 12 percent of Service members use non-credit card credit products that will be covered under the rule.[338] The prices associated with these credit products vary widely; for any given creditor, the amount that would be transferred as a result of compliance with the interest-rate limit depends on how much that creditor charges for credit extended under the rule.

In order to estimate the amount that will be transferred, the Department assumes that between 7 percent and 4.9 percent of Service members use payday loans with a median APR of 391 percent and a median 10 transactions per year, each borrowed for 14 days,[339] 0.3

payday loans, auto title loans, and installment loans because these products together represent much of the market for credit with a cost in excess of 36 percent MAPR and data on the cost of these products is readily available.

[331] Blue Star Families, *The 2013 Military Family Lifestyle Survey* 34 (May 2013).

[332] FINRA Investor Education Foundation, *Financial Capability in the United States, Military Survey* (October 2010).

[333] U.S. Gov't Accountability Office, GAO–11–311, *Credit Cards: Consumer Costs for Debt Protection Can be Substantial Relative to Benefits but Are Not a Focus of Regulatory Oversight* 9, 21 (March 2011).

[334] This calculation assumes a beginning balance of $5,000 and that the borrower pays only the minimum payment, calculated as 4 percent of the monthly balance. Under the existing rule, the APR is 28 percent and the debt cancellation is $1.10 per $1,000 of outstanding balance, and the sum of payments over ten years is $12,696. Under the final rule, the APR is 28 percent and the debt cancellation is $.67 per $1,000 of outstanding balance, and the sum of payments over ten years is $11,810.

[335] U.S. Gov't Accountability Office, GAO–11–311, *Credit Cards: Consumer Costs for Debt Protection Can be Substantial Relative to Benefits but Are Not a Focus of Regulatory Oversight* 7 (March 2011).

[336] The Department calculates the estimated transfer amount by multiplying the number of active duty service members (1.4 million) by the percentage with a credit card account (78 percent), the percentage of accounts with costs that might exceed the interest rate limit if the borrower purchases add-on products (100 percent), the percentage of accounts where the borrower actually purchases add-on products (7 percent), and the amount transferred per card ($886).

[337] The Department calculates the estimated transfer amount by multiplying the number of active duty service members (1.4 million) by the percentage with a credit card account (78 percent), the percentage of accounts with costs that might exceed the interest rate limit if the borrower purchases add-on products (44 percent), the percentage of accounts where the borrower actually purchases add-on products (7 percent), and the amount transferred per card ($886).

[338] *See* Department of Defense, *Report On Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents* (August 9, 2006), available at *http://www.defense.gov/pubs/pdfs/Report_to_Congress_final.pdf*; Jean Ann Fox, *The Military Lending Act Five Years Later,* Consumer Federation of America (2012); U.S. Gov't Accountability Office, GAO–05–349, *Military Personnel: DOD's Tools for Curbing the Use and Effects of Predatory Lending Not Fully Utilized* (April 2005); Pew, *Payday Lending in America: Who Borrowers, Where They Borrow, and Why* 4 (July 2012).

[339] *See* Department of Defense, *Report On Predatory Lending Practices Directed at Members of*

percent of Service members use auto title loans with a median APR of 300 percent,[340] and 7 percent of Service members use installment loans with a median APR of 80 percent.[341]

Given typical prices of payday loans and borrowing patterns, the Department estimates that the value that will be transferred is $534 per borrower per year for payday loans.[342] Assuming that 4.9 percent of Service members use payday loans each year, the Department estimates that the rule will result in transfer payments of $36.59 million per year relating to the domestic payday lending industry.[343] Over 10 years, the Department estimates that the amount of the transfer payments relating to the domestic payday lending industry will be between $222.80 million (at a 7 percent discount rate) and $312.10 million (at a 3 percent discount rate). Alternatively, assuming that 7 percent of Service members use payday loans each year, the Department estimates that the amount of transfer payments on the domestic payday lending industry will be $51.95 million per year.[344] Over 10 years, the Department estimates that the transfer payments under the regulation will be between $316.35 million (at a 7 percent discount rate) and $443.14 million (at a 3 percent discount rate).

Approximately 7 percent of volume in payday loans is done by online lenders based offshore.[345] The Department estimates that the transfer payments relating to these offshore creditors will be between $2.56 million and $3.64 million per year. Over 10 years, the Department estimates that the total amount of the transfer payments relating to these offshore creditors will be between $15.60 million (at a 7 percent discount rate, assuming 4.9 percent usage) and $31.02 million (at a 3 percent discount rate, assuming 7 percent usage).

Assuming that 0.3 percent of Service members use auto title loans each year and that the average auto title loan carries an APR of 300 percent, the Department estimates that the interest-rate limit will lead to transfer payments relating to the auto title lending industry of $0.86 million per year.[346] Over 10 years, the Department estimates that the total amount of the transfer payments relating to auto title lenders would be between $5.62 million (at a 7 percent discount rate) and $7.36 million (at a 3 percent discount rate).

Assuming that 7 percent of Service members use high-cost installment loans each year and that the average installment loan carries an APR of 80 percent, the Department estimates that the interest-rate limit will result in transfer payments relating to the domestic installment lending industry of $59.81 million per year.[347] Over 10 years, the Department estimates that the total amount of transfer payments from installment-loan creditors will be between $364.23 million (at a 7 percent discount rate) and $510.21 million (at a 3 percent discount rate).

Approximately 7 percent of volume in the high-cost installment lending market is done by online lenders based offshore.[348] The Department estimates the regulation will result in transfer payments relating to these offshore creditors of approximately $4.19 million per year. Over 10 years, the total amount of transfer payments from these offshore creditors is estimated to be between $25.50 million (at a 7 percent discount rate) and $35.71 million (at a 3 percent discount rate).

Overall, the Department estimates that the total amount of transfer payments relating to these four categories of consumer credit products will be between $100.22 million and $119.34 million per year; over 10 years, the overall amount of these transfer payments will be between $616.01 million (assuming lower usage rates and a 7 percent discount rate) and $1.022 billion (assuming higher usage rates and a 3 percent discount rate). Of these overall amounts, between $6.75 million and $7.83 million of the transfer payments relate to offshore creditors, and between $41.10 million and $66.73 million over 10 years. The transfer payments from domestic creditors will be between $93.47 million and $111.51 million per year; over 10 years, these transfer payments will be between $574.91 million (assuming lower usage rates and a 7 percent discount rate) and $954.90 billion (assuming higher usage rates and a 3 percent discount rate). Figure 5 provides a summary of all of these figures for the transfer payments.

the Armed Forces and Their Dependents (August 9, 2006), available at *http://www.defense.gov/pubs/pdfs/Report_to_Congress_final.pdf*; Jean Ann Fox, *The Military Lending Act Five Years Later,* Consumer Federation of America (2012); Consumer Financial Protection Bureau, *Payday Loans and Deposit Advance Products* 8 (April 2013). The Department further assumes that borrowers take a median of 10 loans per year, those loans are for $392 and carry an average 14-day term. *See* Consumer Financial Protection Bureau, *Payday Loans and Deposit Advance Products* (April 2013). Some, though not all, transactions involving these products are subject to the protections of 10 U.S.C. 987 under the existing rule.

[340] Consumer Federation of America and Center for Responsible Lending, *Driven to Disaster: Car-Title Lending and Its Impact on Consumers* 3 (2013); U.S. Gov't Accountability Office, GAO–05–349, *Military Personnel: DOD's Tools for Curbing the Use and Effects of Predatory Lending Not Fully Utilized* (April 2005); Jean Ann Fox, *The Military Lending Act Five Years Later,* Consumer Federation of America (2012).

[341] *See* Jean Ann Fox, *The Military Lending Act Five Years Later*, Consumer Federation of America (2012).

[342] The Department assumes that the average loan amount is $392, 10 loans of 14 days each are taken in a year, and the average APR is 391 percent. The Department calculates the transfer amount per borrower by finding the difference between the cost of a typical loan under the status quo, assuming that the loan falls outside the scope of the existing rule ($588), and the permissible cost of a loan complying with the 36 percent interest rate limitation ($54).

[343] The Department calculates the estimated transfer amount by multiplying the number of active duty service members (1.4 million) by the percentage with a payday loan (4.9 percent), and the amount transferred per account ($534).

[344] The Department calculates the estimated transfer amount by multiplying the number of active duty service members (1.4 million) by the percentage with a payday loan (7 percent), and the amount transferred per account ($534).

[345] *See* Stephens Inc., *Forging Ahead: Growth, Opportunity and the Direction of the Alternative Financial Services Sector,* presentation to the Community Financial Services Association of America, March 7, 2013 (estimating that one-third of lending volume is online and that 20 percent of the online market is offshore).

[346] The Department assumes that the average principal borrowed is $951, average APR is 300 percent, and the average loan term is 30 days. The Department calculates the transfer amount per borrower by finding the difference between the cost of a typical loan under the status quo, assuming that the loan falls outside the scope of the existing rule ($235), and the permissible cost of a loan complying with the 36 percent interest rate limitation ($28). *See* Susanna Montezemolo, *Car-Title Lending,* Center for Responsible Lending, July 2013, available at *http://www.responsiblelending.org/state-of-lending/reports/7-Car-Title-Loans.pdf. See* Consumer Federation of America, *Policy Brief: Gaps in the Military Lending Act Leave Many Service Members Vulnerable to Abusive Lending Practices,* July 2013, available at *http://www.consumerfed.org/pdfs/130725-policybrief-mla-cfa.pdf* (finding that a typical auto title loan has a 300 percent APR). The Department does not have data regarding auto-title creditors located offshore.

[347] The Department assumes that a typical loan is $1,000 and borrowed for two years. Under the existing rule with an APR of 80 percent, the monthly payment is $85 per month, for a sum of payments of $2,032. Under the final rule with an APR of 36 percent, the monthly payment is $59, for a sum of payments of $1,417, a difference of $615. For information on typical military installment loans, *see* Jean Ann Fox, *The Military Lending Act Five Years Later,* Consumer Federation of America, May 2012.

[348] *See* Stephens Inc., *Forging Ahead: Growth, Opportunity and the Direction of the Alternative Financial Services Sector,* presentation to the Community Financial Services Association of America, March 7, 2013 (estimating that one-third of lending volume is online and that 20 percent of the online market is offshore).

FIGURE 5—SENSITIVITY ANALYSIS: AMOUNT OF TRANSFER PAYMENTS RELATING TO THE INTEREST-RATE LIMIT

[2015 dollars in millions]

	Annual	PV 10-year, 7% discount rate	PV 10-year, 3% discount rate
Payday			
(1) At 4.9% usage	$37	$223	$312
(2) At 7% usage	52	316	443
Auto title	1	5	7
Installment	60	364	510
Credit Cards			
(1) At 3% of cards	3	24	27
(2) At 7% of cards	7	54	61
TOTAL			
Low (4.9% payday, 3% cards)	100	616	856
High (7% payday, 7% cards)	119	740	1,022

The Department does not expect that the interest rate limitation will have undesirable side-effects for Service members. The Department observes that numerous creditors currently supply credit to Service members in a manner that already should comply with the interest-rate limit.

Further, in the Department's experience, covered borrowers enjoy access to low- and no-cost credit. For example, to provide monetary support to Service members and their families with financial hardships, the Military Services have partnered with nonprofit charitable organizations chartered to provide relief services to Service members and their families. The four Relief Societies for the Military Services provide no-interest loans and grants for shortfalls in household expenses and unforeseen emergencies.[349]

B. Congressional Review Act

The Congressional Review Act establishes certain procedures for major rules, defined as those with similar major impacts. This final rule will have a major impact as that term is used under the Congressional Review Act.

C. Unfunded Mandates Reform Act (Title 10, U.S. Code, Chapter 25)

Section 202 of the Unfunded Mandates Reform Act of 1995 requires an agency to prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in the expenditure within any one year by state, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in 1995 dollars updated annually for inflation.[350] That threshold level is currently approximately $155 million.[351] The Department certifies that this final rule does not contain a federal mandate that may result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector of $100 million or more in inflation adjusted 1995 dollars in any one year.[352]

D. Regulatory Flexibility Act (Title 5, U.S. Code, Chapter 6)

The Department certifies that this proposed regulation is not subject to the Regulatory Flexibility Act (''RFA'') [353] because the regulation, if adopted as proposed, would not have a significant economic impact on a substantial number of small entities.

The North American Industrial Classification (NAIC) codes for the affected businesses are the following:

(a) 522110—Commercial Banking
(b) 522130—Credit Unions
(c) 522210—Credit Card Issuing
(d) 522291—Consumer Lending

Pursuant to the Small Business Administration (SBA) Small Business Size Standards, a consumer lending business is a ''small business entity'' if it has less than $38.5 million in receipts. According to the 2007 Economic Census (the last year for which data is available), approximately 96 percent of firms in NAIC code 522291 are small business entities. For the other three potentially affected businesses, the SBA Small Business Size Standards considers any business with less than $550 million in assets to be a small business entity.

Approximately 81 percent of firms in NAIC code 522110 and 94 percent of firms in NAIC code 522130 are small business entities. Overwhelmingly, credit card products are issued by insured depository institutions and, therefore, small business entities issuing credit cards (included within NAIC code 522210) are covered by the previously described codes.

As detailed in Section V.A., the Department estimates the final rule might impose costs of approximately $106 million during the first year, as creditors adapt their systems to comply with the requirements of the rule. After the first year and on an ongoing basis, the annual cost to the economy is expected to be approximately $30 million. The first-year costs reflect the costs of revising disclosures to include the required statement of the MAPR and the costs of modifying lending systems (if needed) and procedures to take advantage of the optional methods to conduct covered-borrower checks that fit within the safe harbor afforded under § 232.5(b). On an ongoing basis, the costs reflect the costs to creditors of providing the required disclosure—generally, as part of standard form loan agreements—and the costs attributable to the use of the methods for conducting covered-borrower checks described in § 232.5(b).

In the Proposed Rule, the Department sought comment, particularly from potentially affected small businesses themselves, on the possible impact of the Proposed Rule on small businesses. The SBA Office of Advocacy observes that the Department ''underestimated the number of entities that might be

[349] *See, e.g.,* Air Force Aid Society, Nov. 14, 2014, at 1. In 2013, the Air Force Aid Society provided $9 million in interest-free loans and $668,000 in grant assistance.

[350] 2 U.S.C. 1532.

[351] DOL, Bureau of Labor and Statistics, Consumer Price Index Inflation Calculator, available at: *http://data.bls.gov/cgi-bin/cpicalc.pl.*

[352] *See* analysis in section V.A. for calculations. The Department expects expenditure by the private sector of approximately $106 million in the first-year, phase-in period for setting up the required disclosures and optional procedure(s) for conducting covered-borrower checks. On an ongoing basis, the Department expects expenditure by the private sector of approximately $30 million to comply with the provision of the required disclosures and optional covered-borrower checks.

[353] 5 U.S.C. 601.

impacted.'' [354] The Department's estimates are based on the size standards established by the SBA and the 2007 Economic Census, published by the U.S. Census Bureau; the SBA Office of Advocacy does not provide alternate estimates in its comment. The Department believes that relying on standards from the SBA and Census Bureau to assess the number of entities that fit the description of a ''small business entity'' and may be affected by the rule is appropriate. However, the Department is not able to estimate the portion of businesses within these size categories that offer credit with an MAPR in excess of the interest-rate limit of the MLA or that otherwise conflict with the MLA conditions. For a small-entity creditor engaged in lending activity that would not violate MLA when extending consumer credit, the creditor might choose to forgo the use of a method for conducting a covered-borrower check described in § 232.5(b). In this instance, the cost that could be attributable to the final rule would be limited to (in the first year) updating disclosures and (on an ongoing basis) providing the statement of the MAPR, which may be included as part of a loan agreement.

The SBA Office of Advocacy also suggests that ''requiring small entities to check every customer to determine if he or she is a [covered borrower] could become burdensome.'' [355] Another commenter asserts that using the MLA Database ''would be a substantial cost burden on small businesses.'' [356] Neither comment provides data in support of its assertions.

The final rule—like the Proposed Rule—does not require any business to determine whether a customer is a covered borrower. A creditor may choose to make such a determination in order to obtain the protection of the safe harbor in § 232.5(b); the Department assumes that all creditors, other than creditors who offer only residential mortgage loans or loans expressly to finance the purchase of personal property (neither of which loans is consumer credit), will establish a procedure to determine whether a particular customer is a covered borrower.

The Department believes that setting up the process to use information obtained from the MLA Database or using information in a consumer report obtained from a nationwide consumer reporting agency, as well as to timely create and maintain a record of that information will take each creditor 70 hours of labor time. The actual cost for each creditor will depend on that entity's business decisions and operations. For example, if nationwide consumer reporting agencies incorporate covered-borrower indicators into consumer reports, a creditor that already obtains a consumer report during the credit origination process might choose to use that indicator to conduct a covered-borrower check, and keep a record of that indicator, pursuant to § 232.5(b). Another creditor, particularly one that does not already obtain consumer reports from a nationwide consumer reporting agency, may instead choose to use information obtained from the MLA Database, and keep a record of that indicator, pursuant to § 232.5(b). And a third creditor, particularly one that offers credit products that comply with the limitation under the MLA, may, as expressly permitted in § 232.5(a), choose to forgo the use of a covered-borrower check described in § 232.5(b).

Nonetheless, assuming that each of the approximately 37,500 creditors subject to the regulation establishes a process to conduct covered-borrower checks through a method provided in § 232.5(b), and that each creditor will incur 70 hours of labor time in doing so, the Department estimates that the total costs relating to setting up the processes for one of those methods would be $84.02 million.[357] The actual amount of time and the cost of the adjustment will depend on business decisions and operations. For example, a small creditor only originating loans in face-to-face transactions through a manual process may find that updating its procedures and training staff to query the MLA Database takes substantially less than 70 hours.

The Department also recognizes that certain costs may be particular to the type of creditor and practices in that market. For example, the National Pawnbrokers Associations shares the report of one member estimating that as many as 4,000 pawn stores across the country do not have computers and would, therefore, need to purchase such equipment in order to take advantage of the safe harbor in § 232.5.[358]

On an ongoing basis, the Department estimates that using information obtained from the MLA Database will add approximately 60 seconds to each new consumer credit transaction.[359] The Department estimates that the total cost to all creditors for using information obtained from the MLA Database or information in consumer reports obtained from a nationwide consumer reporting agency and retaining records relating to those covered-borrower checks would be approximately $27.75 million per year.[360] The actual cost for a small business of engaging in one of these optional methods to conduct a covered-borrower check depends on several factors, such as the number of customers that each business does business with or whether the small business regularly extends credit in a manner that could be inconsistent with the interest-rate limit or one or more of the other MLA conditions.

While a substantial portion of firms in each affected market are ''small business entities,'' Service members and their dependents make up only a small portion of the consumers for those businesses. Because only approximately 2.5 percent of households in the United States include an active duty Service member, the interest-rate limit and other MLA conditions of the final rule would affect a small percentage of the consumers served by entities that could be creditors covered by this final rule.

[354] SBA Office of Advocacy, Dec. 18, 2014, at 3.

[355] SBA Office of Advocacy, Dec. 18, 2014, at 4.

[356] AFSA, Dec. 22, 2014, at 25.

[357] The Department estimates that staff time to set up access to one of the safe harbor mechanism and the processes to record and retain information will be 50 percent data entry and information processing workers, 40 percent supervisors of office and administrative support workers, and 10 percent legal counsel. DOL, Bureau of Labor and Statistics, Occupational Employment and Wages Table 1 (May, 2014) (mean hourly wage for data entry and information processing workers is $15.48; mean hourly wage for supervisors of office and administrative support workers is $26.15; mean hourly wage for legal counsel is $64.17). The Department estimates total wages to be approximately $64.63 million. The Department arrives at an estimated total cost by including an additional non-wage component of compensation of 30 percent of estimated wages.

[358] Nat'l Pawnbrokers Assoc., Nov. 24, 2014, at 14.

[359] The National Pawnbrokers Association shared the report of one member who found that querying the MLA Database took ''less than 20 seconds from start to finish.'' (Nat'l Pawnbrokers Assoc., Nov. 24, 2014, at 15). In contrast, AFSA shared the report of a ''small business'' that estimated that querying the MLA Database would take ''about five to 10 minutes per loan application.'' (AFSA, Dec. 22, 2014, at 7). And a comment submitted on behalf of certain credit card issuers suggested that checking the MLA Database could cause a ''delay'' for the transaction in question and for ''the transactions of any other consumer in line behind that consumer seeking to engage in a transaction, even if the consumer is not apply for credit.'' (L. Chanin, Dec. 23, 2014, at 22). In light of these divergent estimates and the lack of other data, the Department elected to maintain its transaction time estimate from the Proposed Rule.

[360] The Department calculates an estimated wage cost of $21.35 million by multiplying the expected number of transactions involving a single-record inquiry (100 million) by the mean hourly wage for financial tellers ($12.81) and the additional transaction time expected (1/60th of an hour) based on wage information in the DOL, Bureau of Labor and Statistics, Occupational Employment and Wages Table 1 (May, 2014). The Department arrives at a total cost estimate by including an additional non-wage component of compensation of 30 percent of estimated wages.

Thus, the Department concludes that—even though there appears to be a large percentage of small business entities in each affected class of business—the final rule would not (for the purposes of the RFA) have a significant economic impact on a substantial number of small businesses because: (i) The cost for each business associated with updating disclosures is not substantial; (ii) the cost for each business of updating systems or procedures to use a method for conducting covered-borrower checks described in § 232.5(b) (if the business were to do so) is not substantial, and (iii) small businesses nonetheless have very few customers who are covered borrowers.

E. Paperwork Reduction Act (Title 45, U.S. Code, Chapter 35, Sub-Chapter 1)

The final rule contains information-collection requirements and has been submitted to OMB under the provisions of the Paperwork Reduction Act.[361] The paperwork costs associated with this final rule are accounted for in the assessment under E.O. 12866 and E.O. 13563.

Title: Mandatory Loan Disclosure and Covered-Borrower Check as Part of Limitations on Terms of Consumer Credit Extended to Service Members and Their Dependents.

Number of Respondents: 37,500.

Responses per Respondent: Varies by type of respondent.

Annual Responses: 238 million.

Average Burden per Response: Varies by type of response. On an ongoing basis, respondents likely will spend 1 minute (0.02 hours) for single-record borrower inquiry (100 million); and 0 minutes for printed disclosures included in all consumer credit contracts (191 million). In the first year, there is expected to be a one-time burden of 110 labor hours to set up the mandatory disclosures, as well as a process for conducting covered-borrower checks and retaining records.

Annual Burden Hours: 3,375,000 set-up burden hours in the first year; 2,000,000 ongoing burden hours each year.

Needs and Uses: With respect to any extension of consumer credit to a covered borrower, a creditor is required to provide to the borrower a statement of the MAPR. In approximately 238 million transactions, the required information would be included in standard account agreements. Additionally, a creditor may, at its discretion, identify the status of a consumer-applicant, as permitted under § 232.5(b) and, in the event that the information indicates that consumer-applicant is not a covered borrower, take advantage of a safe harbor from liability under 10 U.S.C. 987 by retaining a record of the information so obtained.

Affected Public: Creditors making loans that are subject to a finance charge or payable by a written agreement in more than four installments, except for loans that are mortgage loans and purchase-money financing for vehicles or other personal property.

Frequency: One disclosure for each transaction involving consumer credit; one covered-borrower check for each transaction involving consumer credit.

Respondents' Obligation: Mandatory loan disclosures; optional use of information from agency database or optional use of a consumer report obtained from a nationwide consumer reporting agency, and subsequent record retention.

F. Executive Order 13132 Federalism

Executive Order 13132 (''E.O. 13132'') requires Executive departments and agencies, including the Department, to identify regulatory actions that have significant federalism implications. A regulation has federalism implications if it has substantial direct effects on the States, on the relationship or distribution of power between the Federal Government and the States, or on the distribution of power and responsibilities among various levels of government.

The provisions of this part, as required by 10 U.S.C. 987, override state statutes inconsistent with this part to the extent that these provisions provide different protections for covered borrowers than those provided to residents of that State. As discussed in the section-by-section description of the final rule, in sections III and IV, the rule revises the corresponding section of the Department's existing rule to reflect amendments to 10 U.S.C. 987(d)(2) enacted in section 661(a)(1) of the 2013 Act. This amendment clarifies the scope of state laws subject to preemption by 10 U.S.C. 987.

The final rule does not affect in any manner the powers and authorities that any State may have or affect the distribution of power and responsibilities between Federal and State levels of government. Therefore, the Department determines that the final rule does not have any federalism implications that warrant the preparation of a Federalism Assessment in accordance with E.O. 13132.

[361] 44 U.S.C. 3502, 3506–07.

List of Subjects in 32 CFR Part 232

Loan programs, Reporting and recordkeeping requirements, Service members.

For the reasons set forth in the preamble, chapter I of title 32, Code of Federal Regulations is amended by revising part 232 to read as follows:

PART 232—LIMITATIONS ON TERMS OF CONSUMER CREDIT EXTENDED TO SERVICE MEMBERS AND DEPENDENTS

Sec.

232.1 Authority, purpose, and coverage.
232.2 Applicability; examples.
232.3 Definitions.
232.4 Terms of consumer credit extended to covered borrowers.
232.5 Identification of covered borrower.
232.6 Mandatory loan disclosures.
232.7 Preemption.
232.8 Limitations.
232.9 Penalties and remedies.
232.10 Administrative enforcement.
232.11 Servicemembers Civil Relief Act provisions unaffected.
232.12 Effective dates.
232.13 Compliance dates.

Authority: 10 U.S.C. 987.

§ 232.1 Authority, purpose, and coverage.

(a) *Authority.* This part is issued by the Department of Defense to implement 10 U.S.C. 987.

(b) *Purpose.* The purpose of this part is to impose limitations on the cost and terms of certain extensions of credit to Service members and their dependents, and to provide additional protections relating to such transactions in accordance with 10 U.S.C. 987.

(c) *Coverage.* This part defines the types of transactions involving ''consumer credit,'' a ''creditor,'' and a ''covered borrower'' that are subject to the regulation, consistent with the provisions of 10 U.S.C. 987. In addition, this part:

(1) Provides the maximum allowable amount of all charges, and the types of charges, that may be associated with a covered extension of consumer credit;

(2) Requires a creditor to provide to a covered borrower a statement of the Military Annual Percentage Rate, or MAPR, before or at the time the borrower becomes obligated on the transaction or establishes an account for the consumer credit. The statement required by § 232.6(a)(1) differs from and is in addition to the disclosures that must be provided to consumers under the Truth in Lending Act;

(3) Provides for the method a creditor must use in calculating the MAPR; and

(4) Contains such other criteria and limitations as the Secretary of Defense has determined appropriate, consistent with the provisions of 10 U.S.C. 987.

§ 232.2 Applicability; examples.

(a)(1) *Applicability.* This part applies to consumer credit extended by a creditor to a covered borrower, as those terms are defined in this part. Nothing in this part applies to a credit transaction or account relating to a consumer who is not a covered borrower at the time he or she becomes obligated on a credit transaction or establishes an account for credit. Nothing in this part applies to a credit transaction or account relating to a consumer (which otherwise would be consumer credit) when the consumer no longer is a covered borrower.

(2) *Examples*—(i) *Covered borrower.* Consumer A is a member of the armed forces but not serving on active duty, and holds an account for closed-end credit with a financial institution. After establishing the closed-end credit account, Consumer A is ordered to serve on active duty, thereby becoming a covered borrower, and soon thereafter separately establishes an open-end line of credit for personal purposes (which is not subject to any exception or temporary exemption) with the financial institution. This part applies to the open-end line of credit, but not to the closed-end credit account.

(ii) *Not a covered borrower.* Same facts as described in paragraph (a)(2)(i) of this section. One year after establishing the open-end line of credit, Consumer A ceases to serve on active duty. This part never did apply to the closed-end credit account, and because Consumer A no longer is a covered borrower, this part no longer applies to the open-end line of credit.

(b) *Examples.* The examples in this part are not exclusive. To the extent that an example in this part implicates a term or provision of Regulation Z (12 CFR part 1026), issued by the Consumer Financial Protection Bureau to implement the Truth in Lending Act, Regulation Z shall control the meaning of that term or provision.

§ 232.3 Definitions.

As used in this part:

(a) *Affiliate* means any person that controls, is controlled by, or is under common control with another person.

(b) *Billing cycle* has the same meaning as ''billing cycle'' in Regulation Z.

(c) *Bureau* means the Consumer Financial Protection Bureau.

(d) *Closed-end credit* means consumer credit (but for the conditions applicable to consumer credit under this part) other than consumer credit that is ''open-end credit'' as that term is defined in Regulation Z.

(e) *Consumer* means a natural person.

(f)(1) *Consumer credit* means credit offered or extended to a covered borrower primarily for personal, family, or household purposes, and that is:

(i) Subject to a finance charge; or

(ii) Payable by a written agreement in more than four installments.

(2) *Exceptions.* Notwithstanding paragraph (f)(1) of this section, consumer credit does not mean:

(i) A residential mortgage, which is any credit transaction secured by an interest in a dwelling, including a transaction to finance the purchase or initial construction of the dwelling, any refinance transaction, home equity loan or line of credit, or reverse mortgage;

(ii) Any credit transaction that is expressly intended to finance the purchase of a motor vehicle when the credit is secured by the vehicle being purchased;

(iii) Any credit transaction that is expressly intended to finance the purchase of personal property when the credit is secured by the property being purchased;

(iv) Any credit transaction that is an exempt transaction for the purposes of Regulation Z (other than a transaction exempt under 12 CFR 1026.29) or otherwise is not subject to disclosure requirements under Regulation Z; and

(v) Any credit transaction or account for credit for which a creditor determines that a consumer is not a covered borrower by using a method and by complying with the recordkeeping requirement set forth in § 232.5(b).

(g)(1) *Covered borrower* means a consumer who, at the time the consumer becomes obligated on a consumer credit transaction or establishes an account for consumer credit, is a covered member (as defined in paragraph (g)(2) of this section) or a dependent (as defined in paragraph (g)(3) of this section) of a covered member.

(2) The term ''covered member'' means a member of the armed forces who is serving on—

(i) Active duty pursuant to title 10, title 14, or title 32, United States Code, under a call or order that does not specify a period of 30 days or fewer; or

(ii) Active Guard and Reserve duty, as that term is defined in 10 U.S.C. 101(d)(6).

(3) The term ''dependent'' with respect to a covered member means a person described in subparagraph (A), (D), (E), or (I) of 10 U.S.C. 1072(2).

(4) Notwithstanding paragraph (g)(1) of this section, covered borrower does not mean a consumer who (though a covered borrower at the time he or she became obligated on a consumer credit transaction or established an account for consumer credit) no longer is a covered member (as defined in paragraph (g)(2) of this section) or a dependent (as defined in paragraph (g)(2) of this section) of a covered member.

(h) *Credit* means the right granted to a consumer by a creditor to defer payment of debt or to incur debt and defer its payment.

(i) *Creditor,* except as provided in § 232.8(a), (f), and (g), means a person who is:

(1) Engaged in the business of extending consumer credit; or

(2) An assignee of a person described in paragraph (i)(1) of this section with respect to any consumer credit extended.

(3) For the purposes of this definition, a creditor is engaged in the business of extending consumer credit if the creditor considered by itself and together with its affiliates meets the transaction standard for a ''creditor'' under Regulation Z with respect to extensions of consumer credit to covered borrowers.

(j) *Department* means the Department of Defense.

(k) *Dwelling* means a residential structure that contains one to four units, whether or not the structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and manufactured home.

(*l*) *Electronic fund transfer* has the same meaning as in the regulation issued by the Bureau to implement the Electronic Fund Transfer Act, as amended from time to time (12 CFR part 1005).

(m) *Federal credit union* has the same meaning as ''Federal credit union'' in the Federal Credit Union Act (12 U.S.C. 1752(1)).

(n) *Finance charge* has the same meaning as ''finance charge'' in Regulation Z.

(o) *Insured depository institution* has the same meaning as ''insured depository institution'' in the Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

(p) *Military annual percentage rate (MAPR).* The MAPR is the cost of the consumer credit expressed as an annual rate, and shall be calculated in accordance with § 232.4(c).

(q) *Open-end credit* means consumer credit that (but for the conditions applicable to consumer credit under this part) is ''open-end credit'' under Regulation Z.

(r) *Person* means a natural person or organization, including any corporation, partnership, proprietorship, association,

cooperative, estate, trust, or government unit.

(s) *Regulation Z* means any rules, or interpretations thereof, issued by the Bureau to implement the Truth in Lending Act, as amended from time to time, including any interpretation or approval issued by an official or employee duly authorized by the Bureau to issue such interpretations or approvals. However, for any provision of this part requiring a creditor to comply with Regulation Z, a creditor who is subject to Regulation Z (12 CFR part 226) issued by the Board of Governors of the Federal Reserve System must continue to comply with 12 CFR part 226. Words that are not defined in this part have the same meanings given to them in Regulation Z (12 CFR part 1026) issued by the Bureau, as amended from time to time, including any interpretation thereof by the Bureau or an official or employee of the Bureau duly authorized by the Bureau to issue such interpretations. Words that are not defined in this part or Regulation Z, or any interpretation thereof, have the meanings given to them by State or Federal law.

(t) *Short-term, small amount loan* means a closed-end loan that is—

(1) Subject to and made in accordance with a Federal law (other than 10 U.S.C. 987) that expressly limits the rate of interest that a Federal credit union or an insured depository institution may charge on an extension of credit, provided that the limitation set forth in that law is comparable to a limitation of an annual percentage rate of interest of 36 percent; and

(2) Made in accordance with the requirements, terms, and conditions of a rule, prescribed by the appropriate Federal regulatory agency (or jointly by such agencies), that implements the Federal law described in paragraph (t)(1) of this section, provided further that such law or rule contains—

(i) A fixed numerical limit on the maximum maturity term, which term shall not exceed 9 months; and

(ii) A fixed numerical limit on any application fee that may be charged to a consumer who applies for such closed-end loan.

§ 232.4 Terms of consumer credit extended to covered borrowers.

(a) *General conditions.* A creditor who extends consumer credit to a covered borrower may not require the covered borrower to pay an MAPR for the credit with respect to such extension of credit, except as:

(1) Agreed to under the terms of the credit agreement or promissory note;

(2) Authorized by applicable State or Federal law; and

(3) Not specifically prohibited by this part.

(b) *Limit on cost of consumer credit.* A creditor may not impose an MAPR greater than 36 percent in connection with an extension of consumer credit that is closed-end credit or in any billing cycle for open-end credit.

(c) *Calculation of the MAPR.*—(1) *Charges included in the MAPR.* The charges for the MAPR shall include, as applicable to the extension of consumer credit:

(i) Any credit insurance premium or fee, any charge for single premium credit insurance, any fee for a debt cancellation contract, or any fee for a debt suspension agreement;

(ii) Any fee for a credit-related ancillary product sold in connection with the credit transaction for closed-end credit or an account for open-end credit; and

(iii) Except for a bona fide fee (other than a periodic rate) which may be excluded under paragraph (d) of this section:

(A) Finance charges associated with the consumer credit;

(B) Any application fee charged to a covered borrower who applies for consumer credit, other than an application fee charged by a Federal credit union or an insured depository institution when making a short-term, small amount loan, provided that the application fee is charged to the covered borrower not more than once in any rolling 12-month period; and

(C) Any fee imposed for participation in any plan or arrangement for consumer credit, subject to paragraph (c)(2)(ii)(B) of this section.

(iv) *Certain exclusions of Regulation Z inapplicable.* Any charge set forth in paragraphs (c)(1)(i) through (iii) of this section shall be included in the calculation of the MAPR even if that charge would be excluded from the finance charge under Regulation Z.

(2) *Computing the MAPR*—(i) *Closed-end credit.* For closed-end credit, the MAPR shall be calculated following the rules for calculating and disclosing the ''Annual Percentage Rate (APR)'' for credit transactions under Regulation Z based on the charges set forth in paragraph (c)(1) of this section.

(ii) *Open-end credit*—(A) *In general.* Except as provided in paragraph (c)(2)(ii)(B) of this section, for open-end credit, the MAPR shall be calculated following the rules for calculating the effective annual percentage rate for a billing cycle as set forth in § 1026.14(c) and (d) of Regulation Z (as if a creditor must comply with that section) based on the charges set forth in paragraph (c)(1) of this section. Notwithstanding § 1026.14(c) and (d) of Regulation Z, the amount of charges related to opening, renewing, or continuing an account must be included in the calculation of the MAPR to the extent those charges are set forth in paragraph (c)(1) of this section.

(B) *No balance during a billing cycle.* For open-end credit, if the MAPR cannot be calculated in a billing cycle because there is no balance in the billing cycle, a creditor may not impose any fee or charge during that billing cycle, except that the creditor may impose a fee for participation in any plan or arrangement for that open-end credit so long as the participation fee does not exceed $100 per annum, regardless of the billing cycle in which the participation fee is imposed; *provided, however,* that the $100-per annum limitation on the amount of the participation fee does not apply to a bona fide participation fee imposed in accordance with paragraph (d) of this section.

(d) *Bona fide fee charged to a credit card account*—(1) *In general.* For consumer credit extended in a credit card account under an open-end (not home-secured) consumer credit plan, a bona fide fee, other than a periodic rate, is not a charge required to be included in the MAPR pursuant to paragraph (c)(1) of this section. The exclusion provided for any bona fide fee under this paragraph (d) applies only to the extent that the charge by the creditor is a bona fide fee, and must be reasonable for that type of fee.

(2) *Ineligible items.* The exclusion for bona fide fees in paragraph (d)(1) of this section does not apply to—

(i) Any credit insurance premium or fee, including any charge for single premium credit insurance, any fee for a debt cancellation contract, or any fee for a debt suspension agreement; or

(ii) Any fee for a credit-related ancillary product sold in connection with the credit transaction for closed-end credit or an account for open-end credit.

(3) *Standards relating to bona fide fees* —(i) *Like-kind fees.* To assess whether a bona fide fee is reasonable under paragraph (d)(1) of this section, the fee must be compared to fees typically imposed by other creditors for the same or a substantially similar product or service. For example, when assessing a bona fide cash advance fee, that fee must be compared to fees charged by other creditors for transactions in which consumers receive extensions of credit in the form of cash or its equivalent. Conversely,

when assessing a foreign transaction fee, that fee may not be compared to a cash advance fee because the foreign transaction fee involves the service of exchanging the consumer's currency (*e.g.,* a reserve currency) for the local currency demanded by a merchant for a good or service, and does not involve the provision of cash to the consumer.

(ii) *Safe harbor.* A bona fide fee is reasonable under paragraph (d)(1) of this section if the amount of the fee is less than or equal to an average amount of a fee for the same or a substantially similar product or service charged by 5 or more creditors each of whose U.S. credit cards in force is at least $3 billion in an outstanding balance (or at least $3 billion in loans on U.S. credit card accounts initially extended by the creditor) at any time during the 3-year period preceding the time such average is computed.

(iii) *Reasonable fee.* A bona fide fee that is higher than an average amount, as calculated under paragraph (d)(3)(ii) of this section, also may be reasonable under paragraph (d)(1) of this section depending on other factors relating to the credit card account. A bona fide fee charged by a creditor is not unreasonable solely because other creditors do not charge a fee for the same or a substantially similar product or service.

(iv) *Indicia of reasonableness for a participation fee.* An amount of a bona fide fee for participation in a credit card account may be reasonable under paragraph (d)(1) of this section if that amount reasonably corresponds to the credit limit in effect or credit made available when the fee is imposed, to the services offered under the credit card account, or to other factors relating to the credit card account. For example, even if other creditors typically charge $100 per annum for participation in credit card accounts, a $400 fee nevertheless may be reasonable if (relative to other accounts carrying participation fees) the credit made available to the covered borrower is significantly higher or additional services or other benefits are offered under that account.

(4) *Effect of charging fees on bona fide fees*—(i) *Bona fide fees treated separately from charges for credit insurance products or credit-related ancillary products.* If a creditor imposes a fee described in paragraph (c)(1) of this section and imposes a finance charge to a covered borrower, the total amount of the fee(s) and finance charge(s) shall be included in the MAPR pursuant to paragraph (c) of this section, and the imposition of any fee or finance charge described in paragraph (c)(1) of this section shall not affect whether another type of fee may be excluded as a bona fide fee under this paragraph (d).

(ii) *Effect of charges for non-bona fide fees.* If a creditor imposes any fee (other than a periodic rate or a fee that must be included in the MAPR pursuant to paragraph (c)(1) of this section) that is not a bona fide fee and imposes a finance charge to a covered borrower, the total amount of those fees, including any bona fide fees, and other finance charges shall be included in the MAPR pursuant to paragraph (c) of this section.

(iii) *Examples.* (A) In a credit card account under an open-end (not home-secured) consumer credit plan during a given billing cycle, Creditor A imposes on a covered borrower a fee for a debt cancellation product (as described in paragraph (c)(1)(i) of this section), a finance charge (as described in paragraph (c)(1)(iii)(A)), and a bona fide foreign transaction fee that qualifies for the exclusion under this paragraph (d). Only the fee for the debt cancellation product and the finance charge must be included when calculating the MAPR.

(B) In a credit card account under an open-end (not home-secured) consumer credit plan during a given billing cycle, Creditor B imposes on a covered borrower a fee for a debt cancellation product (as described in paragraph (c)(1)(i) of this section), a finance charge (as described in paragraph (c)(1)(iii)(A)), a bona fide foreign transaction fee that qualifies for the exclusion under this paragraph (d), and a bona fide, but unreasonable cash advance fee. All of the fees—including the foreign transaction fee that otherwise would qualify for the exclusion under this paragraph (d)—and the finance charge must be included when calculating the MAPR.

(5) *Rule of construction.* Nothing in paragraph (d)(1) of this section authorizes the imposition of fees or charges otherwise prohibited by this part or by other applicable State or Federal law.

§ 232.5 Optional identification of covered borrower.

(a) *No restriction on method for covered-borrower check.* A creditor is permitted to apply its own method to assess whether a consumer is a covered borrower.

(b) *Safe harbor*—(1) *In general.* A creditor may conclusively determine whether credit is offered or extended to a covered borrower, and thus may be subject to 10 U.S.C. 987 and the requirements of this part, by assessing the status of a consumer in accordance with this paragraph (b).

(2) *Methods to check status of consumer*—(i) *Department database*—(A) *In general.* To determine whether a consumer is a covered borrower, a creditor may verify the status of a consumer by using information relating to that consumer, if any, obtained directly or indirectly from the database maintained by the Department, available at *https://www.dmdc.osd.mil/mla/welcome.xhtml.* A search of the Department's database requires the entry of the consumer's last name, date of birth, and Social Security number.

(B) *Historic lookback prohibited.* At any time after a consumer has entered into a transaction or established an account involving an extension of credit, a creditor (including an assignee) may not, directly or indirectly, obtain any information from any database maintained by the Department to ascertain whether a consumer had been a covered borrower as of the date of that transaction or as of the date that account was established.

(ii) *Consumer report from a nationwide consumer reporting agency.* To determine whether a consumer is a covered borrower, a creditor may verify the status of a consumer by using a statement, code, or similar indicator describing that status, if any, contained in a consumer report obtained from a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, or a reseller of such a consumer report (as each of those terms is defined in the Fair Credit Reporting Act (15 U.S.C. 1681a) and any implementing regulation (12 CFR part 1022)).

(3) *Determination and recordkeeping; one-time determination permitted.* A creditor who makes a determination regarding the status of a consumer by using one or both of the methods set forth in paragraph (b)(2) of this section shall be deemed to be conclusive with respect to that transaction or account involving consumer credit between the creditor and that consumer, so long as that creditor timely creates and thereafter maintains a record of the information so obtained. A creditor may make the determination described in this paragraph (b), and keep the record of that information obtained at that time, solely at the time—

(i) A consumer initiates the transaction or 30 days prior to that time;

(ii) A consumer applies to establish the account or 30 days prior to that time; or

(iii) The creditor develops or processes, with respect to a consumer, a firm offer of credit that (among the criteria used by the creditor for the offer) includes the status of the

consumer as a covered borrower, so long as the consumer responds to that offer not later than 60 days after the time that the creditor had provided that offer to the consumer. If the consumer responds to the creditor's offer later than 60 days after the time that the creditor had provided that offer to the consumer, then the creditor may not rely upon its initial determination in developing or processing that offer, and, instead, may act on the consumer's response as if the consumer is initiating the transaction or applying to establish the account (as described in paragraph (b)(3)(i) or (ii) of this section).

§ 232.6 Mandatory loan disclosures.

(a) *Required information.* With respect to any extension of consumer credit (including any consumer credit originated or extended through the internet) to a covered borrower, a creditor shall provide to the covered borrower the following information before or at the time the borrower becomes obligated on the transaction or establishes an account for the consumer credit:

(1) A statement of the MAPR applicable to the extension of consumer credit;

(2) Any disclosure required by Regulation Z, which shall be provided only in accordance with the requirements of Regulation Z that apply to that disclosure; and

(3) A clear description of the payment obligation of the covered borrower, as applicable. A payment schedule (in the case of closed-end credit) or account-opening disclosure (in the case of open-end credit) provided pursuant to paragraph (a)(2) of this section satisfies this requirement.

(b) *One-time delivery; multiple creditors.* (1) The information described in paragraphs (a)(1) and (a)(3) of this section are not required to be provided to a covered borrower more than once for the transaction or the account established for consumer credit with respect to that borrower.

(2) *Multiple creditors.* If a transaction involves more than one creditor, then only one of those creditors must provide the disclosures in accordance with this section. The creditors may agree among themselves which creditor may provide the information described in paragraphs (a)(1) and (a)(3) of this section.

(c) *Statement of the MAPR*—(1) *In general.* A creditor may satisfy the requirement of paragraph (a)(1) of this section by describing the charges the creditor may impose, in accordance with this part and subject to the terms and conditions of the agreement, relating to the consumer credit to calculate the MAPR. Paragraph (a)(1) of this section shall not be construed as requiring a creditor to describe the MAPR as a numerical value or to describe the total dollar amount of all charges in the MAPR that apply to the extension of consumer credit.

(2) *Method of providing a statement regarding the MAPR.* A creditor may include a statement of the MAPR applicable to the consumer credit in the agreement with the covered borrower involving the consumer credit transaction. Paragraph (a)(1) of this section shall not be construed as requiring a creditor to include a statement of the MAPR applicable to an extension of consumer credit in any advertisement relating to the credit.

(3) *Model statement.* A statement substantially similar to the following statement may be used for the purpose of paragraph (a)(1) of this section: ''Federal law provides important protections to members of the Armed Forces and their dependents relating to extensions of consumer credit. In general, the cost of consumer credit to a member of the Armed Forces and his or her dependent may not exceed an annual percentage rate of 36 percent. This rate must include, as applicable to the credit transaction or account: The costs associated with credit insurance premiums; fees for ancillary products sold in connection with the credit transaction; any application fee charged (other than certain application fees for specified credit transactions or accounts); and any participation fee charged (other than certain participation fees for a credit card account).''

(d) *Methods of delivery*—(1) *Written disclosures.* The creditor shall provide the information required by paragraphs (a)(1) and (3) of this section in writing in a form the covered borrower can keep.

(2) *Oral disclosures.* (i) *In general.* The creditor also shall orally provide the information required by paragraphs (a)(1) and (3) of this section.

(ii) *Methods to provide oral disclosures.* A creditor may satisfy the requirement in paragraph (d)(2)(i) of this section if the creditor provides—

(A) The information to the covered borrower in person; or

(B) A toll-free telephone number in order to deliver the oral disclosures to a covered borrower when the covered borrower contacts the creditor for this purpose.

(iii) *Toll-free telephone number on application or disclosure.* If applicable, the toll-free telephone number must be included on—

(A) A form the creditor directs the consumer to use to apply for the transaction or account involving consumer credit; or

(B) A written disclosure the creditor provides to the covered borrower, pursuant to paragraph (d)(1) of this section.

(e) *When disclosures are required for refinancing or renewal of covered loan.* The refinancing or renewal of consumer credit requires new disclosures under this section only when the transaction for that credit would be considered a new transaction that requires disclosures under Regulation Z.

§ 232.7 Preemption.

(a) *Inconsistent laws.* 10 U.S.C. 987 as implemented by this part preempts any State or Federal law, rule or regulation, including any State usury law, to the extent such law, rule or regulation is inconsistent with this part, except that any such law, rule or regulation is not preempted by this part to the extent that it provides protection to a covered borrower greater than those protections provided by 10 U.S.C. 987 and this part.

(b) *Different treatment under State law of covered borrowers is prohibited.* A State may not:

(1) Authorize creditors to charge covered borrowers rates of interest for any consumer credit or loans that are higher than the legal limit for residents of the State, or

(2) Permit the violation or waiver of any State consumer lending protection covering consumer credit that is for the benefit of residents of the State on the basis of the covered borrower's nonresident or military status, regardless of the covered borrower's domicile or permanent home of record, provided that the protection would otherwise apply to the covered borrower.

§ 232.8 Limitations.

Title 10 U.S.C. 987 makes it unlawful for any creditor to extend consumer credit to a covered borrower with respect to which:

(a) The creditor rolls over, renews, repays, refinances, or consolidates any consumer credit extended to the covered borrower by the same creditor with the proceeds of other consumer credit extended by that creditor to the same covered borrower. This paragraph shall not apply to a transaction when the same creditor extends consumer credit to a covered borrower to refinance or renew an extension of credit that was not covered by this paragraph because the consumer was not a covered borrower at the time of the original transaction. For the purposes of this paragraph, the term ''creditor'' means a person engaged in the business of

extending consumer credit subject to applicable law to engage in deferred presentment transactions or similar payday loan transactions (as described in the relevant law), *provided however,* that the term does not include a person that is chartered or licensed under Federal or State law as a bank, savings association, or credit union.

(b) The covered borrower is required to waive the covered borrower's right to legal recourse under any otherwise applicable provision of State or Federal law, including any provision of the Servicemembers Civil Relief Act (50 U.S.C. App. 501 *et seq.*).

(c) The creditor requires the covered borrower to submit to arbitration or imposes other onerous legal notice provisions in the case of a dispute.

(d) The creditor demands unreasonable notice from the covered borrower as a condition for legal action.

(e) The creditor uses a check or other method of access to a deposit, savings, or other financial account maintained by the covered borrower, except that, in connection with a consumer credit transaction with an MAPR consistent with § 232.4(b), the creditor may:

(1) Require an electronic fund transfer to repay a consumer credit transaction, unless otherwise prohibited by law;

(2) Require direct deposit of the consumer's salary as a condition of eligibility for consumer credit, unless otherwise prohibited by law; or

(3) If not otherwise prohibited by applicable law, take a security interest in funds deposited after the extension of credit in an account established in connection with the consumer credit transaction.

(f) The creditor uses the title of a vehicle as security for the obligation involving the consumer credit, *provided however,* that for the purposes of this paragraph, the term ''creditor'' does not include a person that is chartered or licensed under Federal or State law as a bank, savings association, or credit union.

(g) The creditor requires as a condition for the extension of consumer credit that the covered borrower establish an allotment to repay the obligation. For the purposes of this paragraph only, the term ''creditor'' shall not include a ''military welfare society,'' as defined in 10 U.S.C. 1033(b)(2), or a ''service relief society,'' as defined in 37 U.S.C. 1007(h)(4).

(h) The covered borrower is prohibited from prepaying the consumer credit or is charged a penalty fee for prepaying all or part of the consumer credit.

§ 232.9 Penalties and remedies.

(a) *Misdemeanor.* A creditor who knowingly violates 10 U.S.C. 987 as implemented by this part shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(b) *Preservation of other remedies.* The remedies and rights provided under 10 U.S.C. 987 as implemented by this part are in addition to and do not preclude any remedy otherwise available under State or Federal law or regulation to the person claiming relief under the statute, including any award for consequential damages and punitive damages.

(c) *Contract void.* Any credit agreement, promissory note, or other contract with a covered borrower that fails to comply with 10 U.S.C. 987 as implemented by this part or which contains one or more provisions prohibited under 10 U.S.C. 987 as implemented by this part is void from the inception of the contract.

(d) *Arbitration.* Notwithstanding 9 U.S.C. 2, or any other Federal or State law, rule, or regulation, no agreement to arbitrate any dispute involving the extension of consumer credit to a covered borrower pursuant to this part shall be enforceable against any covered borrower, or any person who was a covered borrower when the agreement was made.

(e) *Civil liability*—(1) *In general.* A person who violates 10 U.S.C. 987 as implemented by this part with respect to any person is civilly liable to such person for:

(i) Any actual damage sustained as a result, but not less than $500 for each violation;

(ii) Appropriate punitive damages;

(iii) Appropriate equitable or declaratory relief; and

(iv) Any other relief provided by law.

(2) *Costs of the action.* In any successful action to enforce the civil liability described in paragraph (e)(1) of this section, the person who violated 10 U.S.C. 987 as implemented by this part is also liable for the costs of the action, together with reasonable attorney fees as determined by the court.

(3) *Effect of finding of bad faith and harassment.* In any successful action by a defendant under this section, if the court finds the action was brought in bad faith and for the purpose of harassment, the plaintiff is liable for the attorney fees of the defendant as determined by the court to be reasonable in relation to the work expended and costs incurred.

(4) *Defenses.* A person may not be held liable for civil liability under paragraph (e) of this section if the person shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors, except that an error of legal judgment with respect to a person's obligations under 10 U.S.C. 987 as implemented by this part is not a bona fide error.

(5) *Jurisdiction, venue, and statute of limitations.* An action for civil liability under paragraph (e) of this section may be brought in any appropriate United States district court, without regard to the amount in controversy, or in any other court of competent jurisdiction, not later than the earlier of:

(i) Two years after the date of discovery by the plaintiff of the violation that is the basis for such liability; or

(ii) Five years after the date on which the violation that is the basis for such liability occurs.

§ 232.10 Administrative enforcement.

The provisions of this part, other than § 232.9(a), shall be enforced by the agencies specified in section 108 of the Truth in Lending Act (15 U.S.C. 1607) in the manner set forth in that section or under any other applicable authorities available to such agencies by law.

§ 232.11 Servicemembers Civil Relief Act protections unaffected.

Nothing in this part may be construed to limit or otherwise affect the applicability of section 207 and any other provisions of the Servicemembers Civil Relief Act (50 U.S.C. App. 527).

§ 232.12 Effective dates.

(a) *In general.* This regulation shall take effect October 1, 2015, except that, other than as provided in this section and in § 232.13(b)(1), nothing in this part shall apply to consumer credit that is extended to a covered borrower and consummated before October 3, 2016.

(b) *Prior extensions of consumer credit.* Consumer credit that is extended to a covered borrower and consummated any time between October 1, 2007, and October 3, 2016, is subject to the definitions, conditions, and requirements of this part as were established by the Department and effective on October 1, 2007.

(c) *New extensions of consumer credit.* Except as provided in paragraphs (d) and (e) of this section with respect to extensions of consumer credit under

paragraph (b) of this section (and except as permitted by § 232.13(b)(1)), the requirements of this part that are effective as of October 1, 2015, shall apply only to a consumer credit transaction or account for consumer credit consummated or established on or after October 3, 2016.

(d) *Provisions of 10 U.S.C. 987(d)(2).* The amendments to 10 U.S.C. 987(d)(2) enacted in section 661(a) of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239, 126 Stat. 1785), as reflected in § 232.7(b), took effect on January 2, 2014.

(e) *Civil liability remedies.* The provisions set forth in § 232.9(e) shall apply with respect to consumer credit extended on or after January 2, 2013.

§ 232.13 Compliance dates.

(a) *In general.* Except as provided in paragraph (c) of this section, a creditor must comply with the requirements of this part, as may be applicable, with respect to a consumer credit transaction or account for consumer credit consummated or established on or after October 3, 2016, not later than that date.

(b) *Safe harbors for identifying a covered borrower*—(1) *New safe harbors.* Section 232.5 shall apply October 3, 2016.

(2) *Prior safe harbor valid until general compliance date.* The provisions relating to the identification of a covered borrower set forth in § 232.5(a) of the regulation established by the Department and effective on October 1, 2007 (including the interpretation by the Department that provides an exception from the safe harbor for the creditor's knowledge that the applicant is a covered borrower) shall remain in effect until October 3, 2016.

(c) *Limited exemption for credit card account; reservation of authority*—(1) *In general.* Notwithstanding § 232.3(f)(1) and subject to paragraph (c)(2) of this section, until October 3, 2017, consumer credit does not mean credit extended in a credit card account under an open-end (not home-secured) consumer credit plan.

(2) *Authority to issue an order to extend exemption.* The Secretary, or an official of the Department duly authorized by the Secretary, may, by order, extend the expiration of the exemption set forth in paragraph (c)(1) of this section, until a date not later than October 3, 2018.

Dated: July 13, 2015.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

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