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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2014–0233]

RIN 3150–AJ47

List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM 100 Cask System, Certificate of Compliance No. 1014, Amendment No. 8, Revision 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its spent fuel storage regulations by revising the Holtec International HI–STORM 100 Cask System listing within the ''List of approved spent fuel storage casks'' to add Revision 1 to Amendment No. 8 (effective May 2, 2012, as corrected on November 16, 2012), to the Certificate of Compliance (CoC) No. 1014. Amendment No. 8, Revision 1, changes burnup/cooling time limits for thimble plug devices, changes Metamic-HT material testing requirements, changes Metamic-HT material minimum guaranteed values, and updates fuel definitions to allow boiling water reactor fuel affected by certain corrosion mechanisms with specific guidelines to be classified as undamaged fuel.

DATES: This final rule is effective on February 16, 2016.

ADDRESSES: Please refer to Docket ID NRC–2014–0233 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–2014–0233. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Vanessa Cox, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–8342; email: *Vanessa.Cox@nrc.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

Section 218(a) of the Nuclear Waste Policy Act (NWPA) of 1982, as amended, requires that ''the Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, that ''[the Commission] shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel (SNF) in NRC-approved casks under a general license by publishing a final rule in part 72 of Title 10 of the *Code of Federal Regulations* (10 CFR), which added a new subpart K within 10 CFR part 72 entitled, ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled, ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on May 1, 2000 (65 FR 25241), that approved the Holtec International HI–STORM 100 Cask System design and added it to the list of NRC-approved cask designs in 10 CFR 72.214 as CoC No. 1014.

The NRC published a direct final rule on this revision to this amendment in the **Federal Register** on February 5, 2015 (80 FR 6430). The NRC also concurrently published a companion proposed rule on February 5, 2015 (80 FR 6466). The NRC received at least one significant adverse comment on the proposed rule; therefore, the NRC withdrew the direct final rule on April 20, 2015 (80 FR 21639), and is proceeding, in this document, to address the comments on the proposed rule (see Section III, ''Public Comment Analysis,'' of this document).

II. Discussion of Changes

By letter dated August 21, 2013, and as supplemented on December 20, 2013, and February 28, 2014, Holtec International submitted a revision request for the Holtec International HI–STORM 100 Cask System, CoC No. 1014, Amendment No. 8. As a revision, the CoC will supersede the previous version of the CoC and Technical

Specifications (TSs) that were effective May 2, 2012, as corrected on November 16, 2012, in their entirety. Amendment No. 8, Revision 1, changes burnup/cooling time limits for thimble plug devices, changes Metamic-HT material testing requirements, changes Metamic-HT material minimum guaranteed values, and updates fuel definitions to allow boiling water reactor fuel affected by certain corrosion mechanisms within specific guidelines to be classified as undamaged fuel.

As documented in the safety evaluation report (SER), the NRC staff performed a detailed safety evaluation of the proposed CoC amendment request. There are no significant changes to cask design requirements in the proposed CoC amendment. Considering the specific design requirements for each accident condition, the design of the cask would prevent loss of containment, shielding, and criticality control. If there is no loss of containment, shielding, or criticality control, the environmental impacts would not be significant. This revision does not reflect a significant change in design or fabrication of the cask. In addition, any resulting occupational exposure or offsite dose rates from the implementation of Amendment No. 8, Revision 1, would remain well within the 10 CFR part 20 limits. Therefore, the proposed CoC changes will not result in any radiological or non-radiological environmental impacts that significantly differ from the environmental impacts evaluated in the environmental assessment supporting the July 18, 1990, final rule. There will be no significant change in the types or amounts of any effluent released, no significant increase in individual or cumulative radiation exposure and no significant increase in the potential for or consequences of radiological accidents.

This final rule revises the Holtec International HI–STORM 100 Cask System listing in 10 CFR 72.214 by adding Amendment No. 8, Revision 1, to CoC No. 1014. The revision consists of the changes previously described, as set forth in the revised CoC and TSs. The revised TSs are identified in the SER. The revised Holtec International HI–STORM 100 Cask System design, when used under the conditions specified in the CoC, the TSs, and the NRC's regulations, will meet the requirements of 10 CFR part 72; therefore, adequate protection of public health and safety will continue to be ensured. When this final rule becomes effective, persons who hold a general license under 10 CFR 72.210 may load SNF into the Holtec International HI–STORM 100 Cask Systems that meets the criteria of Amendment No. 8, Revision 1, to CoC No. 1014 under 10 CFR 72.212.

III. Public Comment Analysis

The NRC received 16 comments from private citizens on the companion proposed rule to the direct final rule published on February 5, 2015. The NRC has not made any changes to the TSs or SER as a result of the public comments that the NRC has received. The NRC has, however, extended the effective date of the CoC in response to a comment.

Summary of Comments

The NRC received 16 comments on the companion proposed rule, many raising multiple and overlapping issues. Because the NRC received at least one significant adverse comment on the proposed rule (raising issues that the NRC deemed serious enough to warrant a substantive response to clarify the record), the NRC withdrew the direct final rule and is responding to the comments here. Other comments were not considered to be significant adverse comments because, in most instances, they were beyond the scope of this rulemaking. Nonetheless, in addition to responding to the issues raised in the significant adverse comments, the NRC is also taking this opportunity to respond to some of the issues raised in the comments that are beyond the scope of this rulemaking in order to clarify information about the CoC rulemaking process related to the comments received. The comments are summarized by issue and the NRC's responses follow.

Issue 1—Storage of Spent Nuclear Fuel

Several comments objected to the storage of SNF at the Indian Point nuclear plant and its proximity to New York City, and other comments objected to the storage of SNF, at any location, without a final repository approved.

NRC Response

The concern of SNF storage at the Indian Point nuclear plant, as well as the concern regarding the need for a final repository, are generic in nature and are not applicable to the HI–STORM Cask System, Amendment No. 8, Revision 1. This rulemaking is limited to allowing persons who hold a general license under 10 CFR 72.210 to load SNF into the Holtec International HI–STORM 100 Cask Systems if doing so meets the criteria of Amendment No. 8, Revision 1, to CoC No. 1014 under 10 CFR 72.212.

Issue 2—Change in Definition

Some comments also questioned the NRC's approval that SNF with certain types of corrosion fit within the definition of undamaged fuel. Some comments indicated that there was no explanation for this change in the definition. Another comment identified the concern with the change in the definition of undamaged fuel, as well as concerns with a variety of issues surrounding the manufacturing and use of this Holtec CoC cask system.

NRC Response

The inclusion of certain types of SNF corrosion in the undamaged fuel definition was addressed in detail in the NRC staff's SER which was referenced in the direct final rule published on February 5, 2015 (80 FR 6430), as was the staff's basis for determining that this CoC, as revised, complies with the NRC's regulations in 10 CFR part 72 and therefore, the revision ensures adequate protection of public health and safety. While these comments oppose the rule, they do not raise relevant or specific issues that were not previously addressed or considered by the NRC staff.

Issue 3—Other Agencies

One comment questioned why the NRC did not include other agencies in its Environmental Assessment (EA).

NRC Response

As explained in the direct final rule published on February 5, 2015 (80 FR 6430), the NRC determined that ''the proposed CoC changes will not result in any radiological or non-radiological environmental impacts that significantly differ from the environmental impacts evaluated in the environmental assessment supporting the July 18, 1990, final rule. There will be no significant change in the types or amounts of any effluent released, no significant increase in individual or cumulative radiation exposure and no significant increase in the potential for or consequences of radiological accidents.'' Therefore, no consultation was deemed necessary.

Issue 4—Time Allowed for Comments

Several comments objected to the time allowed by the NRC to provide comments on the companion proposed rule.

NRC Response

These comments do not provide any specific adverse comments on the companion proposed rule. Instead the comments cite concerns with the process used to issue the certificates. The NRC has determined that the

amount of time provided for the submission of comments on a rule of this nature is reasonable, and the comments provide no specific details that would result in a change to that determination.

Issue 5—Implementation Period

Although not commenting on the technical details of the rule, one commenter requested that the NRC consider a 180-day implementation period for the revision to HI–STORM 100 Cask System, Amendment No. 8, to allow general licensees time to incorporate any applicable administrative changes.

NRC Response

The NRC determined that this comment is significant and adverse as defined in Section II, ''Procedural Background,'' of the direct final rule, because the comment raises an issue serious enough to warrant a substantive response to clarify or complete the record.

A revision to a CoC amendment supersedes that specific amendment. Therefore, as the commenter indicates, any general licensee using the system authorized by this specific CoC amendment would have to update their records pursuant to 10 CFR 72.212(b)(5) to that of the revised system by the effective date of this revision.

At the time the application was submitted, according to the applicant, no casks subject to the amendment had been manufactured, and therefore, this was not an issue. However, as of February 5, 2015, upon publication of the direct final rule, several canisters manufactured under CoC No. 1014, Amendment No. 8 have been purchased and delivered to Exelon Generation Company, LLC (Exelon Generation), at its Dresden Nuclear Power Plant.

Given this change in circumstance, the NRC is revising the effective date of the revision to Amendment No. 8 of CoC 1014 to February 16, 2016,180 days from August 18, 2015, thereby providing more time for the general licensee to prepare the necessary paperwork pursuant to 10 CFR 72.212 before this revision becomes effective. Because this revision will supersede Amendment No. 8 in its entirety, the general licensee will have to be in compliance with 10 CFR 72.212 once this revision becomes effective.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC will revise the Holtec International HI–STORM 100 Cask System design listing in 10 CFR 72.214. This action does not constitute the establishment of a standard that contains generally applicable requirements.

V. Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this final rule is classified as Compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended, or the provisions of 10 CFR. Although an Agreement State may not adopt program elements reserved to the NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

VI. Plain Writing

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

VII. Environmental Assessment and Finding of No Significant Environmental Impact

A. The Action

The action is to amend 10 CFR 72.214 to revise the Holtec International HI–STORM 100 Cask System design listing within the ''List of approved spent fuel storage casks'' to revise Amendment No. 8 (effective May 2, 2012, as corrected on November 16, 2012), of CoC No. 1014 by adding Amendment No. 8, Revision 1. Under the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in subpart A of 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The NRC has made a finding of no significant impact on the basis of this environmental assessment.

B. The Need for the Action

This final rule revises an amendment of the CoC for the Holtec International HI–STORM 100 Cask System design within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. Specifically, Amendment No. 8, Revision 1, changes burnup/cooling time limits for thimble plug devices, changes Metamic-HT material testing requirements, changes Metamic-HT material minimum guaranteed values, and updates fuel definitions to allow boiling water reactor fuel affected by certain corrosion mechanisms within specific guidelines to be classified as undamaged fuel.

C. Environmental Impacts of the Action

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent fuel under a general license in cask designs approved by the NRC. The potential environmental impact of using NRC-approved storage casks was initially analyzed in the environmental assessment for the 1990 final rule. The environmental assessment for this CoC addition tiers off of the environmental assessment for the July 18, 1990, final rule. Tiering on past environmental assessments is a standard process under the National Environmental Policy Act.

The Holtec International HI–STORM 100 Cask System is designed to mitigate the effects of design basis accidents that could occur during storage. Design basis accidents account for human-induced events and the most severe natural phenomena reported for the site and surrounding area. Postulated accidents analyzed for an independent spent fuel storage installation (ISFSI), the type of facility at which a holder of a power reactor operating license would store spent fuel in casks in accordance with 10 CFR part 72, include tornado winds and tornado-generated missiles, a design basis earthquake, a design basis flood, an accidental cask drop, lightning effects, fire, explosions, and other incidents.

Considering the specific design requirements for each accident condition, the design of the cask would prevent loss of containment, shielding, and criticality control. If there is no loss of containment, shielding, or criticality

control, the environmental impacts would not be significant. This revision does not reflect a significant change in design or fabrication of the cask. In addition, because there are no significant design or production process changes, any resulting occupational exposures or offsite dose rates from the implementation of Amendment No. 8, Revision 1, would remain well within the 10 CFR part 20 limits. Therefore, the proposed CoC changes will not result in either radiological or non-radiological environmental impacts that significantly differ from the environmental impacts evaluated in the environmental assessment supporting the July 18, 1990, final rule. There will be no significant change in the types or amounts of any effluent released, no significant increase in individual or cumulative radiation exposures, and no significant increase in the potential for or consequences from radiological accidents. The NRC staff documented its safety findings in the SER for this revision.

D. Alternative to the Action

The alternative to this action is to deny approval of the changes in Amendment No. 8, Revision 1, and terminate the final rule. Consequently, any 10 CFR part 72 general licensee that seeks to load SNF into the Holtec International HI–STORM 100 Cask System in accordance with the changes described in proposed Amendment No. 8, Revision 1, would have to request an exemption from the requirements of 10 CFR 72.212 and 72.214. Under this alternative, interested licensees would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden on the NRC and the cost to each licensee. Therefore, the environmental impacts would be the same or less than the action.

E. Alternative Use of Resources

Approval of Amendment No. 8, Revision 1, of CoC No. 1014 would result in no irreversible commitments of resources.

F. Agencies and Persons Contacted

No agencies or persons outside the NRC were contacted in connection with the preparation of this environmental assessment.

G. Finding of No Significant Impact

The environmental impacts of the action have been reviewed under the requirements in 10 CFR part 51. Based on the foregoing environmental assessment, the NRC concludes that this final rule entitled, ''List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM 100 Cask System, Certificate of Compliance No. 1014, Amendment No. 8, Revision 1,'' will not have a significant effect on the human environment. Therefore, the NRC has determined that an environmental impact statement is not necessary for this final rule.

VIII. Paperwork Reduction Act Statement

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

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a current valid Office of Management and Budget control number.

IX. Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of SNF under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store SNF if it notifies the NRC in advance, the spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in 10 CFR 72.214. On May 1, 2000 (65 FR 25241), the NRC issued an amendment to 10 CFR part 72 that approved the Holtec International HI–STORM 100 Cask System design by adding it to the list of NRC-approved cask designs in 10 CFR 72.214.

On August 21, 2013, and as supplemented on December 20, 2013, and February 28, 2014, Holtec International submitted a revision request for the HI–STORM 100 Cask System, CoC No. 1014, Amendment No. 8, as described in Section II, ''Discussion of Changes,'' of this document.

The alternative to this action is to withhold approval of the changes requested in Amendment No. 8, Revision 1, and require any 10 CFR part 72 general licensee seeking to load SNF into the Holtec International HI–STORM 100 Cask System under the changes described in Amendment No. 8, Revision 1, to request an exemption from the requirements of 10 CFR 72.212 and 72.214. Under this alternative, each interested 10 CFR part 72 licensee would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden on the NRC and the costs to each affected licensee.

Approval of this final rule is consistent with previous NRC actions. Further, as documented in the SER and the EA, the final rule will have no adverse effect on public health and safety or the environment. This final rule has no significant identifiable impact or benefit on other Government agencies. Based on this regulatory analysis, the NRC concludes that the requirements of the final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and therefore, this action is recommended.

X. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This final rule affects only nuclear power plant licensees and Holtec International. These entities do not fall within the scope of the definition of small entities set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

XI. Backfitting and Issue Finality

For the reasons set forth below, the NRC has determined that the backfit rule (10 CFR 72.62) does not apply to this final rule. Therefore, a backfit analysis is not required. This final rule revises CoC No. 1014 for the Holtec International HI–STORM 100 Cask System, as currently listed in 10 CFR 72.214, ''List of approved spent fuel storage casks.'' Amendment No. 8, Revision 1, changes burnup/cooling time limits for thimble plug devices, changes Metamic-HT material testing requirements, changes Metamic-HT material minimum guaranteed values, and updates fuel definitions to allow boiling water reactor fuel affected by certain corrosion mechanisms within specific guidelines to be classified as undamaged fuel.

At the time the application was submitted, Holtec International indicated that no casks had been manufactured under this revision, but as of publication of the direct final rule, casks had been manufactured and delivered to a general licensee. Although Holtec International has manufactured some casks under the existing CoC No. 1014, Amendment No. 8 that is being revised by this final rule,

Holtec International, as the vendor, is not subject to backfitting protection under 10 CFR 72.62. Moreover, Holtec International requested the change and has requested to apply it to the existing casks manufactured under Amendment No. 8. Therefore, even if the vendor were deemed to be an entity protected from backfitting, this request represents a voluntary change and is not backfitting for Holtec International.

Under 10 CFR 72.62, general licensees are entities that are protected from backfitting, and in this instance, Holtec International has provided casks under CoC No. 1014, Amendment No. 8, to one general licensee. General licensees are required, pursuant to 10 CFR 72.212, to ensure that each cask conforms to the terms, conditions, and specifications of a CoC, and that each cask can be safely used at the specific site in question. Because the casks purchased and delivered under CoC No. 1014 Amendment No. 8, now must be evaluated under 10 CFR 72.212 consistent with the revisions in CoC No. 1014 Amendment 8, Revision 1, this change in the evaluation method and criteria constitutes a change in a procedure required to operate an ISFSI and, therefore, would constitute backfitting under 10 CFR 72.62(a)(2). However, in this instance, the general licensee voluntarily indicated its willingness to comply with the revised CoC, as long as the general licensee is provided adequate time to implement the revised CoC (see ADAMS No. ML15170A439). This final rule accommodates that request by extending the effective date for the final rule to February 16, 2016, 180 days from August 18, 2015. Therefore, although the general licensee is an entity protected from backfitting, this request represents a voluntary change and is not backfitting for this general licensee.

In addition, the changes in CoC No. 1014, Amendment No. 8, Revision 1 do not apply to casks which were manufactured to other amendments of CoC No. 1014, and, therefore, have no effect on current ISFSI licensees using casks which were manufactured to other amendments of CoC No. 1014. For these reasons, NRC approval of CoC No. 1014, Amendment No. 8, Revision 1, does not constitute backfitting for users of the HI–STORM 100 Cask System which were manufactured to other amendments of CoC No. 1014, under 10 CFR 72.62, 10 CFR 50.109(a)(1), or the issue finality provisions applicable to combined licenses in 10 CFR part 52.

For the reasons set forth above, no backfit analysis or additional documentation addressing the issue finality criteria in 10 CFR part 52 has been prepared by the NRC.

XII. Congressional Review Act

In accordance with the Congressional Review Act of 1996 (5 U.S.C. 801–808), the NRC has determined that this action is not a rule as defined in the Congressional Review Act.

XIII. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS Accession No.
CoC No. 1014, Amendment No. 8, Revision 1	ML14262A478
Safety Evaluation Report	ML14262A476
Technical Specifications, Appendix A	ML14262A480
Technical Specifications, Appendix B	ML14262A479
Application (portions are non-public/proprietary)	ML13235A082
December 20, 2013, Application Supplement	ML14009A271
February 28, 2014, Application Supplement	ML14064A344

The NRC may post materials related to this document, including public comments, on the Federal Rulemaking Web site at *http://www.regulations.gov* under Docket ID NRC–2014–0233. The Federal Rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2014–0233); (2) click the ''Sign up for Email Alerts'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Hazardous waste, Indians, Intergovernmental relations, Nuclear energy, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 72:

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2210e, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act of 1969 (42 U.S.C. 4332); Nuclear Waste Policy Act of 1982, secs. 117(a), 132, 133, 134, 135, 137, 141, 145(g), 148, 218(a) (42 U.S.C. 10137(a), 10152, 10153, 10154, 10155, 10157, 10161, 10165(g), 10168, 10198(a)); 44 U.S.C. 3504 note.

■ 2. In § 72.214, Certificate of Compliance No. 1014 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1014.

Initial Certificate Effective Date: May 31, 2000.

Amendment Number 1 Effective Date: July 15, 2002.

Amendment Number 2 Effective Date: June 7, 2005.

Amendment Number 3 Effective Date: May 29, 2007.

Amendment Number 4 Effective Date: January 8, 2008.

Amendment Number 5 Effective Date: July 14, 2008.

Amendment Number 6 Effective Date: August 17, 2009.

Amendment Number 7 Effective Date: December 28, 2009.

Amendment Number 8 Effective Date: May 2, 2012, as corrected on November 16, 2012 (ADAMS Accession No. ML12213A170); superseded by Revision 1 Effective Date: February 16, 2016.

Amendment Number 8, Revision 1 Effective Date: February 16, 2016.

Amendment Number 9 Effective Date: March 11, 2014.

SAR Submitted by: Holtec International.

SAR Title: Final Safety Analysis.

Report for the HI–STORM 100 Cask System.

Docket Number: 72–1014.

Certificate Expiration Date: May 31, 2020.

Model Number: HI–STORM 100.

* * * * *

Dated at Rockville, Maryland, this 4th day of August, 2015.

For the Nuclear Regulatory Commission.

Michael R. Johnson,

Acting Executive Director for Operation.

[FR Doc. 2015–20141 Filed 8–17–15; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2015–2002; Special Conditions No. 25–593–SC]

Special Conditions: Bombardier Inc. Model BD–700–2A12 and BD–700–2A13 Airplanes; Flight Envelope Protection, High-Speed Limiting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Bombardier Inc. Model BD–700–2A12 and BD–700–2A13 airplanes. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Bombardier Inc. on August 18, 2015. We must receive your comments by October 2, 2015.

ADDRESSES: Send comments identified by docket number FAA–2015–2002 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 8 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/*, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov/.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Joe Jacobsen, FAA, Airplane and Flight Crew Interface, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2011; facsimile 425–227–1149.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions is impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected airplanes.

In addition, the substance of these special conditions has been subject to the public-comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon publication in the **Federal Register**.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On May 30, 2012, Bombardier Aerospace Inc. applied for a type certificate for their new Model BD–700–2A12 and BD–700–2A13 airplanes. These airplanes are derivatives of the Model BD–700 series airplanes. These two models are marketed as the Bombardier Global 7000 and Global 8000, respectively. These are ultra-long-range, executive-interior business jets, with a maximum certified passenger capacity of 19.

The Global 7000 and Global 8000 airplanes will be assembled without a completed interior in Toronto, Ontario, and flight tested at the Bombardier Flight Test Center in Wichita, Kansas. Like the existing BD–700 airplanes, Global 7000 and Global 8000 custom passenger interiors and airplane delivery will be provided from Montreal, Quebec, via supplemental type certificate.

The Global 7000 and Global 8000 share an identical supplier base and significant design-element commonality, the highlights of which are:

- Two GE Passport™ 20 aft-mounted engines
- New high-speed transonic wing
- Fly-by-wire control system with side-stick controls
- Pro Line Fusion® avionics suite

Both the Model BD–700–2A12 and –2A13 airplanes have a wingspan of 104.1 feet, a height of 26.7 feet, a maximum operating altitude of 51,000 feet, a maximum operating speed of 340 knots, and a maximum fuselage diameter of 8.84 feet. The BD–700–2A12 is 111.9 feet long, with a maximum take-off weight of 106,250 pounds; and the –2A13 is 102.9 feet in length at 104,800 pounds.

The longitudinal control-law design of both airplane designs incorporate a high-speed protection system in the normal mode; this would prevent the pilot from inadvertently or intentionally exceeding a speed approximately equivalent to V_{FC} or attaining V_{DF}. Current Title 14, Code of Federal Regulations (14 CFR) part 25 sections do not relate to a high-speed limiter that might preclude or modify flying-qualities assessments in the high-speed region.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Bombardier Inc. must show that the Model BD–700–2A12 and BD–700–2A13 airplanes meet the applicable provisions of part 25 as amended by Amendments 25–1 through 25–129.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model BD–700–2A12 and BD–700–2A13 airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Model BD–700–2A12 and BD–700–2A13 airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36; and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The Bombardier Model BD–700–2A12 and BD–700–2A13 airplanes will incorporate the following novel or unusual design feature:

An electronic flight-control system that contains fly-by-wire control laws, including envelope protections, for high-speed protection functions. Current part 25 requirements do not contain appropriate standards for high-speed protection systems.

Discussion

Model BD–700–2A12 and BD–700–2A13 airplanes are equipped with a high-speed protection system, which, when the system detects airspeed exceeding a small tolerance above V_{MO}/M_{MO}, employs a high-speed limiter to automatically deploy multifunction spoilers (MFS) as speed brakes. The MFS retract automatically when the system detects that airspeed is sufficiently reduced.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Bombardier Model BD–700–2A12 and BD–700–2A13 airplanes. Should Bombardier Inc. apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on Bombardier Model BD–700–2A12 and BD–700–2A13 airplanes. It is not a rule of general applicability.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, because a delay would significantly affect the certification of the airplane, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon publication in the **Federal Register**. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Bombardier Model BD–700–2A12 and BD–700–2A13 airplanes. The requirements of § 25.253 (high-speed characteristics), and its related policy, are applicable to the Model BD–700–2A12 and BD–700–2A13 airplanes, and are not affected by these special conditions.

In addition to § 25.143, the following requirement applies:

Operation of the high-speed limiter during all routine and descent procedure flight must not impede normal attainment of speeds up to high-speed warning.

Issued in Renton, Washington, on August 7, 2015.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–20299 Filed 8–17–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2015–0311; Special Conditions No. 25–592–SC]

Special Conditions: Gulfstream Aerospace Corporation Model GVII–G500 Airplanes; Electronic Flight Control System: Control Surface Position Awareness

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions, request for comments.

SUMMARY: These special conditions are issued for Gulfstream Model GVII–G500 airplanes. These airplanes have a novel or unusual design feature associated with control-surface awareness provided by the electronic flight-control system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Gulfstream on August 18, 2015. We must receive your comments by October 2, 2015.

ADDRESSES: Send comments identified by docket number FAA–2015–0311 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building

Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/*, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov/*.

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Joe Jacobsen, FAA, Airplane and Flightcrew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2011; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions is impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected airplanes.

In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon publication in the **Federal Register**.

Background

On March 29, 2012, Gulfstream applied for a type certificate for their new Model GVII–G500 airplane. This airplane is a large-cabin business jet capable of accommodating up to 19 passengers. It will incorporate a low, swept-wing design with winglets and a T-tail. The powerplant will consist of two aft-fuselage mounted Pratt & Whitney turbofan engines. Avionics will include four primary display units and multiple touchscreen controllers. The flight-control system is a three-axis, fly-by-wire system controlled through active control/coupled side sticks.

The Model GVII–G500 airplane will have a wingspan of approximately 87 ft. and a length of just over 91 ft. Maximum takeoff weight will be approximately 76,850 lbs and maximum takeoff thrust will be approximately 15,135 lbs. Maximum range will be approximately 5,000 nm and maximum operating altitude will be 51,000 ft.

In airplanes with electronic flight-control systems, a direct correspondence between pilot-control position and the associated airplane control-surface position is not always apparent. Under certain circumstances, a commanded maneuver that may not involve a large flightcrew-control input may nevertheless require a large control-surface movement to accomplish, possibly encroaching on a control-surface or actuation-system limit without the flightcrew's knowledge. This situation can arise in both piloted (*i.e.,* manual) and autopilot flight, and may be further intensified on airplanes where the pilot controls are not back-driven during autopilot system operation.

These special conditions for control-surface awareness, applicable to Gulfstream Model GVII–G500 airplanes, require suitable flight-control-position annunciation and control-system mode of operation to be provided to the flightcrew when a flight condition exists in which nearly full surface authority (not crew-commanded) is being utilized. Suitability of such a display must take into account that some pilot-demanded maneuvers (*e.g.,* rapid roll) are necessarily associated with intended full performance, which may saturate the surface. Therefore, simple alerting systems, which would function in both intended or unexpected control-limiting situations, must be properly balanced between needed crew awareness and nuisance features. A monitoring system that might compare airplane motion, surface deflection, and pilot side-stick controller (SSC) demand, could be useful for elimination of nuisance alerting.

Type Certification Basis

Under Title 14, Code of Federal Regulations (14 CFR) 21.17, Gulfstream must show that the Model GVII–G500 airplane meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–137.

In addition, the certification basis includes certain special conditions, exemptions, or later amended sections of the applicable part that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model GVII–G500 airplane because of a novel or unusual design feature, special conditions are prescribed under § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Gulfstream Model GVII–G500 airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36; and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in 14 CFR 11.19, under § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The Gulfstream Model GVII–G500 airplane incorporates the following novel or unusual design features: Electronic flight-control system providing control-surface awareness to the flightcrew.

Discussion

Gulfstream Aerospace Corporation is intending to utilize an electronic flight-control system (including side-stick controllers for pitch and roll control) in their new Model GVII–G500 airplane. With an electronic flight-control system and no direct coupling from the flightdeck controller to the control surface, the pilot may not be aware of the actual surface position utilized to fulfill the requested demand. Some unusual flight conditions, arising from atmospheric conditions, airplane malfunctions, or engine failures, may result in full or nearly full control-surface deflection. Unless the flightcrew is made aware of excessive deflection or impending control-surface limiting, piloted or auto-flight system control of the airplane might be inadvertently continued in such a manner as to cause loss of airplane control, or other unsafe stability or performance characteristics.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions apply to Gulfstream Model GVII–G500 airplanes. Should Gulfstream apply later for a change to the type certificate to include another model incorporating the same or similar novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on Gulfstream Model GVII–G500 airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Gulfstream Model GVII–G500 airplanes.

In addition to the requirements of §§ 25.143, 25.671, 25.672, and 25.1322, when a flight condition exists where, without being commanded by the crew, control surfaces are coming so close to their limits that return to the normal flight envelope, or continuation of safe flight, or both, requires a specific crew action, a suitable flight-control-position annunciation must be provided to the crew, unless other existing indications are found adequate or sufficient to prompt that action.

Note: The term ''suitable'' indicates an appropriate balance between necessary operation and nuisance factors.

Issued in Renton, Washington, on August 7, 2015.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–20296 Filed 8–17–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 870

[Docket No. FDA–2015–N–2723]

Medical Devices; Cardiovascular Devices; Classification of the Esophageal Thermal Regulation Device

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

SUMMARY: The Food and Drug Administration (FDA) is classifying the esophageal thermal regulation device into class II (special controls). The special controls that will apply to the device are identified in this order and will be part of the codified language for the esophageal thermal regulation device's classification. The Agency is classifying the device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device.

DATES: This order is effective August 18, 2015. The classification was applicable on June 23, 2015.

FOR FURTHER INFORMATION CONTACT: Lydia Glaw, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1102, Silver Spring, MD 20993–0002, 301–796–1456, *Lydia.glaw@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976 (the date of enactment of the Medical Device Amendments of 1976), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II, or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807) of the regulations.

Section 513(f)(2) of the FD&C Act, as amended by section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144), provides two procedures by which a person may request FDA to classify a device under the criteria set forth in section 513(a)(1). Under the first procedure, the person submits a premarket notification under section 510(k) of the FD&C Act for a device that has not previously been classified and, within 30 days of receiving an order classifying the device into class III under section 513(f)(1), the person requests a classification under section 513(f)(2) of the FD&C Act. Under the second procedure, rather than first submitting a premarket notification under section 510(k) of the FD&C Act and then a request for classification under the first procedure, the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence and requests a classification under section 513(f)(2) of the FD&C Act. If the person submits a request to classify the device under this second procedure, FDA may decline to undertake the classification request if FDA identifies a legally marketed device that could provide a reasonable basis for review of substantial equivalence with the device or if FDA determines that the device submitted is not of ''low-moderate risk'' or that general controls would be inadequate to control the risks and special controls to mitigate the risks cannot be developed.

In response to a request to classify a device under either procedure provided by section 513(f)(2) of the FD&C Act, FDA will classify the device by written order within 120 days. This classification will be the initial classification of the device. On May 8, 2014, Advanced Cooling Therapy, LLC, submitted a request for classification of the Esophageal Cooling Device under section 513(f)(2) of the FD&C Act. The manufacturer recommended that the device be classified into class II (Ref. 1).

In accordance with section 513(f)(2) of the FD&C Act, FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1). FDA classifies devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the request, FDA determined that the device could be classified into class II with the

establishment of special controls. FDA believes these special controls, in addition to general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on June 23, 2015, FDA issued an order to the requestor classifying the device into class II. FDA is codifying the classification of the device by adding 21 CFR 870.5910.

Following the effective date of this final classification order, any firm submitting a premarket notification (510(k)) for an esophageal thermal regulation device will need to comply with the special controls named in this final order. The device is assigned the generic name esophageal thermal regulation device, and it is identified as a prescription device used to apply a specified temperature to the endoluminal surface of the esophagus via an external controller. This device may incorporate a mechanism for gastric decompression and suctioning. The device is used to regulate patient temperature.

FDA has identified the following risks to health associated specifically with this type of device, as well as the mitigation measures required to mitigate these risks in table 1.

TABLE 1—ESOPHAGEAL THERMAL REGULATION DEVICE RISKS AND MITIGATION MEASURES

Identified risk	Mitigation measure
Adverse tissue reaction.	Biocompatibility testing.
Gastric distension.	Non-clinical performance evaluation. Labeling.
Injury to the esophagus.	Non-clinical performance evaluation. Animal testing. Labeling.
Harmful hypo/hyperthermia.	Non-clinical performance evaluation. Animal testing. Labeling.
Injury to the trachea.	Labeling.

FDA believes that the following special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of the safety and effectiveness:

- The patient contacting materials must be demonstrated to be biocompatible.
- Non-clinical performance evaluation must demonstrate that the device performs as intended under anticipated conditions of use. The following performance characteristics must be tested:
  - Mechanical integrity testing;
  - Testing to determine temperature change rate(s);
  - Testing to demonstrate compatibility with the indicated external controller; and
  - Shelf life testing.
- Animal testing must demonstrate that the device does not cause esophageal injury and that body temperature remains within appropriate boundaries under anticipated conditions of use.
- Labeling must include the following:
  - Detailed insertion instructions;
  - Warning against attaching the device to unintended connections, such as external controllers for which the device is not indicated, or pressurized air outlets instead of vacuum outlets for those devices, including gastric suction;
  - The operating parameters, name, and model number of the indicated external controller; and
  - The intended duration of use.

Esophageal thermal regulation devices are prescription devices restricted to patient use only upon the authorization of a practitioner licensed by law to administer or use the device; see 21 CFR 801.109 (*Prescription devices*).

Section 510(m) of the FD&C Act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k), if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined that premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of the device. Therefore, this device type is not exempt from premarket notification requirements. Persons who intend to market this type of device must submit to FDA a premarket notification, prior to marketing the device, which contains information about the esophageal thermal regulation device they intend to market.

II. Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 807, subpart E, regarding premarket notification submissions have been approved under OMB control number 0910–0120, and the collections of information in 21 CFR part 801, regarding labeling have been approved under OMB control number 0910–0485.

IV. Reference

The following reference has been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and is available electronically at *http://www.regulations.gov.*

1. DEN140018: De Novo Request per 513(f)(2) from Advanced Cooling Therapy, LLC, dated May 8, 2014.

List of Subjects in 21 CFR Part 870

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 870 is amended as follows:

PART 870—CARDIOVASCULAR DEVICES

■ 1. The authority citation for 21 CFR part 870 continues to read as follows:

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

■ 2. Add § 870.5910 to subpart F to read as follows:

§ 870.5910 Esophageal thermal regulation device.

(a) *Identification.* An esophageal thermal regulation device is a prescription device used to apply a specified temperature to the endoluminal surface of the esophagus via an external controller. This device may incorporate a mechanism for gastric decompression and suctioning. The device is used to regulate patient temperature.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) The patient contacting materials must be demonstrated to be biocompatible.

(2) Non-clinical performance evaluation must demonstrate that the device performs as intended under anticipated conditions of use. The

following performance characteristics must be tested:

(i) Mechanical integrity testing.

(ii) Testing to determine temperature change rate(s).

(iii) Testing to demonstrate compatibility with the indicated external controller.

(iv) Shelf life testing.

(3) Animal testing must demonstrate that the device does not cause esophageal injury and that body temperature remains within appropriate boundaries under anticipated conditions of use.

(4) Labeling must include the following:

(i) Detailed insertion instructions.

(ii) Warning against attaching the device to unintended connections, such as external controllers for which the device is not indicated, or pressurized air outlets instead of vacuum outlets for those devices, including gastric suction.

(iii) The operating parameters, name, and model number of the indicated external controller.

(iv) The intended duration of use.

Dated: August 12, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–20317 Filed 8–17–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1902, 1903, 1904, 1952, 1953, 1954, 1955, and 1956

[Docket No. OSHA–2014–0009]

RIN 1218–AC76

Streamlining of Provisions on State Plans for Occupational Safety and Health

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Direct final rule.

SUMMARY: This document primarily amends OSHA regulations to remove the detailed descriptions of State plan coverage, purely historical data, and other unnecessarily codified information. In addition, this document moves most of the general provisions of subpart A of part 1952 into part 1902, where the general regulations on State plan criteria are found. It also amends several other OSHA regulations to delete references to part 1952, which will no longer apply. The purpose of these revisions is to eliminate the unnecessary codification of material in the Code of Federal Regulations and thus save the time and funds currently expended in publicizing State plan revisions. The streamlining of OSHA State plan regulations does not change the areas of coverage or any other substantive components of any State plan. It also does not affect the rights and responsibilities of the State plans, or any employers or employees, except to eliminate the burden on State plan designees to keep paper copies of approved State plans and plan supplements in an office, and to submit multiple copies of proposed State plan documents to OSHA. This document also contains a request for comments for an Information Collection Request (ICR) under the Paperwork Reduction Act of 1995 (PRA), which covers all collection of information requirements in OSHA State plan regulations.

DATES: This direct final rule is effective October 19, 2015. Comments and additional materials (including comments on the information-collection (paperwork) determination described under the section titled **SUPPLEMENTARY INFORMATION** of this document) must be submitted (post-marked, sent or received) by September 17, 2015.

ADDRESSES: You may submit comments, identified by docket number OSHA–2014–0009, or regulatory information number (RIN) 1218–AC76 by any of the following methods:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions on-line for making electronic submissions; or

Fax: If your submission, including attachments, does not exceed 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648; or

U.S. mail, hand delivery, express mail, messenger or courier service: You must submit your comments and attachments to the OSHA Docket Office, Docket No OSHA–2014–0009, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). Deliveries (hand, express mail, messenger and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., EST.

Instructions for submitting comments: All submissions must include the Docket Number (Docket No. OSHA–2014–0009) or the RIN number (RIN 1218–AC76) for this rulemaking. Because of security-related procedures, submission by regular mail may result in significant delay. Please contact the OSHA Docket Office for information about security procedures for making submissions by hand delivery, express delivery and messenger or courier service.

All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at *http://www.regulations.gov.* Therefore, caution should be taken in submitting personal information, such as Social Security numbers and birth dates.

Docket: To read or download submissions in response to this **Federal Register** document, go to docket number OSHA–2014–0009, at *http://www.regulations.gov.* All submissions are listed in the *http://www.regulations.gov* index: However, some information (*e.g.*, copyrighted material) is not publicly available to read or download through that Web page. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office.

Electronic copies of this **Federal Register** document are available at *http://www.regulations.gov.* This document, as well as news releases and other relevant information, is available at OSHA's Web page at *http://www.osha.gov.* A copy of the documents referenced in this document may be obtained from: Office of State Programs, Directorate of Cooperative and State Programs, Occupational Safety and Health Administration, Room N3700, 200 Constitution Avenue NW., Washington, DC 20210, (202) 693–2244, fax (202) 693–1671.

FOR FURTHER INFORMATION CONTACT: *For press inquiries:* Francis Meilinger, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999; email: *meilinger.francis2@dol.gov.*

For general and technical information: Douglas J. Kalinowski, Director, OSHA Directorate of Cooperative and State Programs, Room N–3700, U.S. Department of Labor, 200 Constitution Avenue NW., Washington DC 20210; telephone: (202) 693–2200; email: *kalinowski.doug@dol.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 18 of the Occupational Safety and Health Act of 1970 (the Act), 29 U.S.C. 667, provides that States that desire to assume responsibility for the development and enforcement of

occupational safety and health standards may do so by submitting, and obtaining federal approval of, a State plan. States may obtain approval for plans that cover private-sector employers and State and local government employers (comprehensive plans) or for plans that only cover State and local government employers.

From time to time changes are made to these State plans, particularly with respect to the issues which they cover. Procedures for approval of and changes to comprehensive State plans are set forth in the regulations at 29 CFR part 1902 and 29 CFR part 1953. A description of each comprehensive State plan has previously been set forth in 29 CFR part 1952, subparts C–FF. These descriptions have contained the following sections: Description of the plan, Developmental schedule, Completion of developmental steps and certifications, Staffing benchmarks, Final approval determination (if applicable), Level of Federal enforcement, Location where the State plan may be physically inspected, and Changes to approved plan.

Procedures for approval of a State plan covering State and local government employees only are set forth in the regulations at 29 CFR part 1956, subparts A–C. Pursuant to 29 CFR 1956.21, procedures for changes to these State plans are also governed by 29 CFR part 1953. A description of each State plan for State and local government employees only has previously been set forth in 29 CFR part 1956, subparts E–I. These subparts have contained the following sections: Description of the plan as certified (or as initially approved), Developmental schedule, Completed developmental steps and certification (if applicable), and Location of basic State plan documentation.

The area of coverage of each State plan has previously been codified at 29 CFR part 1952 under each State's subpart within the sections entitled ''Final approval determination'' and ''Level of Federal enforcement,'' and in 29 CFR part 1956 within the section on the description of the plan. Therefore, any change to a State plan's coverage or other part of the State plan description contained in 29 CFR part 1952 or 29 CFR part 1956 has thus far necessitated an amendment to the language of the CFR, which has required the expenditure of additional time and resources, such as those needed for printing. Furthermore, reprinting parts 1952 and 1956 in the annual CFR publication has necessitated the expenditure of additional time and resources. The individual descriptions of the State plans consisted of 103 pages in the July 1, 2013 revision of title 29, part 1927 to end, of the CFR. For these reasons, OSHA is streamlining parts 1952 and 1956 to delete the detailed descriptions of State plan coverage, purely historical data, and other unnecessarily codified information, thus saving time and funds currently expended in publishing changes to these parts of the CFR.

There is no legal statutory requirement that individual State plans be described in the CFR. The CFR is a codification of the documents of each agency of the Government having general applicability and legal effect, issued or promulgated by the agency in the **Federal Register**. 44 U.S.C. 1510(a) and (b). The description of a State plan is not a document of general applicability; it only applies to a particular State. Nevertheless, in this document, OSHA sets forth brief descriptions of each State plan that will be retained in the CFR in part 1952 in order to make this information readily available to those conducting legal research and relying on the CFR. Brief descriptions of comprehensive plans are included in subpart A of part 1952 and brief descriptions of State plans covering State and local government employees only are included in subpart B of part 1952. Any significant changes that would make these descriptions outdated, such as a withdrawal or grant of final approval, will continue to be codified in the CFR.

The partial deletions of the State plan descriptions from the CFR will not decrease transparency. Each section of part 1952 continues to note each State plan, the date of its initial approval, and, where applicable, the date of final approval, the existence of an operational status agreement, and the approval of staffing requirements (''benchmarks''). Each section makes a general statement of coverage indicating whether the plan covers all private-sector and State and local government employers, with some exceptions, or State and local government employers only. Each section also notes that current information about these coverage exceptions and additional details about the State plan can be obtained from the Web page on the OSHA public Web site describing the particular State plan (a link is referenced). The OSHA Web page for each State plan will also be updated to include the latest information on coverage and other important changes. Furthermore, the other information about the State plan that is currently in the CFR will still be available in the **Federal Register**, and can be searched electronically at *https://www.federalregister.gov* and is also available in printed form. The **Federal Register** can also be searched electronically on commercially available legal databases. When changes are made to State plan coverage, all of the information on coverage will be reprinted in the **Federal Register** along with the change so that readers will not have to search through many **Federal Register** notices to obtain a comprehensive description of coverage.

In addition to changing the individual descriptions of all State plans within part 1952, OSHA is making several other housekeeping changes. First, OSHA is moving the provisions of subpart A of part 1952 that pertain to the required criteria for State plans, to part 1902. (The following provisions are moved to part 1902: 29 CFR 1952.4, Injury and illness recording and reporting requirements; 29 CFR 1952.6, Partial approval of State plans; 29 CFR 1952.8, Variations, tolerances, and exemptions affecting the national defense; 29 CFR1952.9, Variances affecting multi-state employers; 29 CFR 1952.10, Requirements for approval of State posters; and 29 CFR 1952.11, State and local government employee programs.) As a result, the complete criteria for State plans will be located within part 1902.

OSHA is deleting 29 CFR 1952.1 (Purpose and scope) and 29 CFR 1952.2 (Definitions) because the changes described above and the restructuring of part 1952 make these provisions unnecessary. OSHA is also deleting 29 CFR 1952.3 (Developmental plans) because that material is covered by 29 CFR 1902.2(b). The text of 29 CFR 1952.5 (Availability of State plans) used to require complete copies of each State plan, including supplements thereto, to be kept at OSHA's National Office, the office of the nearest OSHA Regional Administrator, and the office of the State plan agency listed in part 1952. OSHA is deleting 29 CFR 1952.5 because with the widespread use of electronic document storage and the internet, it is no longer necessary to physically store such information in order to make it available to the public. Information about State plans can now be found on each State plan's Web site, as well as on OSHA's Web site. For the same reasons, OSHA is deleting the language in 29 CFR 1953.3(c) (Plan supplement availability) which discusses making State plan documents available for public inspection and photocopying in designated offices. The text of 29 CFR 1952.7(a), which deals with product standards, is being deleted because the explanation of section 18(c)(2) of the Act, 29 U.S.C. 667(c)(2)

on product standards is already covered by 29 CFR 1902.3(c)(2). However, § 1952.7(b) is being moved to the end of § 1902.3(c)(2) because that material was not previously included. In addition, OSHA is deleting references to part 1952 from several other parts of the regulations, such as parts 1903, 1904, 1953, 1954 and 1955, because these references are no longer accurate due to the changes made by this streamlining. Where appropriate, OSHA is inserting references to the newly numbered part 1902.

Finally, OSHA is making some further minor changes to part 1902. The text of 29 CFR 1902.3(j), which briefly describes State plans covering State and local government employees, is being deleted because a more detailed description of State plan coverage of State and local government employees, formerly set forth in 29 CFR 1952.11, is now being incorporated into 29 CFR part 1902 as § 1902.4(d). This change necessitates the re-designation of paragraphs in § 1902.3. Also, OSHA is changing 29 CFR 1902.10(a) to reduce the number of copies a State agency must submit in order to obtain approval of a State plan. With the advent of computer technology the submission of extra paper copies of documents is not necessary. OSHA also is deleting outdated references to an address in 29 CFR 1902.11(c) and (d).

Administrative Procedure Act and Direct Final Rulemaking

The notice and comment rulemaking procedures of section 553 of the Administrative Procedure Act (APA) do not apply ''to interpretive rules, general statements of policy or, rules of agency organization, procedure, or practice'' or when the agency for good cause finds that ''notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(A), (B). The revisions set forth in this document do not implement any substantive change in the development, operation or monitoring of State plans. Nor do these revisions change the coverage or other enforcement responsibilities of the State plans or federal OSHA. The compliance obligations of employers and the rights of employees remain unaffected. Therefore, OSHA for good cause finds that notice and comment is unnecessary. In addition, the elimination of the requirement to make State plan documents available in certain federal and State offices and the reduction of the number of copies of a proposed State plan which a State agency must submit, are purely procedural changes. Upon the issuance of this document, future alterations to State plan coverage will only require a simple easily searchable notice to be published in the **Federal Register** and an update to OSHA's State plan Web page. For these reasons, publication in the **Federal Register** of a notice of proposed rulemaking and request for comments are not required for these revisions.

OSHA is publishing a companion proposed rule along with this direct final rule in the ''Proposed Rules'' section of this **Federal Register**. An agency uses direct final rulemaking when it anticipates that a rule will not be controversial. OSHA does not consider this rule to be such because it primarily consists of changes in the organization of State plan information housed within the CFR, and the resultant re-numbering and updates to cross-references throughout the CFR.

In direct final rulemaking, an agency publishes a direct final rule in the **Federal Register** with a statement that the rule will become effective unless the agency receives significant adverse comment within a specified period. The agency may publish an identical proposed rule at the same time. If the agency receives no significant adverse comment in response to the direct final rule, the agency typically confirms the effective date of a direct final rule through a separate **Federal Register** document. If the agency receives a significant adverse comment, the agency withdraws the direct final rule and treats such comment as a response to the proposed rule. For purposes of this direct final rule and the companion proposed rule, a significant adverse comment is one that explains why the rule would be inappropriate.

The comment period for the direct final rule runs concurrently with that of the proposed rule. OSHA will treat comments received on the direct final rule as comments regarding the proposed rule. OSHA also will consider significant adverse comment submitted to this direct final rule as comment to the companion proposed rule. If OSHA receives no significant adverse comment to either this direct final rule or the proposal, OSHA will publish a **Federal Register** document confirming the effective date of the direct final rule and withdrawing the companion proposed rule. Such confirmation may include minor stylistic or technical changes to the document. If OSHA receives a significant adverse comment on either the direct final rule or the proposed rule, it will publish a timely withdrawal of the direct final rule and proceed with the proposed rule. In the event OSHA withdraws the direct final rule because of significant adverse comment, OSHA will consider all timely comments received in response to the direct final rule when it continues with the proposed rule. After carefully considering all comments to the direct final rule and the proposal, OSHA will decide whether to publish a new final rule.

OMB Review Under the Paperwork Reduction Act of 1995

This direct final rule revises ''collection of information'' (paperwork) requirements that are subject to review by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1995 (''PRA–95''), 44 U.S.C. 3501 *et seq.*, and OMB's regulations at 5 CFR part 1320. The Paperwork Reduction Act defines a ''collection of information'' as ''the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public of facts or opinions by or for an agency regardless of form or format'' (44 U.S.C. 3502(3)(A)). OMB approved the collection of information requirements currently contained in the regulations associated with OSHA-approved State Plans (29 CFR parts 1902, 1952, 1953, 1954, and 1956) under OMB Control Number 1218–0247.

Through emergency processing procedures, OSHA submitted a request that OMB revise the collection of information requirements contained in these regulations within 45 days of publication. The direct final rule would not impose new collection of information requirements for purposes of PRA–95; therefore, the Agency does not believe that this rule will impact burden hours or costs. The direct final rule would move the current collection of information requirement provisions of subpart A of part 1952, pertaining to required criteria for State plans, to part 1902. The direct final rule would delete the text of current 29 CFR 1952.5 (Availability of State plans) requiring complete copies of each State plan, including supplements thereto, to be kept at OSHA's National Office, the nearest OSHA Regional office, and the office of the State plan agency. The rule would also delete the language in current 29 CFR 1953.3(c) (Plan supplement availability) which discusses making State plan documents available for public inspection and photocopying in designated offices. The rule would also reduce from ten to one the number of copies of the State plan which a State agency must submit under 29 CFR 1902.10(a) in order to obtain approval of the State plan. Finally, the direct final rule would revise

regulations containing current collection of information requirements at 29 CFR parts 1902, 1952, 1953, 1954, and 1956 to delete or update cross-references, remove duplicative provisions, and re-designate paragraphs.

OSHA has submitted an ICR addressing the collection of information requirements identified in this rule to OMB for review (44 U.S.C. 3507(d)). OSHA solicits comments on the proposed extension and revision of the collection of information requirements and the estimated burden hours associated with the regulations associated with OSHA-approved State Plans, including comments on the following:

Whether the proposed collection of information requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;

The accuracy of OSHA's estimate of the burden (time and cost) of the information collection requirements, including the validity of the methodology and assumptions used;

Enhancing the quality, utility, and clarity of the information collected; and

Minimizing the burden on employers who must comply, for example, by using automated or other technological techniques for collecting and transmitting information.

Pursuant to 5 CFR 1320.5(a)(1)(iv), OSHA provides the following summary of the Occupational Safety and Health State Plans Information Collection Request (ICR):

1. *Type of Review:* Revision of a currently approved collection.

2. *Title:* Occupational Safety and Health State Plans

3. *OMB Control Number:* 1218–0247.

4. *Description of Collection of Information Requirements:* The collection of information requirements contained in the regulations associated with this rule are set forth below. The citations reflect changes made in this direct final rule and the accompanying notice of proposed rulemaking.

Part	Collection of information requirements
29 CFR 1902	1902.2(a), 1902.2(b), 1902.2(c)(2), 1902.2(c)(3), 1902.3(a), 1902.3(b)(1)–(b)(3), 1902.3(c)(1), 1902.3(d)(1), 1902.3(d)(2), 1902.3(e), 1902.3(f), 1902.3(g), 1902.3(h), 1902.3(i), 1902.3(j), 1902.3(k), 1902.4(a), 1902.4(a)(1), 1902.4(a)(2), 1902.4(b)(1), 1902.4(b)(2), 1902.4(b)(2)(i)–(b)(2)(vii), 1902.4(c)(1), 1902.4(c)(2), 1902.4(c)(2)(i)–(c)(2)(xiii), 1902.4(d)(1), 1902.4(d)(2), 1902.4(d)(2)(i)–(d)(2)(iii)(k), 1902.4(e), 1902.7(a), 1902.7(d), 1902.9(a)(1), 1902.9(a)(5), 1902.9(a)(5)(i)–(a)(5)(xii), 1902.10, 1902.10(a), 1902.10(b), 1902.31, 1902.32(e), 1902.33, 1902.38(b), 1902.39(a), 1902.39(b), 1902.44(a), 1902.46(d), 1902.46(d)(1).
29 CFR 1952.	
29 CFR 1953	1953.1(a), 1953.1(b), 1953.1(c), 1953.2(c)-1953.2(j), 1953.3(a)–(e), 1953.4(a)(1)–1953.4(a)(5), 1953.4(b)(1)–1953.4(b)(7), 1953.4(c)(1)–1953.4(c)(5), 1953.4(d)(1), 1953.4(d)(2), 1953.5(a)(1)–1953.5(a)(3), 1953.5(b)(1)–(b)(3), 1953.6(a), 1953.6(e).
29 CFR 1954	1954.2(a), 1954.2(b), 1954.2(b)(1)–1954.2(b)(3), 1954.2(c), 1954.2(d), 1954.2(e), 1954.2(e)(1)–(e)(4), 1954.3(f)(1), 1954.3(f)(1)(i)–1954.3(f)(1)(v), 1954.10(a), 1954.10(b), 1954.10(c), 1954.11, 1954.20(a), 1954.20(b), 1954.20(c)(1), 1954.20(c)(2), 1954.20(c)(2)(i)–1954.20(c)(2)(iv), 1954.21(a), 1954.21(b), 1954.21(c), 1954.21(d), 1954.22(a)(1), 1954.22(a)(2).
29 CFR 1955.	
29 CFR 1956	1956.2(b)(1), 1956.2(b)(1)(i)–(ii), 1956.2(b)(2), 1956.2(b)(3), 1956.2(c)(1), 1956.2(c)(2), 1956.10(a), 1956.10(b)(1), 1956.10(b)(2), 1956.10(b)(3), 1956.10(c), 1956.10(d)(1), 1956.10(d)(2), 1956.10(e), 1956.10(f), 1956.10(g), 1956.10(h), 1956.10(i), 1956.10(j), 1956.11(a), 1956.11(a)(1), 1956.11(a)(2), 1956.11(d), 1956.20, 1956.21, 1956.22, 1956.23.

5. *Affected Public:* Designated state government agencies that are seeking or have submitted and obtained approval for State Plans for the development and enforcement of occupational safety and health standards.

6. *Number of Respondents:* 28.

7. *Frequency:* On occasion; quarterly; annually.

8. *Average Time per Response:* Varies from 30 minutes (.5 hour) to respond to an information inquiry to 80 hours to document state annual performance goals.

9. *Estimated Total Burden Hours:* The Agency does not believe that this rule will impact burden hours or costs. However, based on updated data and estimates, the Agency is requesting an adjustment increase of 173 burden hours, from 11,196 to 11,369 burden hours. This burden hour increase is the result of the anticipated increase in the submission of state plan changes associated with one state (Maine) actively implementing a new State Plan. The burden hour increase was partially offset by the decrease in the estimated number of state-initiated state plan changes.

10. *Estimated Costs (Operation and Maintenance):* There are no capital costs for this collection of information.

Submitting comments. In addition to having an opportunity to file comments with the Department, the PRA provides that an interested party may file comments on the collection of information requirements contained in the rule directly with the Office of Management and Budget, at the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments to the Department. See **ADDRESSES** section of this preamble. The OMB will consider all written comments that the agency receives within forty-five (45) days of publication of this DFR in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB control number 1218–0247. Comments submitted in response to this document are public records; therefore, OSHA cautions commenters about submitting personal information such as Social Security numbers and date of birth.

Docket and inquiries. To access the docket to read or download comments and other materials related to this paperwork determination, including the complete Information Collection Request (ICR) (containing the Supporting Statement with attachments describing the paperwork determinations in detail), use the procedures described under the section of this document titled **ADDRESSES.** You also may obtain an electronic copy of the complete ICR by visiting the Web page, *http://www.reginfo.gov/public/do/PRAMain*, select ''Department of Labor'' under ''Currently Under Review'' to view all of DOL's ICRs, including the ICR related to this rulemaking. To make inquiries, or to request other

information, contact Mr. Todd Owen, Directorate of Standards and Guidance, OSHA, Room N–3609, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

OSHA notes that a federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the PRA and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number.

Regulatory Flexibility Analysis, Unfunded Mandates, and Executive Orders on the Review of Regulations

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (as amended), OSHA examined the provisions of the direct final rule to determine whether it would have a significant economic impact on a substantial number of small entities. Since no employer of any size will have any new compliance obligations, the Agency certifies that the direct final rule will not have a significant economic impact on a substantial number of small entities. OSHA also reviewed this direct final rule in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA; 2 U.S.C. 1501 *et seq.*) and Executive Orders 12866 (58 FR 51735, September 30, 1993) and 13563 (76 FR 3821, January 21, 2011). Because this rule imposes no new compliance obligations, it requires no additional expenditures by either private employers or State, local, or tribal governments.

Executive Order 13132, ''Federalism,'' (64 FR 43255, August 10, 1999) emphasizes consultation between Federal agencies and the States on policies not required by statute which have federalism implications, *i.e.*, policies, such as regulations, which 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, or which impose substantial direct compliance costs on State and local governments. This direct final rule has no federalism implications and will not impose substantial direct compliance costs on State or local governments.

OSHA has reviewed this rule in accordance with Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' (65 FR 67249, November 6, 2000) and determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

List of Subjects in 29 CFR Parts 1902, 1903, 1904, 1952, 1953, 1954, 1955, and 1956

Intergovernmental relations, Law enforcement, Occupational safety and health.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC, authorized the preparation of this direct final rule. OSHA is issuing this direct final rule under the authority specified by Sections 8(c)(1), 8(c)(2), and 8(g)(2) and 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657 (c)(1), (c)(2), and (g)(2) and 667) and Secretary of Labor's Order No. 1–2012 (76 FR 3912).

Signed at Washington, DC, on July 28, 2015.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

Amendments to Regulations

For the reasons set forth in the preamble of this direct final rule, OSHA amends 29 CFR parts 1902, 1903, 1904, 1952, 1953, 1954, 1955, and 1956 as follows:

PART 1902—STATE PLANS FOR THE DEVELOPMENT AND ENFORCEMENT OF STATE STANDARDS

■ 1. The authority citation for part 1902 is revised to read as follows:

Authority: Secs. 8 and 18, 84 Stat. 1608 (29 U.S.C. 657, 667); Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012).

Subpart B—Criteria for State Plans

■ 2. Amend § 1902.3 as follows:
■ a. Revise paragraph (c)(2);
■ b. Remove paragraph (j);
■ c. Redesignate paragraphs (k) and (l) as (j) and (k), respectively.

The revision reads as follows:

§ 1902.3 Specific criteria.

* * * * *

(c) * * *

(2) The State plan shall not include standards for products distributed or used in interstate commerce which are different from Federal standards for such products unless such standards are required by compelling local conditions and do not unduly burden interstate commerce. This provision, reflecting section 18(c)(2) of the Act, is interpreted as not being applicable to customized products or parts not normally available on the open market, or to the optional parts or additions to products which are ordinarily available with such optional parts or additions. In situations where section 18(c)(2) is considered applicable, and provision is made for the adoption of product standards, the requirements of section 18(c)(2), as they relate to undue burden on interstate commerce, shall be treated as a condition subsequent in light of the facts and circumstances which may be involved.

* * * * *

■ 3. Amend § 1902.4 by revising paragraph (d) and adding paragraph (e) to read as follows:

§ 1902.4 Indices of effectiveness.

* * * * *

(d) *State and local government employee programs.* (1) Each approved State plan must contain satisfactory assurances that the State will, to the extent permitted by its law, establish and maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions which program is as effective as the standards contained in an approved plan.

(2) This criterion for approved State plans is interpreted to require the following elements with regard to coverage, standards, and enforcement:

(i) *Coverage.* The program must cover all public employees over which the State has legislative authority under its constitution. The language in section 18(c)(6) which only requires such coverage to the extent permitted by the State's law specifically recognizes the situation where local governments exclusively control their own employees, such as under certain home rule charters.

(ii) *Standards.* The program must be as effective as the standards contained in the approved plan applicable to private employers. Thus, the same criteria and indices of standards effectiveness contained in §§ 1902.3(c) and 1902.4(a) and (b) would apply to the public employee program. Where hazards are unique to public

employment, all appropriate indices of effectiveness, such as those dealing with temporary emergency standards, development of standards, employee information, variances, and protective equipment, would be applicable to standards for such hazards.

(iii) *Enforcement.* Although section 18(c)(6) of the Act requires State public employee programs to be as effective as standards contained in the State plan, minimum enforcement elements are required to ensure an effective and comprehensive public employee program as follows:

(A) Regular inspections of workplaces, including inspections in response to valid employee complaints;

(B) A means for employees to bring possible violations to the attention of inspectors;

(C) Notification to employees, or their representatives, of decisions that no violations are found as a result of complaints by such employees or their representatives, and informal review of such decisions;

(D) A means of informing employees of their protections and obligations under the Act;

(E) Protection for employees against discharge of discrimination because of the exercise of rights under the Act;

(F) Employee access to information on their exposure to toxic materials or harmful physical agents and prompt notification to employees when they have been or are being exposed to such materials or agents at concentrations or levels above those specified by the applicable standards;

(G) Procedures for the prompt restraint or elimination of imminent danger situations;

(H) A means of promptly notifying employers and employees when an alleged violation has occurred, including the proposed abatement requirements;

(I) A means of establishing timetables for the correction of violations;

(J) A program for encouraging voluntary compliance; and

(K) Such other additional enforcement provisions under State law as may have been included in the State plan.

(3) In accordance with § 1902.3(b)(3), the State agency or agencies designated to administer the plan throughout the State must retain overall responsibility for the entire plan. Political subdivisions may have the responsibility and authority for the development and enforcement of standards: *Provided,* that the designated State agency or agencies have adequate authority by statute, regulation, or agreement to insure that the commitments of the State under the plan will be fulfilled.

(e) *Additional indices.* Upon his own motion or after consideration of data, views and arguments received in any proceeding held under subpart C of this part, the Assistant Secretary may prescribe additional indices for any State plan which shall be in furtherance of the purpose of this part, as expressed in § 1902.1.

* * * * *

■ 4. Add §§ 1902.7 through 1902.09 to read as follows:

Sec.

* * * * *

1902.7 Injury and illness recording and reporting requirements.

1902.8 Variations and variances.

1902.9 Requirements for approval of State posters.

* * * * *

§ 1902.7 Injury and illness recording and reporting requirements.

(a) Injury and illness recording and reporting requirements promulgated by State-Plan States must be substantially identical to those in 29 CFR part 1904 on recording and reporting occupational injuries and illnesses. State-Plan States must promulgate recording and reporting requirements that are the same as the Federal requirements for determining which injuries and illnesses will be entered into the records and how they are entered. All other injury and illness recording and reporting requirements that are promulgated by State-Plan States may be more stringent than, or supplemental to, the Federal requirements, but, because of the unique nature of the national recordkeeping program, States must consult with OSHA and obtain approval of such additional or more stringent reporting and recording requirements to ensure that they will not interfere with uniform reporting objectives. State-Plan States must extend the scope of their regulation to State and local government employers.

(b) A State may not grant a variance to the injury and illness recording and reporting requirements for private sector employers. Such variances may only be granted by Federal OSHA to assure nationally consistent workplace injury and illness statistics. A State may only grant a variance to the injury and illness recording and reporting requirements for State or local government entities in that State after obtaining approval from Federal OSHA.

(c) A State must recognize any variance issued by Federal OSHA.

(d) A State may, but is not required, to participate in the Annual OSHA Injury/Illness Survey as authorized by 29 CFR 1904.41. A participating State may either adopt requirements identical to § 1904.41 in its recording and reporting regulation as an enforceable State requirement, or may defer to the Federal regulation for enforcement. Nothing in any State plan shall affect the duties of employers to comply with § 1904.41, when surveyed, as provided by section 18(c)(7) of the Act.

§ 1902.8 Variations and variances.

(a) The power of the Secretary of Labor under section 16 of the Act to provide reasonable limitations and variations, tolerances, and exemptions to and from any or all provisions of the Act as he may find necessary and proper to avoid serious impairment of the national defense is reserved.

(b) No action by a State under a plan shall be inconsistent with action by the Secretary under this section of the Act.

(c) Where a State standard is identical to a Federal standard addressed to the same hazard, an employer or group of employers seeking a temporary or permanent variance from such standard, or portion thereof, to be applicable to employment or places of employment in more than one State, including at least one State with an approved plan, may elect to apply to the Assistant Secretary for such variance under the provisions of 29 CFR part 1905.

(d) Actions taken by the Assistant Secretary with respect to such application for a variance, such as interim orders, with respect thereto, the granting, denying, or issuing any modification or extension thereof, will be deemed prospectively an authoritative interpretation of the employer or employers' compliance obligations with regard to the State standard, or portion thereof, identical to the Federal standard, or portion thereof, affected by the action in the employment or places of employment covered by the application.

(e) Nothing herein shall affect the option of an employer or employers seeking a temporary or permanent variance with applicability to employment or places of employment in more than one State to apply for such variance either to the Assistant Secretary or the individual State agencies involved. However, the filing with, as well as granting, denial, modification, or revocation of a variance request or interim order by, either authority (Federal or State) shall preclude any further substantive consideration of such application on the same material facts for the same employment or place of employment by the other authority.

(f) Nothing herein shall affect either Federal or State authority and obligations to cite for noncompliance with standards in employment or places of employment where no interim order, variance, or modification or extension thereof, granted under State or Federal law applies, or to cite for noncompliance with such Federal or State variance action.

§ 1902.9 Requirements for approval of State posters.

(a)(1) In order to inform employees of their protections and obligations under applicable State law, of the issues not covered by State law, and of the continuing availability of Federal monitoring under section 18(f) of the Act, States with approved plans shall develop and require employers to post a State poster meeting the requirements set out in paragraph (a)(5) of this section.

(2) Such poster shall be substituted for the Federal poster under section 8(c)(1) of the Act and § 1903.2 of this chapter where the State attains operational status for the enforcement of State standards as defined in § 1954.3(b) of this chapter.

(3) Where a State has distributed its poster and has enabling legislation as defined in § 1954.3(b)(1) of this chapter but becomes nonoperational under the provisions of § 1954.3(f)(1) of this chapter because of failure to be at least as effective as the Federal program, the approved State poster may, at the discretion of the Assistant Secretary, continue to be substituted for the Federal poster in accordance with paragraph (a)(2) of this section.

(4) A State may, for good cause shown, request, under 29 CFR part 1953, approval of an alternative to a State poster for informing employees of their protections and obligations under the State plans, provided such alternative is consistent with the Act, § 1902.4(c)(2)(iv) and applicable State law. In order to qualify as a substitute for the Federal poster under this paragraph (a), such alternative must be shown to be at least as effective as the Federal poster requirements in informing employees of their protections and obligations and address the items listed in paragraph (a)(5) of this section.

(5) In developing the poster, the State shall address but not be limited to the following items:

(i) Responsibilities of the State, employers and employees;

(ii) The right of employees or their representatives to request workplace inspections;

(iii) The right of employees making such requests to remain anonymous;

(iv) The right of employees to participate in inspections;

(v) Provisions for prompt notice to employers and employees when alleged violations occur;

(vi) Protection for employees against discharge or discrimination for the exercise of their rights under Federal and State law;

(vii) Sanctions;

(viii) A means of obtaining further information on State law and standards and the address of the State agency;

(ix) The right to file complaints with the Occupational Safety and Health Administration about State program administration;

(x) A list of the issues as defined in § 1902.2(c) which will not be covered by State plan;

(xi) The address of the Regional Office of the Occupational Safety and Health Administration; and

(xii) Such additional employee protection provisions and obligations under State law as may have been included in the approved State plan.

(b) Posting of the State poster shall be recognized as compliance with the posting requirements in section 8(c)(1) of the Act and § 1903.2 of this chapter, provided that the poster has been approved in accordance with subpart B of part 1953 of this chapter. Continued Federal recognition of the State poster is also subject to pertinent findings of effectiveness with regard to the State program under 29 CFR part 1954.

Subpart C—Procedures for Submission, Approval and Rejection of State Plans

■ 5. In § 1902.10, revise paragraph (a) to read as follows:

§ 1902.10 Submission.

(a) An authorized representative of the State agency or agencies responsible for administering the plan shall submit one copy of the plan to the appropriate Assistant Regional Director of the Occupational Safety and Health Administration, U.S. Department of Labor. The State plan shall include supporting papers conforming to the requirements specified in the subpart B of this part, and the State occupational safety and health standards to be included in the plan, including a copy of any specific or enabling State laws and regulations relating to such standards. If any of the representations concerning the requirements of subpart B of this part are dependent upon any judicial or administrative interpretations of the State standards or enforcement provisions, the State shall furnish citations to any pertinent judicial decisions and the text of any pertinent administrative decisions.

* * * * *

■ 6. In § 1902.11, revise paragraphs (c) and (d) to read as follows:

§ 1902.11 General notice.

* * * * *

(c) The notice shall provide that the plan, or copies thereof, shall be available for inspection and copying at the office of the Director, Office of State Programs, Occupational Safety and Health Administration, office of the Assistant Regional Director in whose region the State is located, and an office of the State which shall be designated by the State for this purpose.

(d) The notice shall afford interested persons an opportunity to submit in writing, data, views, and arguments on the proposal, subjects, or issues involved within 30 days after publication of the notice in the **Federal Register**. Thereafter the written comments received or copies thereof shall be available for public inspection and copying at the office of the Director, Office of State Programs, Occupational Safety and Health Administration, office of the Assistant Regional Director in whose region the State is located, and an office of the State which shall be designated by the State for this purpose.

* * * * *

■ 7. Add § 1902.16 immediately following § 1902.15 to read as follows:

§ 1902.16 Partial approval of State plans.

(a) The Assistant Secretary may partially approve a plan under this part whenever:

(1) The portion to be approved meets the requirements of this part;

(2) The plan covers more than one occupational safety and health issue; and

(3) Portions of the plan to be approved are reasonably separable from the remainder of the plan.

(b) Whenever the Assistant Secretary approves only a portion of a State plan, he may give notice to the State of an opportunity to show cause why a proceeding should not be commenced for disapproval of the remainder of the plan under subpart C of this part before commencing such a proceeding.

Subpart D—Procedures for Determinations under section 18(e) of the Act

■ 8. In § 1902.31, revise the definition of ''Development step'' to read as follows:

§ 1902.31 Definitions.

* * * * *

Development step includes, but is not limited to, those items listed in the published developmental schedule, or any revisions thereof, for each plan. A developmental step also includes those items specified in the plan as approved under section 18(c) of the Act for completion by the State, as well as those items which under the approval decision were subject to evaluations and changes deemed necessary as a result thereof to make the State program at least as effective as the Federal program within the 3 years developmental period. (See 29 CFR 1953.4(a)).

* * * * *

■ 9. Revise § 1902.33 to read as follows:

§ 1902.33 Developmental period.

Upon the commencement of plan operations after the initial approval of a State's plan by the Assistant Secretary, a State has three years in which to complete all of the developmental steps specified in the plan as approved. Section 1953.4 of this chapter sets forth the procedures for the submission and consideration of developmental changes by OSHA. Generally, whenever a State completes a developmental step, it must submit the resulting plan change as a supplement to its plan to OSHA for approval. OSHA's approval of such changes is then published in the **Federal Register**.

■ 10. In § 1902.34, revise paragraph (c) to read as follows:

§ 1902.34 Certification of completion of developmental steps.

* * * * *

(c) After a review of the certification and the State's plan, if the Assistant Secretary finds that the State has completed all the developmental steps specified in the plan, he shall publish the certification in the **Federal Register**.

* * * * *

§ 1902.41 [Amended]

■ 11. In § 1902.41, remove paragraph (c) and redesignate paragraph (d) as (c).

■ 12. In § 1902.43, revise paragraph (a)(3) to read as follows:

§ 1902.43 Affirmative 18(e) decision.

(a) * * *

(3) An amendment to the appropriate section of part 1952 of this chapter;

* * * * *

PART 1903—INSPECTIONS, CITATIONS AND PROPOSED PENALTIES

■ 13. The authority citation for part 1903 is revised to read as follows:

Authority: Secs. 8 and 9 (29 U.S.C. 657, 658); 5 U.S.C. 553; Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012).

■ 14. In § 1903.2, revise paragraph (a)(2) to read as follows:

§ 1903.2 Posting of notice; availability of the Act, regulations and applicable standard.

(a) * * *

(2) Where a State has an approved poster informing employees of their protections and obligations as defined in § 1902.9 of this chapter, such poster, when posted by employers covered by the State plan, shall constitute compliance with the posting requirements of section 8(c)(1) of the Act. Employers whose operations are not within the issues covered by the State plan must comply with paragraph (a)(1) of this section.

* * * * *

PART 1904—RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES

■ 15. The authority citation for part 1904 is revised to read as follows:

Authority: 29 U.S.C. 657, 658, 660, 666, 669, 673, Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012).

Subpart D—Other OSHA Injury and Illness Recordkeeping Requirements

■ 16. In § 1904.37, revise paragraph (a) to read as follows:

§ 1904.37 State recordkeeping requirements.

(a) *Basic requirement.* Some States operate their own OSHA programs, under the authority of a State plan as approved by OSHA. States operating OSHA-approved State plans must have occupational injury and illness recording and reporting requirements that are substantially identical to the requirements in this part (see 29 CFR 1902.3(j), 29 CFR 1902.7, and 29 CFR 1956.10(i)).

* * * * *

PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

■ 17. The authority citation for part 1952 is revised to read as follows:

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR part 1902; Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012).

■ 18. Revise subpart A to read as follows:

Subpart A—List of Approved State Plans for Private-Sector and State and Local Government Employees

Subpart A—List of Approved State Plans for Private-Sector and State and Local Government Employees

§ 1952.1 South Carolina.

(a) The South Carolina State plan received initial approval on December 6, 1972.

(b) The South Carolina State plan received final approval on December 18, 1987.

(c) Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall,* compliance officer staffing levels (benchmarks) necessary for a ''fully effective'' enforcement program were required to be established for each State operating an approved State plan. In September 1984, South Carolina, in conjunction with OSHA, completed a reassessment of the staffing levels initially established in 1980 and proposed revised compliance staffing benchmarks of 17 safety and 12 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on January 17, 1986.

(d) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and local government employers and employees, within the State. For current information on these exceptions and for additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/south_carolina.html.*

§ 1952.2 Oregon.

(a) The Oregon State plan received initial approval on December 28, 1972.

(b) The Oregon State plan received final approval on May 12, 2005.

(c) Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall,* compliance staffing levels (''benchmarks'') necessary for a ''fully effective'' enforcement program were required for each State operating an approved State plan. In October 1992, Oregon completed, in conjunction with OSHA, a reassessment of the health staffing level initially established in 1980 and proposed a revised health benchmark of 28 health compliance officers. Oregon elected to retain the safety benchmark level established in the 1980 Report to the Court of the U.S. District Court for the District of Columbia in 1980 of 47 safety compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on August 11, 1994.

(d) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and local government employers and employees, within the State. For current information on these exceptions and for additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/oregon.html.*

§ 1952.3 Utah.

(a) The Utah State plan received initial approval on January 10, 1973.

(b) The Utah State plan received final approval on July 16, 1985.

(c) Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall,* compliance staffing levels (benchmarks) necessary for a ''fully effective'' enforcement program were required to be established for each State operating an approved State plan. In September 1984, Utah, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 10 safety and 9 health compliance officers. After opportunity for public comments and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements effective July 16, 1985.

(d) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and local government employers and employees, within the State. For current information on these exceptions and for additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/utah.html.*

§ 1952.4 Washington.

(a) The Washington State plan received initial approval on January 26, 1973.

(b) OSHA entered into an operational status agreement with Washington.

(c) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and local government employers and employees, within the State. For current information on these exceptions and for additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/washington.html.*

§ 1952.5 North Carolina.

(a) The North Carolina State plan received initial approval on February 1, 1973.

(b) The North Carolina State plan received final approval on December 18, 1996.

(c) Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall,* compliance staffing levels (''benchmarks'') necessary for a ''fully effective'' enforcement program were required for each State operating an approved State plan. In September 1984, North Carolina, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised benchmarks of 50 safety and 27 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on January 17, 1986.

In June 1990, North Carolina reconsidered the information utilized in the initial revision of its 1980 benchmarks and determined that changes in local conditions and improved inspection data warranted further revision of its benchmarks to 64 safety inspectors and 50 industrial hygienists. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on June 4, 1996.

(d) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and local government employers and employees, within the State. For current information on these exceptions and for additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/north_carolina.html.*

§ 1952.6 Iowa.

(a) The Iowa State plan received initial approval on July 20, 1973.

(b) The Iowa State plan received final approval on July 2, 1985.

(c) Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall,* compliance staffing levels (benchmarks) necessary for a ''fully effective'' enforcement program were required to be established for each State operating an approved State plan. In September 1984, Iowa, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 16 safety and 13 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements effective July 2, 1985.

(d) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and local government employers and employees, within the State. For current information on these exceptions and for additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/iowa.html.*

§ 1952.7 California.

(a) The California State plan received initial approval on May 1, 1973.

(b) OSHA entered into an operational status agreement with California.

(c) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and local government employers and employees, within the State. For current information on these exceptions and for additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/california.html.*

§ 1952.8 Minnesota.

(a) The Minnesota State plan received initial approval on June 8, 1973.

(b) The Minnesota State plan received final approval on July 30, 1985.

(c) Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall,* compliance staffing levels (benchmarks) necessary for a ''fully effective'' enforcement program were required to be established for each State operating an approved State plan. In September 1984 Minnesota, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 31 safety and 12 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on July 30, 1985.

(d) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and local government employers and employees, within the State. For current information on these exceptions and for additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/minnesota.html.*

§ 1952.9 Maryland.

(a) The Maryland State plan received initial approval on July 5, 1973.

(b) The Maryland State plan received final approval on July 18, 1985.

(c) Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall,* compliance staffing levels (benchmarks) necessary for a ''fully effective'' enforcement program were required to be established for each State operating an approved State plan. In September 1984 Maryland, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 36 safety and 18 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on July 18, 1985.

(d) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and local government employers and employees, within the State. For current information on these exceptions and for additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/maryland.html.*

§ 1952.10 Tennessee.

(a) The Tennessee State plan received initial approval on July 5, 1973.

(b) The Tennessee State plan received final approval on July 22, 1985.

(c) Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall,* compliance staffing levels (benchmarks) necessary for a ''fully effective'' enforcement program were required to be established for each State operating an approved State plan. In September 1984 Tennessee, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 22 safety and 14 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on July 22, 1985.

(d) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and local government employers and employees, within the State. For current information on these exceptions and for additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/tennessee.html.*

§ 1952.11 Kentucky.

(a) The Kentucky State plan received initial approval on July 31, 1973.

(b) The Kentucky State plan received final approval on June 13, 1985.

(c) Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall,* compliance staffing levels (benchmarks) necessary for a ''fully effective'' enforcement program were required to be established for each State operating an approved State plan. In September 1984 Kentucky, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 23 safety and 14 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on June 13, 1985.

(d) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and local government employers and employees, within the State. For current information on these exceptions and for additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/kentucky.html.*

§ 1952.12 Alaska.

(a) The Alaska State plan received initial approval on August 10, 1973.

(b) The Alaska State plan received final approval on September 28, 1984.

(c) Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall,* compliance staffing levels (benchmarks) necessary for a ''fully effective'' enforcement program were required to be established for each State operating an approved State plan. Alaska's compliance staffing benchmarks are 4 safety and 5 health compliance officers.

(d) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and local government employers and employees, within the State. For current information on these exceptions and for additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/alaska.html.*

§ 1952.13 Michigan.

(a) The Michigan State plan received initial approval on October 3, 1973.

(b) OSHA entered into an operational status agreement with Michigan.

(c) Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall,* compliance staffing levels (''benchmarks'') necessary for a ''fully effective'' enforcement program were required for each State operating an approved State plan. In 1992, Michigan completed, in conjunction with OSHA, a reassessment of the levels initially established in 1980 and proposed revised benchmarks of 56 safety and 45 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on April 20, 1995.

(d) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and local government employers and employees, within the State. For current information on these exceptions and for additional details about the plan, please visit *https://www.osha.gov/dcsp/osp/stateprogs/michigan.html.*

§ 1952.14 Vermont.

(a) The Vermont State plan received initial approval on October 16, 1973.

(b) OSHA entered into an operational status agreement with Vermont.

(c) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and local government employers and employees, within the State. For current information on these exceptions and for additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/vermont.html.*

§ 1952.15 Nevada.

(a) The Nevada State plan received initial approval on January 4, 1974.

(b) The Nevada State plan received final approval on April 18, 2000.

(c) Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall,* compliance staffing levels (benchmarks) necessary for a ''fully effective'' enforcement program were required to be established for each State operating an approved State plan. In July 1986 Nevada, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 11 safety and 5 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on September 2, 1987.

(d) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and local government employers and employees, within the State. For current information on these exceptions and for additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/nevada.html.*

§ 1952.16 Hawaii.

(a) The Hawaii State plan received initial approval on January 4, 1974.

(b) The Hawaii State plan received final approval on May 4, 1984.

(c) On September 21, 2012 OSHA modified the State Plan's approval status from final approval to initial approval, and reinstated concurrent

federal enforcement authority pending the necessary corrective action by the State Plan in order to once again meet the criteria for a final approval determination. OSHA and Hawaii entered into an operational status agreement to provide a workable division of enforcement responsibilities.

(d) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and local government employers and employees, within the State. For current information on these exceptions and for additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/hawaii.html.*

§ 1952.17 Indiana.

(a) The Indiana State plan received initial approval on March 6, 1974.

(b) The Indiana State plan received final approval on September 26, 1986.

(c) Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall,* compliance staffing levels (benchmarks) necessary for a ''fully effective'' enforcement program were required to be established for each State operating an approved State plan. In September 1984 Indiana, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 47 safety and 23 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on January 17, 1986.

(d) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and local government employers and employees, within the State. For current information on these exceptions and for additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/indiana.html.*

§ 1952.18 Wyoming.

(a) The Wyoming State plan received initial approval on May 3, 1974.

(b) The Wyoming State plan received final approval on June 27, 1985.

(c) Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall,* compliance staffing levels (benchmarks) necessary for a ''fully effective'' enforcement program were required to be established for each State operating an approved State plan. In September 1984 Wyoming, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 6 safety and 2 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on June 27, 1985.

(d) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and local government employers and employees, within the State. For current information on these exceptions and for additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/wyoming.html.*

§ 1952.19 Arizona.

(a) The Arizona State plan received initial approval on November 5, 1974.

(b) The Arizona State plan received final approval on June 20, 1985.

(c) Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall,* compliance staffing levels (benchmarks) necessary for a ''fully effective'' enforcement program were required to be established for each State operating an approved State plan. In September 1984, Arizona in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 9 safety and 6 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on June 20, 1985.

(d) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and local government employers and employees, within the State. For current information on these exceptions and for additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/arizona.html.*

§ 1952.20 New Mexico.

(a) The New Mexico State plan received initial approval on December 10, 1975.

(b) OSHA entered into an operational status agreement with New Mexico.

(c) Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall,* compliance staffing levels (''benchmarks'') necessary for a ''fully effective'' enforcement program were required for each State operating an approved State plan. In May 1992, New Mexico completed, in conjunction with OSHA, a reassessment of the staffing levels initially established in 1980 and proposed revised benchmarks of 7 safety and 3 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on August 11, 1994.

(d) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and local government employers and employees, within the State. For current information on these exceptions and for additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/new_mexico.html.*

§ 1952.21 Virginia.

(a) The Virginia State plan received initial approval on September 28, 1976.

(b) The Virginia State plan received final approval on November 30, 1988.

(c) Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall,* compliance staffing levels (benchmarks) necessary for a ''fully effective'' enforcement program were required to be established for each State operating an approved State plan. In September 1984 Virginia, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 38 safety and 21 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on January 17, 1986.

(d) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and local government employers and employees, within the State. For current information on these exceptions and for additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/virginia.html.*

§ 1952.22 Puerto Rico.

(a) The Puerto Rico State plan received initial approval on August 30, 1977.

(b) OSHA entered into an operational status agreement with Puerto Rico.

(c) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and local government employers and employees, within the State. For current information on these exceptions and for additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/puerto_rico.html.*

■ 19. Add subpart B to read as follows:

Subpart B—List of Approved State Plans for State and Local Government Employees

Sec.

Subpart B—List of Approved State Plans for State and Local Government Employees

§ 1952.23 Connecticut.

(a) The Connecticut State plan for State and local government employees received initial approval from the Assistant Secretary on November 3, 1978.

(b) In accordance with 29 CFR 1956.10(g), a State is required to have a sufficient number of adequately trained and competent personnel to discharge its responsibilities under the plan. The Connecticut Public Employee Only State plan provides for three (3) safety compliance officers and one (1) health compliance officer as set forth in the Connecticut Fiscal Year 1986 grant. This staffing level meets the ''fully effective'' benchmarks established for Connecticut for both safety and health.

(c) The plan only covers State and local government employers and employees within the State. For additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/connecticut.html.*

§ 1952.24 New York.

(a) The New York State plan for State and local government employees received initial approval from the Assistant Secretary on June 1, 1984.

(b) The plan, as revised on April 28, 2006, provides assurances of a fully trained, adequate staff, including 29 safety and 21 health compliance officers for enforcement inspections and 11 safety and 9 health consultants to perform consultation services in the public sector. The State has also given satisfactory assurances of continued adequate funding to support the plan.

(c) The plan only covers State and local government employers and employees within the State. For additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/new_york.html.*

§ 1952.25 New Jersey.

(a) The New Jersey State plan for State and local government employees received initial approval from the Assistant Secretary on January 11, 2001.

(b) The plan further provides assurances of a fully trained, adequate staff, including 20 safety and 7 health compliance officers for enforcement inspections, and 4 safety and 3 health consultants to perform consultation services in the public sector, and 2 safety and 3 health training and education staff. The State has assured that it will continue to provide a sufficient number of adequately trained and qualified personnel necessary for the enforcement of standards as required by 29 CFR 1956.10. The State has also given satisfactory assurance of adequate funding to support the plan.

(c) The plan only covers State and local government employers and employees within the State. For additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/new_jersey.html.*

§ 1952.26 The Virgin Islands.

(a) The Virgin Islands State plan for Public Employees Only was approved on July 23, 2003.

(b) The plan only covers State and local government employers and employees within the State. For additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/virgin_islands.html.*

§ 1952.27 Illinois.

(a) The Illinois State plan for state and local government employees received initial approval from the Assistant Secretary on September 1, 2009.

(b) The Plan further provides assurances of a fully trained, adequate staff within three years of plan approval, including 11 safety and 3 health compliance officers for enforcement inspections, and 3 safety and 2 health consultants to perform consultation services in the public sector. The state has assured that it will continue to provide a sufficient number of adequately trained and qualified personnel necessary for the enforcement of standards as required by 29 CFR 1956.10. The state has also given satisfactory assurance of adequate funding to support the Plan.

(c) The plan only covers State and local government employers and employees within the state. For additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/illinois.html.*

Subparts C Through FF [Removed]

■ 20. Remove subparts C through FF.

PART 1953—CHANGES TO STATE PLANS

■ 21. The authority citation for part 1953 is revised to read as follows:

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012).

■ 22. In § 1953.3, revise paragraph (c) to read as follows:

§ 1953.3 General policies and procedures.

* * * * *

(c) *Plan supplement availability.* The underlying documentation for identical plan changes shall be maintained by the State. Annually, States shall submit updated copies of the principal documents comprising the plan, or appropriate page changes, to the extent that these documents have been revised. To the extent possible, plan documents will be maintained and submitted by the State in electronic format and also made available in such manner.

* * * * *

PART 1954—PROCEDURES FOR THE EVALUATION AND MONITORING OF APPROVED STATE PLANS

■ 23. The authority citation for part 1954 is revised to read as follows:

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012).

Subpart A—General

■ 24. In § 1954.3, revise paragraphs (d)(1)(ii) and (iii) to read as follows:

§ 1954.3 Exercise of Federal discretionary authority.

* * * * *

(d) * * *

(1) * * *

(ii) Subject to pertinent findings of effectiveness under this part, and approval under part 1953 of this chapter, Federal enforcement proceedings will not be initiated where an employer has posted the approved State poster in accordance with the applicable provisions of an approved State plan and § 1902.9 of this chapter.

(iii) Subject to pertinent findings of effectiveness under this part, and approval under part 1953 of this chapter, Federal enforcement proceedings will not be initiated where an employer is in compliance with the recordkeeping and reporting requirements of an approved State plan as provided in § 1902.7 of this chapter.

* * * * *

PART 1955—PROCEDURES FOR WITHDRAWAL OF APPROVAL OF STATE PLANS

■ 25. The authority citation for part 1955 is revised to read as follows:

Authority: Secs. 8 and 18, 84 Stat. 1608 (29 U.S.C. 657, 667); Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012).

Subpart A—General

■ 26. In § 1955.2, revise paragraph (a)(4) to read as follows:

§ 1955.2 Definitions.

(a) * * *

(4) *Developmental step* includes, but is not limited to, those items listed in

the published developmental schedule, or any revisions thereto, for each plan. A developmental step also includes those items in the plan as approved under section 18(c) of the Act, as well as those items in the approval decision which are subject to evaluations (see *e.g.,* approval of Michigan plan), which were deemed necessary to make the State program at least as effective as the Federal program within the 3 year developmental period. (See part 1953 of this chapter.)

* * * * *

PART 1956—STATE PLANS FOR THE DEVELOPMENT AND ENFORCEMENT OF STATE STANDARDS APPLICABLE TO STATE AND LOCAL GOVERNMENT EMPLOYEES IN STATES WITHOUT APPROVED PRIVATE EMPLOYEE PLANS

■ 27. The authority citation for part 1956 is revised to read as follows:

Authority: Section 18 (29 U.S.C. 667), 29 CFR parts 1902 and 1955, and Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012).

Subparts E Through I [Removed]

■ 28. Remove subparts E through I.

[FR Doc. 2015–19225 Filed 8–17–15; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2015–0337]

RIN 1625–AA08

Special Local Regulation, Tennessee River 647.0 to 648.0; Knoxville, TN

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation for all waters of the Tennessee River, beginning at mile marker 647.0 and ending at mile marker 648.0 on September 4–5, 2015. This special regulation is necessary to provide safety for the racers that will be participating in the ''Racing on the Tennessee.'' Entry into this area will be prohibited unless specifically authorized by the Captain of the Port Ohio Valley or designated representative.

DATES: This rule is effective and will be enforced on September 4, 2015 through September 5, 2015.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2015–0337. To view documents mentioned in the preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Vera Max, MSD Nashville, Nashville, TN, at 615–736–5421 or at *vera.m.max@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.''

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because specifics associated with the ''Racing on the Tennessee'' event were not received in time to publish an NPRM and seek comments before the event. Publishing an NPRM and delaying the effective date of this rule to await public comments would be impracticable and contrary to the public interest since it would inhibit the Coast Guard's ability to provide for the safety of the racers participating in the event and the safety of spectators and waterway users.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, delaying the effective date of this rule would be impracticable and contrary to the public interest.

B. Basis and Purpose

The legal basis and authority for this rule establishing a special local regulation are found in 33 U.S.C. 1233, which authorizes the Coast Guard to establish and define special local regulations for regattas under 33 CFR 100.

The ''Racing on the Tennessee'' is an annual event being held on September 4 and 5, 2015. The Captain of the Port (COTP) Ohio Valley has determined that additional safety measures are necessary to protect race participants, spectators, and waterway users during this event. Therefore, the Coast Guard is establishing a special local regulation for all waters of the Tennessee River beginning at mile marker 647.0 and ending at mile marker 648.0. This regulation will provide safety for the racers that will be participating in the ''Racing on the Tennessee'' and spectators and waterway users.

C. Discussion of Temporary Final Rule

The COTP Ohio Valley is establishing a special local regulated area for all waters of the Tennessee River beginning at mile marker 647.0 and ending at mile marker 648.0. Vessels or persons will not be permitted to enter into, depart from, or move within this area without permission from the COTP Ohio Valley or designated representative. Persons or vessels requiring entry into or passage through the special local regulated area will be required to request permission from the COTP Ohio Valley, or designated representative. Requests for permission are submitted via VHF–FM Channel 13 or 16, or through Coast Guard Sector Ohio Valley at 1–800–253–7465. This rule will be enforced from 10:00 a.m. until 7:00 p.m. on September 4 and 5, 2015. The COTP Ohio Valley will inform the public through broadcast notices to mariners of the enforcement period for the special local regulated area as well as of any changes in the planned schedule.

E. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory

Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit mile marker 647.0 to mile marker 648.0 on the Tennessee River, from 10:00 a.m. to 7:00 p.m. on September 4 and 5, 2015. This special local regulated area will not have a significant economic impact on a substantial number of small entities as it will be enforce for a limited period of time over two days. Additionally, although the special local regulated area will apply to the entire width of the river, traffic will be allowed to pass through the area with the permission of the COTP Ohio Valley or designated representative.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditures, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children From Environmental Health Risks

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This rule is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the COTP Ohio Valley establishing a special local regulation for all waters of the Tennessee River beginning at mile marker 647.0 and ending at mile marker 648.0 to provide safety for the racers that will be participating in the ''Racing on the Tennessee.'' This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist

supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERWAYS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233

■ 2. Temporary § 100.801T08–0337 is added to read as follows:

§ 100.35T08–0337 Special Local Regulation; Tennessee River Mile 647.0 to 648.0, Knoxville, TN.

(a) *Regulated area.* The following location is a regulated area: All waters of the Tennessee River beginning at mile marker 647.0 and ending at mile marker 648.0.

(b) *Enforcement period.* This section will be enforced from 10 a.m. to 7 p.m. on September 4 and 5, 2015.

(c) *Special local regulations.* (1) The general regulations contained in 33 CFR 100.35 as well as the regulations in this section apply to the Regulated Area.

(2) Entry into the Regulated Area is prohibited unless authorized by the Captain of the Port Ohio Valley or a designated representative.

(3) The Captain of the Port Ohio Valley or a designated representative will inform the public through broadcast notice to mariners of the enforcement period for the special local regulation.

(4) Persons or vessels requiring entry into or passage through the Regulated Area must request permission from the Captain of the Port Ohio Valley or a designated representative. U.S. Coast Guard Sector Ohio Valley may be contacted on VHF Channel 13 or 16, or at 1–800–253–7465.

(5) All persons and vessels shall comply with the instructions of the Captain of the Port Ohio Valley and designated U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: July 13, 2015.

R.V. Timme,

Captain, U.S. Coast Guard, Captain of the Port Ohio Valley.

[FR Doc. 2015–20406 Filed 8–17–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–1060; 1625–AA00]

Safety Zones; Eighth Coast Guard District Annual and Recurring Safety Zones Update

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending and updating its current list of recurring safety zone regulations that take place in the Eighth Coast Guard District area of responsibility (AOR). This final rule informs the public of regularly scheduled events that require additional safety measures through establishing a safety zone. Through this final rule, the list of recurring safety zones is updated with revisions, additional events, and removal of events that no longer take place in the Eighth Coast Guard District AOR. When these safety zones are enforced, vessel traffic is restricted from specified areas. Additionally, this one rulemaking project reduces administrative costs involved in producing a separate rule for each individual recurring safety zone and serves to provide notice of the known recurring safety zones throughout the year.

DATES: This rule is effective August 18, 2015.

ADDRESSES: Documents mentioned in this preamble are part of Docket Number [USCG–2013–1060]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Open Docket Folder'' on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Shelley R. Miller, Eighth Coast Guard District Waterways Management Division, (504) 671–2139 or email, *Shelley.R.Miller@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

BNM Broadcast Notice to Mariners
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
LNM Local Notice to Mariners
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard preceded this final rule with an interim final rule with request for comments. The interim rule was published in the **Federal Register** on April 22, 2014, [79 FR 22398]. The interim rule established separate tables for each of the Sectors operating within the Coast Guard's Eighth District and updated the list of recurring safety zones under 33 CFR 165. Although no adverse comments were received, some comments to further update the recurring list were received. Because the interim rule and now this final rule establish separate tables for each Sector within the Eighth District, further updates will now be made by each Sector individually, impacting only their table of recurring safety zones.

The list of annual and recurring safety zones occurring in the Eighth Coast Guard District AOR is published under 33 CFR 165.801. That list was originally created May 16, 2012 through a previous rulemaking, [77 FR 2876] and received no adverse comments.

B. Basis and Purpose

The legal basis for the rule is 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define regulatory safety zones. The Coast Guard is amending and updating the safety zone regulations under 33 CFR part 165 to include the most up to date list of recurring safety zones for events held on or around navigable waters within the Eighth Coast Guard District. These events include air shows, fireworks displays, and other marine related events requiring a limited access area restricting vessel traffic for safety purposes. The list under 33 CFR 165.801 requires amending to provide new information on existing safety zones, and updating to include new safety zones expected to recur annually or biannually and to remove safety

zones that are no longer required. Issuing individual regulations for each new safety zone, amendment, or removal of an existing safety zone creates unnecessary administrative costs and burdens. This single rulemaking considerably reduces administrative overhead and provides the public with notice through publication in the **Federal Register** of the upcoming recurring safety zone regulations.

C. Discussion of Comments, Changes and the Final Rule

No adverse comments were received. Some comments regarding further updates to the recurring list were received. Because the interim rule and now this final rule establish separate tables for each Sector within the Eighth District, further updates will now be made by each sector individually, impacting only their table of recurring safety zones.

No changes to the rule have been made from the interim rule and request for comments.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

This rule establishes safety zones limiting access to certain areas under 33 CFR 165 within the Eighth Coast Guard District. The effect of this rulemaking will not be significant because these safety zones are limited in scope and duration.

Additionally, the public is given advance notification through local forms of notice, the **Federal Register**, and/or Notices of Enforcement and thus will be able to plan operations around the safety zones in advance. Deviation from the safety zones established through this rulemaking may be requested from the appropriate COTP and requests will be considered on a case-by-case basis.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit the safety zone areas during periods of enforcement. The safety zones will not have a significant economic impact on a substantial number of small entities because they are limited in scope and will be in effect for short periods of time. Before the enforcement period, the Coast Guard COTP will issue maritime advisories widely available to waterway users. Deviation from the safety zones established through this rulemaking may be requested from the appropriate COTP and requests will be considered on a case-by-case basis.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded from further review under section 2.B.2 figure 2–1, paragraph 34(g) of the Commandant Instruction because it involves the establishment of safety zones. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under the **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Accordingly, the interim rule amending 33 CFR part 165 that published at 79 FR 22398 on April 22, 2014, is adopted as a final rule without change.

Dated: July 27, 2015.

D.R. Callahan,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 2015–20250 Filed 8–17–15; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2014–0602; FRL–9932–39–Region 7]

Approval and Promulgation of Implementation Plans; State of Missouri, Controlling Emissions During Episodes of High Air Pollution Potential

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the State Implementation Plan (SIP) submitted by the State of Missouri and received by EPA on December 17, 2013, pertaining to Missouri's regulation ''Controlling Emissions During Episodes of High Air Pollution Potential.'' This regulation specifies conditions that establish air pollution alerts and emergency alert levels, and associated procedures and emission reduction objectives statewide. This action revises the SIP by amending an existing table in the regulation, clarifying requirements of the regulation related to emission reduction plans and other provisions, and makes administrative and format changes, all consistent with Federal regulations.

DATES: This final rule is effective on September 17, 2015.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2014–0602. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. The Regional Office's official hours of business are Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. 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: Amy Bhesania, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at 913–551–7147, or by email at *bhesania.amy@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 in this document?

EPA is taking final action to approve a revision to the Missouri SIP received by EPA on December 17, 2013, pertaining to Missouri regulation 10 CSR 10–6.130, ''Controlling Emissions During Episodes of High Air Pollution Potential.'' This regulation specifies conditions that establish air pollution alerts and emergency alert levels, and associated procedures and emission reduction objectives statewide. This action revises the SIP by amending an existing table in the regulation, clarifying requirements of the regulation related to emission reduction plans and other provisions, and makes administrative and format changes all consistent with Federal regulations. EPA proposed approval of this rule on November 4, 2014 at 79 FR 65362.

Specifically, in subsection (1)(A), the regulation is being revised to clarify the applicability of the regulation to all sources and premises throughout the entire state with emissions of sulfur dioxide (SO_2), carbon monoxide (CO), ozone (O_3), nitrogen dioxide (NO_2) or Particulate Matter—10 Micron (PM_{10}) and 2.5 Micron ($PM_{2.5}$) that contribute to the air quality levels in the state. This clarification is consistent with federal regulations regarding prevention of air pollution emergency episodes found in 40 CFR part 51, subpart H.

In addition, specific terms in this regulation that were previously defined in section (2) have now been removed and placed in Missouri regulation 10 CSR 10–6.020, ''Definitions and Common Reference Tables.''

In section (3) of the regulation, table A is being amended to remove the specific breakpoint values for each relevant pollutant but retains the Air Quality Index (AQI) range values and categories for each pollutant. Because the AQI breakpoint values are updated each time a National Ambient Air Quality Standard (NAAQS) is revised, removing these values from the table eliminates unnecessary updates to this

table. The AQI breakpoint values are established when EPA takes final action to revise a NAAQS. In subparagraph (3)(A)2., Missouri identifies that these breakpoint values are codified in 40 CFR part 58, appendix G and therefore applicable to this state regulation Missouri's SIP approved regulation 10 CSR 10–6.010, Ambient Air Quality Standards, adopts EPA's most recent air quality standards and thus associated AQI breakpoint values. Therefore there is no need for this regulation being amended as part of today's action, to also contain these breakpoint values. This revision to the regulation does not alter any provisions or applicability of the regulation.

The conditions that are listed for alert level categories are being moved from a narrative outline format into a table format in subsection (3)(B), table B, to provide more clarity regarding the specific applicable conditions. The requirement for an air stagnation advisory to be in effect in order to trigger an alert has been removed from all alert level categories thus, the conditions that are required to establish an alert are more easily triggered.

The procedures established for addressing alert level conditions are being moved from a narrative outline into a table format in subsection (3)(C), table C, to provide clarity on applicable procedures. The alert level procedures associated with an orange alert which are currently listed in the regulation have been removed. These orange alert procedures were inadvertently retained when the state revised their regulation in 2002 to be consistent with revised Federal regulations by updating the formally called Pollution Standards Index (PSI) to the AQI standards and procedures as codified in 40 CFR part 58, appendix G. EPA took action to approve Missouri's SIP revision on March 18, 2003 (68 FR 12829). Establishing orange alert procedures are not a Federal requirement. Today's action amends the SIP to correct this error. This action does not alter the stringency of the regulation.

Additional clarity is being added to section (4) of the regulation addressing reporting and recordkeeping requirements. The alert plan requirements that are outlined in section (3) of the regulation are being moved to a table format, tables D, E, and F. These tables retain the same objectives as previously contained in the regulation, only modified in format and moved to section (4) of the regulation with the exception of one red alert procedure. The red alert procedure which previously outlined provisions for the director to request all entertainment functions and facilities be closed has been removed from the regulation. This procedure is not a requirement of Federal regulations for red alert procedures, and therefore remains consistent with Federal requirements. This does not alter the stringency of the regulation. This procedure remains applicable for maroon level procedures.

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 above, the revision meets the substantive SIP requirements of the Clean Air Act (CAA), including section 110 and implementing regulations. These modifications will not adversely affect air quality and will not relax the SIP.

III. EPA's Response to Comments

The public comment period on EPA's proposed regulation opened November 4, 2014, the date of its publication in the **Federal Register**, and closed on December 4, 2014 (79 FR 65362). During this period, EPA received two comment letters. The first letter is in support of EPA's action and therefore no response to the comment is necessary. The comments included in the second letter are addressed below.

Comment 1: The commenter expressed overall agreement with EPA actions, however requests EPA to ''clarify certain aspects of the emergency episode program as well as the Air Quality Index (AQI) values derived from the significant harm levels (SHLs) for the $PM_{2.5}$ NAAQS.''

Response 1: Because this comment is not directly related to EPA's proposed action on November 4, 2014, no changes will be made in response to this comment. In this action, EPA is evaluating specific revisions to the existing SIP in Missouri. EPA is not addressing other Federal regulations that govern issues such as the AQI or SHLs for $PM_{2.5.}$ EPA provides the following background and references as guidance to address the commenter's request to clarify certain aspects of the emergency episode program.

EPA promulgated regulations for emergency episodes in 40 CFR part 51, subpart H (51.150 through 51.153). The regulations address the following:

- 51.150—how regions are classified for sulfur oxides (SO_X), PM, carbon monoxide (CO), nitrogen dioxide (NO_2), and ozone;
- 51.151—the requirement for a contingency plan for any region classified as Priority I to prevent air pollution levels from reaching the significant harm levels (SHLs) established therein;
- 51.152—the specific content requirements for a contingency plan; a requirement that regions classified as Priority IA or II have a contingency plan that addresses a subset of those content requirements; a provision that regions ''classified Priority III do not need to develop episode plans;'' and an exemption mechanism for the Administrator; and
- 51.153—how states should review the classification of regions using the most recent three years of data; and a requirement to revise emergency episode plans if a higher classification is warranted by the recent air pollution levels.

EPA has issued several memoranda that provide guidance on emergency episode planning to meet the requirements of section 110(a)(2)(G), including the 2007 Infrastructure SIP Guidance for the 1997 ozone and 1997 fine particulate matter ($PM_{2.5}$) NAAQS,[1] the 2009 Infrastructure SIP Guidance for the 2006 $PM_{2.5}$ NAAQS,[2] the 2011 Infrastructure SIP Guidance for the 2008 lead (Pb) NAAQS,[3] and the 2013 Infrastructure SIP Guidance for the 2008 ozone, 2010 NO_2, 2010 sulfur dioxide (SO_2), and all future NAAQS. The latter represents EPA's most recent guidance.[4]

Comment 2: The commenter also stated that EPA incorrectly stated in its November 4, 2014, proposed action that Missouri's regulations are ''consistent'' with Federal regulations that meet the breakpoint values in subpart H.

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[1] ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' William T. Harnett, Director, EPA's Air Quality Policy Division, October 2, 2007. *http://www.epa.gov/ttn/oarpg/t1/memoranda/110a_sip_guid_fin100207.pdf.*

[2] ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards,'' William T. Harnett, Director, EPA's Air Quality Policy Division, September 25, 2009. *http://www.epa.gov/ttn/caaa/t1/memoranda/20090925_harnett_pm25_sip_110a12.pdf.*

[3] ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards,'' Stephen D. Page, Director, EPA's Office of Air Quality Planning and Standards, October 14, 2011. *http://www.epa.gov/air/lead/pdfs/20111014infrastructure.pdf.*

[4] ''Guidance on Infrastructure SIP Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),'' Stephen D. Page, Director, EPA's Office of Air Quality Planning and Standards, September 13, 2013. *http://www.epa.gov/oar/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf.*

Response 2: When stating the state's action was 'consistent' with federal regulations, EPA was specifically referring to the Missouri revision in subsection (1)(A) of the regulation which was revised to clarify the applicability of the regulation to all sources and premises through the entire state. EPA believes that this specific revision to subsection (1)(A) of the regulation is in fact consistent with subpart H of 40 CFR part 51. This subsection of Missouri's regulation does not relate to the AQI table as the commenter suggests.

Comment 3: The commenter implied that Missouri was removing SHLs from their regulation and was instead relying on AQI breakpoint values to determine the levels at which emergency episodes occur.

Response 3: Missouri's regulations do not specifically include SHL values, and therefore EPA is not taking action to remove SHLs. In addition, for identified priority areas in Missouri, the state is not changing these classifications or supplanting these priority levels with the AQI.

Comment 4: The commenter stated that AQI breakpoint values are not updated each time the National Ambient Air Quality Standards (NAAQS) are revised.

Response 4: The January 15, 2013, final rule for the $PM_{2.5}$ standards updated the AQI breakpoint values for $PM_{2.5}$. See 78 FR 3086. This is consistent with past EPA actions.

Comment 5: The fifth and sixth paragraphs of the commenter's letter expresses concern about EPA's historical actions related to the emergency episode program and that EPA has not determined a SHL (and thus AQI breakpoint values) specifically for $PM_{2.5}$.

Response 5: Because this comment is not related to EPA's proposed action on November 4, 2014, no changes will be made to EPA's action in response to this comment. Further, because EPA is not taking action to address or revise any SHL in Missouri's regulation, no changes will be made to EPA's action in response to this aspect of the comment. See response to comment 1 above for further information on EPA's historical actions related to the emergency episode program. In addition, while the regulations in 40 CFR part 51, subpart H do not address $PM_{2.5}$ specifically and do not identify a significant harm level or priority classification levels for $PM_{2.5}$, the EPA has recommended to states, through the September 25, 2009 guidance, which remains in effect, that states only need to develop contingency plans for any area that has a monitored and recorded 24-hour $PM_{2.5}$ levels greater than 140.4 $\mu g/m^3$ since 2006. The EPA has evaluated $PM_{2.5}$ regulatory monitoring data in Missouri since 2006 and have confirmed that no values greater than 140.4 $\mu g/m^3$ have been recorded. Accordingly, EPA believes that there are no areas in Missouri for which a contingency plan is required at this time. If there were an area for which such a contingency plan were necessary, however, EPA's 2013 infrastructure SIP guidance states, ''the EPA believes that the central components of a contingency plan would be to reduce emissions from the source(s) at issue (if necessary by curtailing operations of . . . $PM_{2.5}$ sources) and public communication as needed.'' Thus, the absence of a significant harm level and classification levels for $PM_{2.5}$ are not relevant, if Missouri were required to develop a contingency plan for purposes of $PM_{2.5}$, which it is not at this time. However, EPA notes that the state regulation is applicable to ''all emissions'' including $PM_{2.5}$ and therefore the provisions of the state regulation apply to $PM_{2.5}$ as well.

Comment 6: The commenter requests clarification regarding the ''placeholder'' AQI levels and SHLs for $PM_{2.5}$ remain appropriate for the nation and for Missouri.

Response 6: EPA has previously approved Missouri's emergency episode plan as meeting the requirements of CAA section 110(a)(2)(G), See 78 FR 37457. For a detailed rationale on EPA's analysis of how Missouri meets these requirements, see EPA's proposed action on April 10, 2013 (78 FR 21281).

In response to the commenter's broader concern of the appropriateness of the AQI levels in relation to SHLs for $PM_{2.5}$, EPA directs the commenter to EPA's February 2007 issue paper on revising the AQI and setting a SHLs for $PM_{2.5}$ as previously referenced in comment 1.

Comment 7: The commenter stated that, ''EPA should not approve state regulations that are merely 'consistent with' federal regulations when EPA clearly set out 'placeholder' values and not real values that would protect the public health and welfare.''

Response 7: Because this comment is not related to EPA's action on November 4, 2014, no changes will be made in response to this comment. EPA directs the commenter to EPA's February 2007 issue paper on revising the AQI and setting a SHL for $PM_{2.5}$ as previously referenced in comment 1.

Comment 8: The commenter requested that EPA should explain why it has not revised the SHLs for $PM_{2.5}$ in 15 years.

Response 8: Because this comment is not related to EPA's action on November 4, 2014, no changes will be made in response to this comment. EPA directs the commenter to response number 1 and 5 above for further explanation of historical actions on EPA's emergency episode planning requirements and guidance.

IV. What action is EPA taking?

Upon review and consideration of comments received, EPA is taking final action to revise the Missouri SIP pertaining to Missouri regulation 10 CSR 10–6.130, ''Controlling Emissions During Episodes of High Air Pollution Potential.'' Based upon review of the state's SIP revision and relevant requirements of the CAA, EPA believes that this revision meets applicable requirements and does not adversely impact air quality in Missouri.

Statutory and Executive Order Reviews

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Missouri Code of State Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

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 action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; 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).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 19, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 4, 2015.

Mark Hague,

Acting Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA amends 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 the table in paragraph (c) is amended by revising the entry for 10–6.130 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 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
* * * * * * *				
10–6.130	Controlling Emissions During Episodes of High Air Pollution Potential.	12/30/13	*8/18/15, [Insert* **Federal Register** *citation].*	
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[FR Doc. 2015–20249 Filed 8–17–15; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 150623545–5545–01]

RIN 0648–XE015

Revisions to Framework Adjustment 53 to the Northeast Multispecies Fishery Management Plan and Sector Annual Catch Entitlements; Updated Annual Catch Limits for Sectors and the Common Pool for Fishing Year 2015

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

ACTION: Temporary final rule; adjustment to specifications.

SUMMARY: Based on the final Northeast multispecies sector rosters submitted as of May 1, 2015, we are adjusting the fishing year 2015 specification of annual catch limits for commercial groundfish vessels, as well as sector annual catch entitlements and common pool allocations for groundfish stocks. This revision to fishing year 2015 catch levels is necessary to account for changes in the number of participants electing to fish in either sectors or the common pool fishery. This action details unused sector quotas that may be carried over from fishing year 2014 to fishing year 2015. This action also reduces the fishing year 2015 common pool allocation of Eastern Georges Bank cod and adjusts common pool incidental catch limits to account for a common pool fishing year 2014 overage.

DATES: Effective August 17, 2015, through April 30, 2016.

FOR FURTHER INFORMATION CONTACT: William Whitmore, Fishery Policy Analyst, (978) 281–9128.

SUPPLEMENTARY INFORMATION: The New England Fishery Management Council (Council) developed Amendment 16 to the Northeast (NE) Multispecies Fishery Management Plan (FMP), in part, to establish a process for setting groundfish annual catch limits (also referred to as ACLs or catch limits) and accountability measures. Framework Adjustment (Framework) 53 set annual catch limits for groundfish stocks and three jointly managed U.S./Canada stocks for fishing year 2015. We recently approved Framework 53, which became effective on May 1, 2015 (80 FR 25110).

We also recently approved fishing year 2015 sector operations plans and allocations (80 FR 25143; May 2, 2015; ''sector final rule''). A sector receives an allocation of each stock, or annual catch entitlement (referred to as ACE, or allocation), based on its members' catch histories. State-operated permit banks also receive an allocation that can be transferred to qualifying sector vessels. The sum of all sector and state-operated permit bank allocations is referred to as the sector sub-ACL. Whatever groundfish allocations remain after sectors and state-operated permit banks receive their allocations are then allocated to the common pool (*i.e.,* vessels not enrolled in a sector).

This rule adjusts the fishing year 2015 sector and common pool allocations based on final sector membership as of May 1, 2015. Since the final rules are not effective until the beginning of the fishing year (May 1), permits enrolled in a sector and the vessels associated with those permits have until April 30, the last day prior to the beginning of a new fishing year, to withdraw from a sector and fish in the common pool. As a result, the actual sector enrollment for the new fishing year is unknown when the specifications (in this case, Framework 53) and sector final rules publish. To address this issue, each year we publish an adjustment rule modifying sector and common pool allocations based on final sector enrollment. If the sector allocation increases as a result of sector membership changes, the common pool allocation decreases—the opposite is true as well. The Framework 53 and the fishing year 2015 sector proposed and final rules both explained that sector enrollments may change and that there would be a need to adjust the sub-ACLs and ACEs accordingly.

Adjustments to sector ACEs and the sub-ACLs for sectors and the common pool are typically minimal as historically there has been little change in sector enrollment. Tables 1, 2, and 3 explain the revised fishing year 2015. Table 4 compares the allocation changes between the sector final rule and this adjustment rule. Vessels currently enrolled in sectors have accounted for approximately 99 percent of the historical groundfish landings. This year's sector final rule specified sector ACEs based on the 842 permits enrolled in sectors on February 25, 2015. As of May 1, 2015, there are 838 NE multispecies permits enrolled in sectors, which means four permits elected to leave sectors and operate in common pool for fishing year 2015.

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Table 1. Final Sector Enrollment and Percentage (%) of ACE for Each Sector, by Stock for Fishing Year 2015[1]

Sector Name	MRI Count	GB Cod	GOM Cod	GB Haddock	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	SNE/MA Winter Flounder	Redfish	White Hake	Pollock
FGS	113	27.68	2.60	5.76	1.84	0.01	0.37	3.04	0.98	2.14	0.03	13.47	2.34	2.74	5.70	7.38
MCCS	45	0.21	4.59	0.04	2.56	0.00	0.66	1.05	7.55	5.06	0.01	1.96	0.19	2.50	4.39	3.79
MPB	11	0.13	1.15	0.04	1.12	0.01	0.03	0.32	1.16	0.73	0.00	0.43	0.02	0.82	1.65	1.69
NHPB	4	0.00	1.14	0.00	0.03	0.00	0.00	0.02	0.03	0.01	0.00	0.06	0.00	0.02	0.08	0.11
NCCS	26	0.18	0.87	0.14	0.39	0.84	0.72	0.62	0.31	0.30	0.05	0.93	0.29	0.45	0.86	0.51
NEFS 1	3	0.00	0.03	0.00	0.00	0.00	0.00	0.04	0.01	0.01	0.00	0.05	0.00	0.00	0.00	0.00
NEFS 2	80	5.69	18.28	10.68	16.45	1.91	1.40	18.84	7.78	12.59	3.21	18.17	3.19	14.71	6.04	11.84
NEFS 3	72	1.12	13.67	0.14	8.94	0.05	0.41	8.50	4.05	2.85	0.03	9.18	0.75	1.29	4.51	6.05
NEFS 4	50	4.14	9.59	5.33	8.27	2.16	2.35	5.46	9.29	8.49	0.69	6.24	1.28	6.63	8.05	6.14
NEFS 5	28	0.73	0.11	0.86	0.13	1.26	20.66	0.21	0.38	0.55	0.43	0.02	12.32	0.02	0.10	0.09
NEFS 6	22	2.87	2.95	2.92	3.85	2.70	5.26	3.73	3.89	5.20	1.50	4.55	1.94	5.30	3.91	3.29
NEFS 7	28	4.59	0.82	4.51	0.69	10.45	4.33	4.36	3.69	3.67	10.26	3.01	4.87	0.61	0.88	0.76
NEFS 8	16	5.89	0.18	5.86	0.08	9.75	5.43	4.32	1.54	2.12	15.05	1.04	9.77	0.53	0.46	0.57
NEFS 9	60	14.23	1.75	11.60	4.80	26.78	7.90	10.43	8.27	8.27	39.54	2.45	18.36	5.82	4.15	4.23
NEFS 10	44	0.74	5.40	0.25	2.59	0.00	0.55	13.05	1.71	2.39	0.01	18.10	0.73	0.55	0.91	1.46
NEFS 11	56	0.41	13.62	0.04	3.21	0.00	0.02	2.58	2.10	2.07	0.00	2.25	0.02	1.98	4.83	9.44
NEFS 13	50	7.95	0.84	15.97	0.93	24.74	18.57	4.74	5.15	6.17	7.24	2.06	10.82	3.98	1.74	2.27
SHS 1	25	1.82	4.33	2.24	3.94	0.92	0.44	2.81	5.75	3.95	5.75	5.06	0.82	4.26	4.87	3.94
SHS 3	105	19.46	15.37	32.73	38.89	16.50	10.37	11.30	34.44	31.13	15.23	5.55	20.07	47.20	46.14	35.82
Sector Total	**838**	**97.84**	**97.29**	**99.11**	**98.72**	**98.09**	**79.45**	**95.43**	**98.09**	**97.71**	**99.03**	**94.58**	**87.80**	**99.42**	**99.27**	**99.37**
Common Pool	**522**	**2.16**	**2.71**	**0.89**	**1.28**	**1.91**	**20.55**	**4.57**	**1.91**	**2.29**	**0.97**	**5.42**	**12.20**	**0.58**	**0.73**	**0.63**

Georges Bank Cod Fixed Gear Sector (FGS), Maine Coast Community Sector (MCCS), Maine Permit Bank (MPB), New Hampshire Permit Bank (NHPB), Northeast Coastal Communities Sector (NCCS), Northeast Fishery Sectors (NEFS), and Sustainable Harvest Sector (SHS)

[1]All ACE values for sectors outlined in Table 1 assume that each sector permit is valid for fishing year 2015.

Table 2. Final ACE, for Each Sector, by Stock for Fishing Year 2015 (mt)[1,2]

Sector Name	GB Cod East	GB Cod West	GOM Cod	GB Haddock East	GB Haddock West	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	SNE/MA Winter Flounder	Redfish	White Hake	Pollock
FGS	34	460	5	1,023	230	18	0	2	14	14	13	1	53	31	302	247	1,013
MCCS	0	3	10	7	2	24	0	4	5	106	31	0	8	3	276	191	520
MPB	0	2	2	8	2	11	0	0	1	16	4	0	2	0	91	72	232
NHPB	0	0	2	0	0	0	0	0	0	0	0	0	0	0	2	4	15
NCCS	0	3	2	24	6	4	2	4	3	4	2	1	4	4	50	37	70
NEFS 1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
NEFS 2	7	95	38	1,897	427	158	4	8	86	110	77	61	71	42	1,624	262	1,625
NEFS 3	1	19	28	25	6	86	0	2	39	57	17	0	36	10	142	196	830
NEFS 4	5	69	20	947	213	79	4	13	25	131	52	13	24	17	732	350	842
NEFS 5	1	12	0	152	34	1	2	115	1	5	3	8	0	161	2	4	13
NEFS 6	4	48	6	519	117	37	5	29	17	55	32	28	18	25	585	170	452
NEFS 7	6	76	2	801	180	7	20	24	20	52	22	194	12	64	67	38	104
NEFS 8	7	98	0	1,041	234	1	19	30	20	22	13	285	4	128	58	20	78
NEFS 9	18	237	4	2,060	464	46	52	44	48	116	50	748	10	240	643	180	580
NEFS 10	1	12	11	45	10	25	0	3	60	24	15	0	71	10	60	40	200
NEFS 11	1	7	28	7	2	31	0	0	12	30	13	0	9	0	219	210	1,295
NEFS 13	10	132	2	2,836	639	9	48	103	22	73	38	137	8	141	439	76	311
SHS 1	2	30	9	397	89	38	2	2	13	81	24	109	20	11	470	211	541
SHS 3	24	324	32	5,813	1,309	373	32	58	52	485	190	288	22	262	5,208	2,004	4,914
Sectors Total	**121**	**1,627**	**201**	**17,603**	**3,964**	**946**	**191**	**443**	**437**	**1,381**	**596**	**1,873**	**371**	**1,147**	**10,970**	**4,311**	**13,634**
Common Pool	**3**	**36**	**6**	**157**	**35**	**12**	**4**	**114**	**21**	**27**	**14**	**18**	**21**	**159**	**64**	**32**	**86**

[1]All ACE values for sectors outlined in Table 2 assume that each sector permit is valid for fishing year 2015.

[2]These values do not include any potential ACE carryover or deductions from fishing year 2014 sector ACE underages or overages or common pool overages. The common pool Eastern GB cod overage adjustment is explained in Tables 5-6. Adjustments for any sector carryover or deductions will be made in a future action following reconciliation.

Table 3. Final ACE for Each Sector by Stock for Fishing Year 2015 (1,000 lb)[1,2]

Sector Name	GB Cod East	GB Cod West	GOM Cod	GB Haddock East	GB Haddock West	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	SNE/MA Winter Flounder	Redfish	White Hake	Pollock
FGS	76	1,015	12	2,255	508	39	0	5	31	30	29	1	116	67	666	545	2,232
MCCS	1	8	21	15	3	54	0	8	11	234	68	0	17	6	608	421	1,146
MPB	0	5	5	17	4	24	0	0	3	36	10	0	4	1	200	158	510
NHPB	0	0	5	0	0	1	0	0	0	1	0	0	1	0	5	8	34
NCCS	0	7	4	54	12	8	4	9	6	10	4	2	8	8	111	82	155
NEFS 1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
NEFS 2	16	208	83	4,182	942	347	8	17	190	242	169	134	157	92	3,579	579	3,581
NEFS 3	3	41	62	56	13	189	0	5	86	126	38	1	79	22	313	432	1,829
NEFS 4	11	152	44	2,089	470	175	9	29	55	288	114	29	54	37	1,614	771	1,857
NEFS 5	2	27	0	336	76	3	5	254	2	12	7	18	0	355	5	10	28
NEFS 6	8	105	13	1,144	258	81	12	65	38	121	70	63	39	56	1,290	374	996
NEFS 7	13	168	4	1,765	397	15	45	53	44	115	49	428	26	140	148	84	229
NEFS 8	16	216	1	2,296	517	2	42	67	44	48	28	628	9	281	129	44	172
NEFS 9	39	522	8	4,542	1,023	101	115	97	105	257	111	1,648	21	529	1,417	397	1,278
NEFS 10	2	27	25	98	22	55	0	7	132	53	32	0	156	21	133	88	441
NEFS 11	1	15	62	15	3	68	0	0	26	65	28	0	19	1	482	463	2,854
NEFS 13	22	291	4	6,252	1,408	20	106	228	48	160	83	302	18	311	968	167	687
SHS 1	5	67	20	875	197	83	4	5	28	179	53	240	44	24	1,037	466	1,192
SHS 3	53	713	70	12,815	2,886	821	71	127	114	1,069	419	635	48	578	11,482	4,417	10,834
Sectors Total	**267**	**3,587**	**444**	**38,807**	**8,738**	**2,085**	**422**	**976**	**964**	**3,045**	**1,314**	**4,129**	**817**	**2,528**	**24,185**	**9,505**	**30,057**
Common Pool	**6**	**79**	**12**	**347**	**78**	**27**	**8**	**252**	**46**	**59**	**31**	**40**	**47**	**351**	**140**	**69**	**191**

[1]All ACE values for sectors outlined in Table 3 assume that each sector permit is valid for fishing year 2015.

[2]These values do not include any potential ACE carryover or deductions from fishing year 2014 sector ACE underages or overages or common pool overages. The common pool Eastern GB cod overage is explained in Tables 5-6. Adjustments for any sector carryover or deductions will be made in a future action following reconciliation.

Table 4. ACE Comparison Between Final Sector and Adjustment Rules (mt)

	GB Cod East	GB Cod West	GOM Cod	GB Haddock East	GB Haddock West	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	SNE/MA Winter Flounder	Redfish	White Hake	Pollock
Total ACE	124	1,663	207	17,760	3,999	958	195	557	458	1,408	610	1,891	392	1,306	11,034	4,343	13,720
Common Pool ACE from Final Rule	2	32	5	127	29	9	3	102	16	27	12	15	17	157	60	32	92
Adjusted Common Pool Allocation	3	36	6	157	35	12	4	114	21	27	14	18	21	159	64	32	86
Sector ACE from Final Rule	122	1,631	202	17,633	3,970	949	192	455	442	1,381	598	1,876	375	1,149	10,974	4,311	13,628
Adjusted Sector Allocation	121	1,627	201	17,603	3,964	946	191	443	437	1,381	596	1,873	371	1,147	10,970	4,311	13,634
% ACE Moved from Sectors to Common Pool	-0.5%	-0.2%	-0.3%	-0.2%	-0.2%	-0.3%	-0.4%	-2.2%	-1.1%	0.0%	-0.3%	-0.2%	-1.1%	-0.2%	0.0%	0.0%	0.0%

We have completed fishing year 2014 data reconciliation with sectors and determined final fishing year 2014 sector catch and the amount of quota that sectors may carry from fishing year 2014 into fishing year 2015. A recent emergency rule (79 FR 36433; June 27, 2014) described changes to carryover and catch accounting in response to litigation by Conservation Law Foundation (*Conservation Law Foundation* v. *Pritzker, et al.* (Case No. 1:13–CV–0821–JEB)). This rule ensures that catch does not exceed the allowable biological catch for any stock. Because of this, the maximum carryover for certain stocks may be lower than what a sector expects. Table 5 includes the maximum amount of quota that sectors may carry over from fishing year 2014 into fishing year 2015. Table 6 includes the *de minimis* amount of quota that sectors may carry over from fishing year 2014 into fishing year 2015. Tables 7 and 8 list the final ACE available to sectors for fishing year 2015, including carryover.

Table 5. Maximum Carryover ACE from Fishing Year 2014 to Fishing Year 2015 (lb)

	GB Cod West	GOM Cod	GB Haddock West	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	SNE/MA Winter Flounder	Redfish	White Hake	Pollock
FGS	48,857	908	148,776	1,768	0	278	1,641	1,959	1,668	36	6,168	2,880	35,537	29,439	120,414
MCCS	479	2,357	1,018	2,451	0	246	594	7,839	5,773	8	940	334	32,432	22,697	61,818
NCCS	395	437	3,139	346	0	692	353	318	21	89	444	516	5,601	4,201	8,281
NEFS 1	0	3	0	2	0	0	10	9	6	0	7	0	0	0	0
NEFS 2	13,140	9,376	276,008	15,724	0	159	10,913	7,660	5,494	4,184	8,831	5,634	191,150	30,683	183,721
NEFS 3	2,867	7,410	3,770	8,924	0	205	5,010	4,495	508	34	4,549	1,333	17,414	24,528	111,131
NEFS 4	8,815	4,929	137,234	8,029	0	2,093	1,836	11,660	5,243	903	2,989	2,231	86,109	41,613	100,191
NEFS 5	1,774	6	27,216	279	0	21,371	273	875	759	670	31	20,719	996	623	1,715
NEFS 6	6,514	1,517	75,474	3,698	0	5,034	2,115	4,472	4,153	1,963	2,180	3,350	68,843	20,202	53,743
NEFS 7	10,603	200	119,167	451	0	3,896	1,326	7,063	3,695	16,872	359	8,892	7,593	4,243	11,582
NEFS 8	13,962	236	154,842	193	0	5,736	3,616	3,436	2,932	20,221	1,515	17,474	7,126	2,650	9,904
NEFS 9	31,863	891	299,569	4,609	0	7,598	5,887	15,896	5,321	51,384	1,167	32,204	75,607	21,451	68,976
NEFS 10	1,656	2,677	6,488	2,435	0	411	7,164	3,410	2,213	17	8,547	1,265	7,075	4,618	22,654
NEFS 11	924	2,432	984	2,904	0	18	1,462	4,205	2,137	4	1,077	37	25,738	24,967	153,992
NEFS 13	17,995	487	411,921	950	0	17,809	2,843	10,289	4,279	9,442	1,121	18,952	51,613	8,980	37,036
SHS 1	46,950	10,104	886,366	41,056	0	7,972	7,471	79,099	26,182	22,516	4,972	33,731	665,116	262,229	645,586
SHS 3	542	76	10,359	63	0	2,149	636	694	383	599	630	1,933	2,351	802	1,207
Total	**207,336**	**44,046**	**2,562,331**	**93,882**	**0**	**75,667**	**53,150**	**163,379**	**70,767**	**128,942**	**45,527**	**151,485**	**1,280,301**	**503,926**	**1,591,951**

Table 6. *De Minimis* Carryover ACE from Fishing Year 2014 to Fishing Year 2015 (lb)

	GB Cod West	GOM Cod	GB Haddock West	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	SNE/MA Winter Flounder	Redfish	White Hake	Pollock
FGS	10,907	119	27,634	389	0	45	307	304	288	12	1,164	673	6,661	5,454	22,323
MCCS	83	210	186	540	0	81	106	2,344	680	3	170	55	6,078	4,205	11,458
NCCS	71	40	661	83	0	88	63	95	21	22	80	82	1,107	821	1,549
NEFS 1	0	1	0	1	0	0	4	3	2	0	4	0	0	0	0
NEFS 2	2,240	834	51,242	3,474	0	159	1,902	2,417	1,693	1,338	1,570	919	35,793	5,786	35,814
NEFS 3	443	624	684	1,888	0	50	858	1,258	383	11	794	217	3,132	4,315	18,295
NEFS 4	1,632	437	25,588	1,746	0	288	552	2,882	1,142	288	540	369	16,136	7,709	18,571
NEFS 5	286	5	4,119	28	0	2,537	21	119	74	181	2	3,548	51	97	281
NEFS 6	1,129	135	14,019	814	0	646	377	1,208	700	627	394	559	12,901	3,743	9,962
NEFS 7	1,809	37	21,626	146	0	532	440	1,145	494	4,276	260	1,403	1,478	840	2,285
NEFS 8	2,320	8	28,128	16	0	667	436	479	285	6,276	90	2,814	1,289	440	1,723
NEFS 9	5,606	80	55,641	1,014	0	970	1,053	2,566	1,113	16,484	212	5,287	14,168	3,974	12,785
NEFS 10	290	247	1,206	546	0	67	1,318	530	322	4	1,564	210	1,333	876	4,406
NEFS 11	160	622	183	679	0	2	261	651	279	1	194	6	4,823	4,625	28,543
NEFS 13	3,132	38	76,592	197	0	2,281	479	1,599	830	3,017	178	3,114	9,675	1,671	6,866
SHS 1	718	198	10,725	832	0	53	284	1,785	531	2,396	437	237	10,368	4,662	11,924
SHS 3	542	76	10,359	63	0	1,273	636	694	383	599	480	1,933	2,351	802	1,207
Total	**31,368**	**3,711**	**328,593**	**12,456**	**0**	**9,739**	**9,097**	**20,079**	**9,220**	**35,535**	**8,133**	**21,426**	**127,344**	**50,020**	**187,992**

Table 7. Total ACE Available to Sectors in Fishing Year 2014 with Maximum Carryover (mt)

	GB Cod East	GB Cod West	GOM Cod	GB Haddock East	GB Haddock West	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	SNE/MA Winter Flounder	Redfish	White Hake	Pollock
FGS	34	483	6	1,023	298	18	0	2	15	15	14	1	56	32	318	261	1,067
MCCS	0	4	11	7	2	26	0	4	5	110	33	0	8	3	290	201	548
MPB	0	2	2	8	2	11	0	0	1	16	4	0	2	0	91	72	232
NCCS	0	3	2	24	7	4	2	4	3	4	2	1	4	4	53	39	74
NEFS 1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
NEFS 2	7	101	42	1,897	552	165	4	8	91	113	79	63	75	44	1,710	276	1,708
NEFS 3	1	20	32	25	7	90	0	2	41	59	18	1	38	10	150	207	880
NEFS 4	5	73	22	947	276	83	4	14	26	136	54	13	26	18	771	369	888
NEFS 5	1	13	0	152	47	1	2	125	1	6	4	9	0	170	3	5	14
NEFS 6	4	51	7	519	151	39	5	32	18	57	34	29	19	27	616	179	476
NEFS 7	6	81	2	801	234	7	20	26	21	55	24	202	12	68	70	40	109
NEFS 8	7	104	0	1,041	305	1	19	33	21	23	14	294	5	136	62	21	83
NEFS 9	18	251	4	2,060	600	48	52	47	50	124	53	771	10	254	677	190	611
NEFS 10	1	13	12	45	13	26	0	3	63	26	16	0	75	10	64	42	210
NEFS 11	1	7	29	7	2	32	0	0	12	31	14	0	9	0	230	221	1,365
NEFS 13	10	140	2	2,836	825	9	48	112	23	77	40	141	9	150	462	80	328
NHPB	0	0	2	0	0	0	0	0	0	0	0	0	0	0	2	4	15
SHS 1	2	52	14	397	491	56	2	6	16	117	36	119	22	26	772	330	834
SHS 3	24	324	32	5,813	1,314	373	32	59	52	485	190	288	22	263	5,209	2,004	4,915
Total	**121**	**1,721**	**221**	**17,603**	**5,126**	**988**	**191**	**477**	**461**	**1,455**	**628**	**1,931**	**391**	**1,215**	**11,551**	**4,540**	**14,356**

Table 8. Total ACE Available to Sectors in Fishing Year 2014 with Maximum Carryover (1,000 lb)

	GB Cod East	GB Cod West	GOM Cod	GB Haddock East	GB Haddock West	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	SNE/MA Winter Flounder	Redfish	White Hake	Pollock
FGS	76	1,064	13	2,255	657	41	0	5	32	32	30	1	123	70	702	575	2,353
MCCS	1	8	23	15	4	56	0	8	11	242	74	0	18	6	640	443	1,208
MPB	0	5	5	17	4	24	0	0	3	36	10	0	4	1	200	158	510
NCCS	0	7	4	54	15	9	4	10	7	10	4	2	8	9	116	86	163
NEFS 1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
NEFS 2	16	222	93	4,182	1,218	363	8	17	201	249	175	138	166	98	3,770	609	3,765
NEFS 3	3	44	70	56	16	198	0	5	91	130	39	1	84	23	331	456	1,941
NEFS 4	11	161	49	2,089	608	183	9	31	57	300	119	30	57	39	1,700	813	1,957
NEFS 5	2	28	0	336	103	3	5	275	2	13	8	19	0	376	6	10	30
NEFS 6	8	112	15	1,144	333	85	12	70	40	125	74	65	42	59	1,359	394	1,050
NEFS 7	13	179	4	1,765	517	15	45	57	45	122	53	445	26	149	155	88	240
NEFS 8	16	230	1	2,296	672	2	42	72	47	51	31	648	11	299	136	47	182
NEFS 9	39	554	9	4,542	1,322	106	115	105	111	273	117	1,700	22	561	1,492	419	1,347
NEFS 10	2	29	27	98	29	57	0	7	139	56	34	0	165	22	140	92	463
NEFS 11	1	16	65	15	4	71	0	0	28	69	30	0	21	1	508	487	3,008
NEFS 13	22	309	4	6,252	1,820	21	106	246	51	170	87	311	19	330	1,019	176	724
NHPB	0	0	5	0	0	1	0	0	0	1	0	0	1	0	5	8	34
SHS 1	5	114	30	875	1,083	124	4	13	36	258	79	262	49	57	1,702	728	1,838
SHS 3	53	714	70	12,815	2,896	821	71	129	115	1,070	419	636	49	580	11,484	4,418	10,836
Total	**267**	**3,794**	**488**	**38,807**	**11,301**	**2,179**	**422**	**1,051**	**1,017**	**3,208**	**1,385**	**4,258**	**863**	**2,679**	**25,466**	**10,009**	**31,649**

This rule also reduces the Eastern GB cod common pool sub-ACL for fishing year 2015 due to a fishing year 2014 overage (Tables 9 and 10). When the common pool sub-ACL for any stock is exceeded in one fishing year, the

accountability measures in the FMP require us to reduce the common pool sub-ACL by the amount of the overage in the next fishing year. The 2.8 mt fishing year 2014 common pool sub-ACL for Eastern GB cod was exceeded by 1.3 mt (48 percent). Therefore, this action reduces the initially allocated 2.7 mt fishing year 2015 Eastern GB cod common pool sub-ACL by 1.3 mt, leaving an adjusted allocation of 1.4 mt for the remainder of the fishing year.

Framework 53 specified incidental catch limits (or incidental total allowable catches, ''TACs'') applicable to the common pool and groundfish Special Management Programs for fishing year 2015, including the B day-at-sea (DAS) Program. Because these incidental catch limits are based on the common-pool allocation, they also must be revised to match current common pool enrollment allocation and, in this instance, to account for the Eastern GB cod accountability measure for fishing year 2015. Final common pool trimester quotas (including adjustments for the Eastern GB cod overage) and incidental catch limits are included in Tables 11–15 below.

This is only a temporary final rule. After we finish reconciling differences in fishing year 2014 catch accounting between our data and each sector manager's data, each sector will have 2 weeks to trade its fishing year 2014 ACE to account for any overages. After that 2-week trading window, a sector that still has exceeded its fishing year 2014 allocation will have its fishing year 2015 allocation reduced, pursuant to regulatory requirements. Because data reconciliation and the 2-week trading window take place after the new fishing year beings, we reserve 20 percent of each sector's fishing year 2015 allocation until fishing year 2014 catch data are reconciled. Sectors can carryover up to 10 percent of their fishing year 2014 ACE, or an amount of ACE that does not result in exceeding the allowable biological catch, into fishing year 2015. We will publish a final follow-up rule detailing any carryover of fishing year 2014 sector allocation or reduction in fishing year 2014 allocation resulting from sectors under or overharvesting their allocations.

Table 9. Fishing year 2015 Sector ACEs and Common Pool TACs for Eastern and Western GB Cod Based on Final Sector Rosters (mt)[1]

Catch Limits	Eastern GB Cod	Western GB Cod	Total GB Cod
Sectors Total	121	1627	1748
Common Pool	3	36	39
Total	124	1663	1787

[1] Values are rounded to the nearest mt

Table 10. Adjustment of Fishing Year 2015 Common Pool GB Cod TAC to Account for Fishing Year 2014 Overage (mt)

Eastern GB Cod TAC	2014 Eastern GB Cod Deduction	Adjusted Eastern GB Cod TAC	Western GB Cod TAC	Total GB TAC	Trimester 1	Trimester 2	Trimester 3
2.7	-1.3	1.4	36.0	37.3	9.3	13.8	14.2

Table 11. Final Fishing Year 2015 Common Pool Trimester TACs

Stock	Percentage of sub-ACL			2015 Trimester TAC (mt)		
	Trimester 1	Trimester 2	Trimester 3	Trimester 1	Trimester 2	Trimester 3
GB Cod	25	37	38	9.3	13.8	14.2
GOM Cod	27	36	37	1.5	2.0	2.1
GB Haddock	27	33	40	52.0	63.6	77.1
GOM Haddock	27	26	47	3.32	3.19	5.77
GB Yellowtail Flounder	19	30	52	0.7	1.1	1.9
SNE/MA Yellowtail Flounder	21	37	42	24.1	42.4	48.1
CC/GOM Yellowtail Flounder	35	35	30	7.3	7.3	6.3
American Plaice	24	36	40	6.5	9.7	10.8
Witch Flounder	27	31	42	3.8	4.3	5.9
GB Winter Flounder	8	24	69	1.5	4.4	12.6
GOM Winter Flounder	37	38	25	7.9	8.1	5.3
Redfish	25	31	44	15.9	19.7	28.0
White Hake	38	31	31	12.0	9.8	9.8
Pollock	28	35	37	24.2	30.3	32.0

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TABLE 12—FISHING YEAR 2015 COMMON POOL INCIDENTAL CATCH TACS

Stock	Percentage of common pool sub-ACL	Incidental catch TAC (mt)
GB cod	2	0.75
GOM cod	1	0.06
GB yellowtail flounder	2	0.08
CC/GOM yellowtail flounder	1	0.21
American Plaice	5	1.35
Witch Flounder	5	0.7
SNE/MA winter flounder	1	1.59

TABLE 13—DISTRIBUTION OF COMMON POOL INCIDENTAL CATCH TACS TO EACH SPECIAL MANAGEMENT PROGRAM

Stock	Regular B DAS program (%)	Closed Area I hook gear haddock SAP (%)	Eastern U.S./CA haddock SAP (%)	Southern closed Area II haddock SAP
GB cod	50	16	34	NA
GOM cod	100	NA	NA	NA
GB yellowtail flounder	50	NA	50	NA
CC/GOM yellowtail flounder	100	NA	NA	NA
American Plaice	100	NA	NA	NA
Witch Flounder	100	NA	NA	NA
SNE/MA winter flounder	100	NA	NA	NA

TABLE 14—FISHING YEAR 2015 COMMON POOL INCIDENTAL CATCH TACS FOR EACH SPECIAL MANAGEMENT PROGRAM

[(mt)]

Stock	Regular B DAS program	Closed Area I hook gear haddock SAP	Eastern U.S./Canada haddock SAP
GB cod	0.38	0.12	0.26
GOM cod	0.06	NA	NA
GB yellowtail flounder	0.04	NA	0.04
CC/GOM yellowtail flounder	0.21	NA	NA
American Plaice	1.35	NA	NA
Witch Flounder	0.70	NA	NA
SNE/MA winter flounder	1.59	NA	NA

TABLE 15—FISHING YEAR 2015 COMMON POOL REGULAR B DAS PROGRAM QUARTERLY INCIDENTAL CATCH TACS

[(mt)]

Stock	1st Quarter (13%)	2nd Quarter (29%)	3rd Quarter (29%)	4th Quarter (29%)
GB cod	0.05	0.11	0.11	0.11
GOM cod	0.01	0.02	0.02	0.02
GB yellowtail flounder	0.01	0.01	0.01	0.01
CC/GOM yellowtail flounder	0.03	0.06	0.06	0.06
American Plaice	0.18	0.39	0.39	0.39
Witch Flounder	0.09	0.20	0.20	0.20
SNE/MA winter flounder	0.21	0.46	0.46	0.46

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(3)(B), we find good cause to waive prior public notice and opportunity for public comment on the catch limit and allocation adjustments because allowing time for notice and comment is impracticable, unnecessary, and contrary to the public interest. We also find good cause to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), so that this final rule may become effective upon filing.

There are several reasons that notice and comment are impracticable, unnecessary, and contrary to the public interest. First, the proposed and final rules for fishing year 2015 sector operations plans and contracts explained the need and likelihood for adjustments of sector and common pool allocations based on final sector rosters.

No comments were received on the potential for these adjustments, which provide an accurate accounting of a sector's or common pool's allocation at this time. Furthermore, we have followed a similar process since Amendment 16 was implemented in 2010; this annual adjustment action is anticipated by industry. The accountability measure and adjustment process to account for the fishing year 2014 Eastern Georges Bank cod overage was also already subject to notice and comment during Amendment 16 development and implementation. Second, these adjustments are based on either objective sector enrollment data or a pre-determined accountability measure and are not subject to NMFS' discretion, so there would be no benefit to allowing time for prior notice and comment. Third, a delay would potentially impair achievement of the management plan's objectives for the common pool of preventing overfishing and achieving optimum yield by staying within ACLs or allocations. Finally, if this rule is not effective immediately, the sector and common pool vessels will be operating under incorrect information on the catch limits for each stock for sectors and the common pool. This could cause negative economic impacts to the both sectors and the common pool, depending on the size of the allocation, the degree of change in the allocation, and the catch rate of a particular stock.

The catch limit and allocation adjustments are not controversial and the need for them was clearly explained in the proposed and final rules for fishing year 2015 sector operations plans and contracts. Adjustments for overages are also explained in detail in the Amendment 16 proposed and final rules. As a result, NE multispecies permit holders are expecting these adjustments and awaiting their implementation. Fishermen may make both short- and long-term business decisions based on the catch limits in a given sector or the common pool. Any delays in adjusting these limits may cause the affected fishing entities to slow down, or speed up, their fishing activities during the interim period before this rule becomes effective. Both of these reactions could negatively affect the fishery and the businesses and communities that depend on them. Therefore, it is important to implement adjusted catch limits and allocations as soon as possible. For these reasons, we are waiving the public comment period and delay in effectiveness for this rule, pursuant to 5 U.S.C. 553(b)(3)(B) and (d), respectively.

Because advanced notice and the opportunity for public comment are not required under the Administrative Procedure Act, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, do not apply to this rule. Therefore, no final regulatory flexibility analysis is required and none has been prepared.

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

Dated: August 11, 2015.

Eileen Sobeck,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2015–20303 Filed 8–17–15; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 80, No. 159
Tuesday, August 18, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 185

[Document No. AMS–TM–10–0088; TM–08–07]

RIN 0581–AC83

Farmers' Market Promotion Program Regulation; Withdrawal of a Proposed Rule

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; withdrawal.

SUMMARY: This document withdraws a proposed rule published in the **Federal Register** on January 19, 2011 to establish a regulation for the Agricultural Marketing Service's (AMS) Farmers' Market Promotion Program (FMPP). The FMPP is a competitive grant program that makes funds available to eligible entities for projects to establish, expand, and promote farmers markets, roadside stands, community-supported agriculture programs, agritourism activities, and other direct producer-to-consumer marketing opportunities. The proposed rule would have established eligibility and application requirements, the review and approval process, and grant administration procedures for the FMPP. Additionally, the proposed rule announced AMS's intent to request approval from the Office of Management and Budget (OMB) for a new information collection for the FMPP. AMS is consolidating the procedures for all of its grant programs, including the FMPP, into one regulation. Thus, a separate regulation for the FMPP is no longer needed and the 2011 proposed rule is withdrawn.

DATES: Effective August 19, 2015, the proposed rule published on January 19, 2011 (76 FR 3046) is withdrawn.

FOR FURTHER INFORMATION CONTACT: Trista Etzig, Grants Division Director, AMS Transportation and Marketing Program, 1400 Independence Avenue SW., Stop 0264, Washington, DC 20250–0264; Telephone: (202) 720–8356; Email: *Trista.Etzig@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: The FMPP grant program is authorized under the Farmer-to-Consumer Direct Marketing Act of 1976 (7 U.S.C. 3001–3006) (1976 Act) and the amendment to the 1976 Act, the Farmers' Market Promotion Program (7 U.S.C. 3005).

This action withdraws a proposed rule published in the **Federal Register** on January 19, 2011 (76 FR 3046) to establish a regulation for AMS's FMPP. The FMPP is a competitive grant program that makes funds available to eligible entities for projects to establish, expand, and promote farmers markets, roadside stands, community-supported agriculture programs, agritourism activities, and other direct producer-to-consumer marketing opportunities. The proposed rule would have established eligibility and application requirements, the review and approval process, and grant administration procedures for the FMPP. Additionally, the proposed rule announced AMS's intent to request approval from the OMB for a new information collection for the FMPP.

During the comment period, January 19 through March 21, 2011, the U.S. Department of Agriculture received 11 timely comments. These comments may be viewed on the Internet at *http://www.regulations.gov*. One comment generally opposed the proposed rule and one duplicated a comment already submitted. Of the remaining nine comments received, seven addressed multiple sections of the proposed rule and the others provided recommendations regarding how to implement the FMPP program which were outside the scope of the proposed rule.

AMS is consolidating the procedures for all of its grant programs, including the FMPP, into one regulation. Thus, a separate regulation for the FMPP is no longer needed and the proposed rule published in the **Federal Register** on January 19, 2011 (76 FR 3046), is hereby withdrawn.

List of Subjects in 7 CFR Part 185

Farmers' Market Promotion Program, FMPP, FMPP guidelines, FMPP application requirements, FMPP voluntary narrative and budget forms, Confidentiality, FMPP grant agreement, and FMPP awardee grant acceptance terms and conditions.

Authority: 7 U.S.C. 3001–3006.

Dated: August 13, 2015.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2015–20384 Filed 8–17–15; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Doc. No. AMS–FV–15–0026; FV15–984–1 PR]

Walnuts Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the California Walnut Board (Board) to increase the assessment rate established for the 2015–16 and subsequent marketing years from $0.0189 to $0.0379 per kernelweight pound of assessable walnuts. The Board locally administers the marketing order and is comprised of growers and handlers of walnuts operating within the area of production. Assessments upon walnut handlers are used by the Board to fund reasonable and necessary expenses of the program. The marketing year begins September 1 and ends August 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by September 17, 2015.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://*

www.regulations.gov. All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Senior Marketing Specialist, or Martin Engeler, Regional Manager, California Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or Email: *Terry.Vawter@ams.usda.gov* or *Martin.Engeler@ams.usda.gov*.

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Jeffery.Smutny@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 984, as amended (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California walnut handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable walnuts beginning on September 1, 2015, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposed rule would increase the assessment rate established for the Board for the 2015–16 and subsequent marketing years from $0.0189 to $0.0379 per kernelweight pound of assessable walnuts.

The California walnut marketing order provides authority for the Board, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are growers and handlers of California walnuts. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2013–14 and subsequent marketing years, the Board recommended, and USDA approved, an assessment rate of $0.0189 per kernelweight pound of assessable walnuts that would continue in effect from year to year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other information available to USDA.

The Board met on June 4, 2015, and unanimously recommended 2015–16 expenditures of $22,668,980, and an assessment rate of $0.0379 per kernelweight pound of assessable walnuts. In comparison, last year's budgeted expenditures were $9,861,810. The assessment rate of $0.0379 is $0.019 per pound higher than the rate currently in effect. The quantity of assessable walnuts for the 2015–16 marketing year is estimated at 518,000 tons inshell or 466,200,000 kernelweight pounds, which is the five-year average of walnut production. At the recommended higher assessment rate of $0.0379 per kernelweight pound, the Board should collect approximately $17,668,980 in assessment income. The Board also recommended using $5,000,000 from its monetary reserve to help fund the increase in proposed expenditures. Assessments and funds from the reserve would be adequate to cover its 2015–16 budgeted expenses of $22,668,980.

The Board noted that sales of California walnuts in the domestic market have been declining in recent years, and believes that more market development and promotion would reverse the trend. Thus, they are committed to increasing expenditures on domestic marketing promotion projects and programs.

The following table compares major budget expenditures recommended by the Board for the 2014–15 and 2015–16 marketing years:

Budget expense categories	2014–15	2015–16
Employee Expenses	$1,711,000	$1,846,500
Travel/Board Expenses/Annual Audit	190,000	191,000
Office Expenses	241,000	254,000
Controlled Purchases	10,000	10,000
Crop Acreage Survey	0	100,000
Crop Estimate	126,000	130,000
Production Research Director	94,500	94,500
Production Research	1,600,000	1,700,000
Sustainability Project	75,000	75,000
Grades and Standards Research	600,000	600,000
Domestic Market Development	5,742,000	18,478,440
Reserve for Contingency	166,310	32,790

The assessment rate recommended by the Board was derived by dividing anticipated assessment revenue needed by estimated shipments of California walnuts certified as merchantable. The 518,000 ton (inshell) estimate for

merchantable shipments is an average of shipments during five prior years, and that volume has routinely been used in recent years to formulate the crop estimate. Pursuant to § 984.51(b) of the order, this figure is converted to a merchantable kernelweight basis using a factor of 0.45 (518,000 tons × 2,000 pounds per ton × 0.45), which yields 466,200,000 kernelweight pounds. At $0.0379 per pound, the new assessment rate should generate $17,668,980 in assessment income. Along with $5,000,000 from the Board's reserve fund, this assessment rate would allow the Board to cover its expenses.

Section 984.69 of the order authorizes the Board to carry over excess funds into subsequent marketing years as a reserve, provided that funds already in the reserve do not exceed approximately two years' budgeted expenses. By using $5,000,000 from their reserve, the Board is ensuring that the funds within the reserve remain within the requirements of the marketing order.

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other available information.

Although this assessment rate would be effective for an indefinite period, the Board would continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Board's 2015–16 budget and those for subsequent marketing years would be reviewed, and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

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

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

There are approximately 4,500 growers of California walnuts in the production area and approximately 90 handlers subject to regulation under the marketing order. The Small Business Administration (SBA) defines small businesses (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those having annual receipts of less than $7,000,000.

According to USDA's National Agricultural Statistics Service's (NASS's) 2012 Census of Agriculture, approximately 89 percent of California's walnut farms were smaller than 100 acres. Further, NASS reports that the average yield for 2014 was 1.95 tons per acre, and the average price received for 2013 was $3,710 per ton. No average price for 2014 has been reported yet.

A 100-acre farm with an average yield of 1.95 tons per acre would therefore have been expected to produce about 195 tons of walnuts during 2010–11. At $3,710 per ton, that farm's production would have had an approximate value of $723,450. Since Census of Agriculture information indicates that the majority of California's walnut farms are smaller than 100 acres, it could be concluded that the majority of the growers had receipts of less than $723,450 in 2014–15, well below the SBA threshold of $750,000. Thus, the majority of California's walnut growers would be considered small growers according to SBA's definition.

According to information supplied by the Board, approximately two-thirds of California's walnut handlers shipped merchantable walnuts valued under $7,000,000 during the 2014–15 marketing year; and would, therefore, be considered small handlers according to the SBA definition.

This proposed rule would increase the assessment rate established for the Board and collected from handlers for the 2015–16 and subsequent marketing years from $0.0189 to $0.0379 per kernelweight pound of assessable walnuts. The Board unanimously recommended 2015–16 expenditures of $22,668,980 and an assessment rate of $0.0379 per kernelweight pound of assessable walnuts. The proposed assessment rate of $0.0379 is $0.019 higher than the 2014–15 rate. The quantity of assessable walnuts for the 2015–16 marketing year is estimated at 518,000 tons inshell weight, or 466,200,000 kernelweight pounds. Thus, the $0.0379 rate should provide $17,668,980 in assessment income.

The Board also recommended using $5,000,000 from its monetary reserve to augment the assessment income. Thus, assessments plus the $5,000,000 would be adequate to meet this year's expenses. The increased assessment rate is primarily due to increased domestic marketing promotion and programs. The Board has become concerned with the declining sales of California walnuts in the domestic market, and believes that sagging sales can be improved through increased promotional activities. Thus, they recommended an increase in domestic market development from approximately $5.7 million during the 2014–15 marketing year to approximately $18.4 million for the 2015–16 marketing year.

The major expenses for the 2015–16 marketing year include: $1,846,500 for employee expenses; $191,000 for travel, board, and annual audit expenses; $254,000 for office expenses; $10,000 for controlled purchases; $100,000 for the crop acreage survey; $130,000 for the crop estimate; $94,500 for the salary of the Production Research Director; $1,700,000 for production research; $75,000 for a sustainability project; $600,000 for grades and standards research; $18,478,440 for domestic market development projects; and $32,790 for the contingency reserve.

In comparison, these expenditures for the 2014–15 marketing year were: $1,711,000 for employee expenses; $190,000 for travel, board, and annual audit expenses; $241,000 for office expenses; $10,000 for controlled purchases; $126,000 for the crop estimate; $94,500 for the salary of the Production Research Director; $1,600,000 for production research; $75,000 for the sustainability project; $600,000 for grades and standards research; $5,742,000 for domestic market development projects; and $166,310 for the contingency reserve. There was no acreage survey expense in the 2014–15 marketing year.

The Board reviewed and unanimously recommended 2015–16 expenditures of $22,668,980. Prior to arriving at this budget, the Board considered alternative expenditure levels, such as spending an additional $5,000,000, or $10,000,000 for domestic market development projects, as well as alternate assessment rate levels. They ultimately decided that the recommended expenditure and assessment levels were reasonable and necessary to assist in improving domestic sales, as well as properly administering the order. The assessment rate of $0.0379 per kernelweight pound of assessable walnuts was derived by

dividing anticipated assessment revenue needed by expected shipments of California walnuts certified as merchantable. Merchantable shipments for the year are estimated at 466,200,000 pounds. It was determined that $17,668,980 in assessment income was needed, and assessment income combined with funds from the monetary reserve would allow the Board to cover its expenses of $22,668,980.

The Board also considered information from various committees who deliberate and formulate their own budgets of expenses and make recommendations to the Board. The committees include the Market Development, Production Research, Budget and Personnel, and Grades and Standards committees.

Unexpended funds may be retained in a financial reserve, provided that funds in the financial reserve do not exceed approximately two years' budgeted expenses.

According to NASS, the season average grower prices for the years 2012 and 2013 were $3,030 and $3,710 per ton, respectively. No prices have yet been reported for 2014. These prices provide a range within which the 2015–16 season average price could fall. Dividing these average grower prices by 2,000 pounds per ton provides an inshell price per pound range of $1.52 to $1.86. Dividing these inshell per pound prices by the 0.45 conversion factor (inshell to kernelweight) established in the order yields a 2015–16 price range estimate of $3.38 to $4.13 per kernelweight pound of assessable walnuts.

To calculate the percentage of grower revenue represented by the assessment rate, the assessment rate of $0.0379 per kernelweight pound is divided by the low and high estimates of the price range. The estimated assessment revenue for the 2015–16 marketing year as a percentage of total grower revenue will thus likely range between 0.92 and 1.11 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to growers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Board's meeting was widely publicized throughout the California walnut industry, and all interested persons were invited to attend the meeting and encouraged to participate in Board deliberations on all issues. Like all Board meetings, the June 4, 2015, meeting was a public meeting and all entities, both large and small, were free to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178 (Walnuts Grown in California). No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large California walnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

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

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/MarketingOrderSmallBusinessGuide*. Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2015–16 marketing year begins on September 1, 2015, and the marketing order requires that the rate of assessment for each marketing year apply to all assessable walnuts handled during the year; (2) the Board needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis; and (3) handlers are aware of this action, which was unanimously recommended by the Board at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 984

Marketing agreements, Nuts, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR part 984 is proposed to be amended as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 984.347 is revised to read as follows:

§ 984.347 Assessment rate.

On and after September 1, 2015, an assessment rate of $0.0379 per kernelweight pound is established for California merchantable walnuts.

Dated: August 13, 2015.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2015–20395 Filed 8–17–15; 8:45 am]

BILLING CODE 3410–02—P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2015–BT–STD–0006]

RIN: 1904–AD51

Energy Efficiency Program for Consumer Products: Energy Conservation Standards for Fluorescent Lamp Ballasts

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Reopening of public comment period.

SUMMARY: On June 23, 2015, the U.S. Department of Energy (DOE) published a notice of public meeting (NOPM) in the **Federal Register** announcing the availability of the framework document regarding energy conservation standards for fluorescent lamp ballasts. DOE also held a public meeting presenting the framework document on July 17, 2015. The comment period was scheduled to end August 7, 2015. After receiving a request for an additional two weeks to comment, DOE has decided to reopen the comment period for submitting comments and data in response to the framework document regarding energy conservation standards for fluorescent lamp ballasts. The comment period is extended to September 2, 2015.

DATES: DOE will accept comments, data, and information in response to the framework document received no later than September 2, 2015.

ADDRESSES: Interested parties are encouraged to submit comments electronically. However, comments may be submitted, identified by docket number EERE–2015–BT–STD–0006 and/or Regulation Identification Number (RIN) 1904–AD51, by any of the following methods:

• *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

• *Email: FluorLampBallast2015STD0006@ee.doe.gov.* Include the docket number EERE–2015–BT–STD–0006 and/or RIN 1904–AD51 in the subject line of the message.

• *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–5B, Framework Document for Fluorescent Lamp Ballasts, Docket No. EERE–2015–BT–STD–0006 and/or RIN 1904–AD51, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies. [Please note that comments and CDs sent by mail are often delayed and may be damaged by mail screening processes.]

• *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza SW., Washington, DC 20024. Telephone (202) 586–2945. If possible, please submit all items on CD, in which case it is not necessary to include printed copies.

Instructions: All submissions received must include the agency name and docket number and/or RIN for this rulemaking. No telefacsimilies (faxes) will be accepted.

Docket: The docket is available for review at *www.regulations.gov,* including **Federal Register** notices, framework document, public meeting attendee lists and transcripts, comments, and other supporting documents/materials throughout the rulemaking process. The regulations.gov Web page contains simple instructions on how to access all documents, including public comments, in the docket. The docket can be accessed by searching for docket number EERE–2015–BT–STD–0006 on the regulations.gov Web site. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

FOR FURTHER INFORMATION CONTACT:

Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–5J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–1604. Email: *fluorescent_lamp_ballasts@ee.doe.gov.*

Ms. Sarah Butler, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–1777. Email: *sarah.butler@hq.doe.gov.*

For information on how to submit or review public comments, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone (202) 586–2945. Email: *brenda.edwards@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: On June 23, 2015, DOE published a notice in the **Federal Register** announcing the availability of a framework document for potential energy conservation standards for fluorescent lamp ballasts. 80 FR 35886. This framework document details the analytical approach and scope of coverage for the rulemaking, and identifies several issues on which DOE is particularly interested in receiving comments.[1] The notice also announced a public meeting to present the framework document, which was held on July 17, 2015. The notice provided for the submission of written comments by August 7, 2015.

On August 6, 2015, DOE received a request from the National Electrical Manufacturers Association (NEMA) requesting an additional two weeks to prepare comment. In this notice, DOE is reopening the public comment period to allow interested parties to provide DOE with comments and data in response to the methodologies presented in the framework document. DOE will consider any comments in response to the framework document received by midnight of September 2, 2015, and deems any comments received by that time to be timely submitted.

[1] The framework document is available through DOE's Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=110.*

Issued in Washington, DC, on August 12, 2015.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2015–20381 Filed 8–17–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2015–1496; Notice No. 25–15–07–SC]

Special Conditions: Gulfstream Model GVII–G500 Airplanes, Side-Stick Controllers; Controllability and Maneuverability

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for Gulfstream Model GVII–G500 airplanes. These airplanes will have a novel or unusual design feature associated with side-stick controllers, instead of conventional-control wheel-and-column design, for pitch and roll control. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send your comments on or before October 2, 2015.

ADDRESSES: Send comments identified by docket number FAA–2015–1496 using any of the following methods:

• *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.

• *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov/.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Joe Jacobsen, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2011; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these proposed special conditions based on the comments we receive.

Background

On March 29, 2012, Gulfstream Aerospace Corporation applied for a type certificate for their new Model GVII–G500 airplane. The Model GVII–G500 will be a large-cabin business jet with seating for 19 passengers. It will incorporate a low, swept-wing design with winglets and a T-tail. The powerplant will consist of two aft-fuselage-mounted Pratt & Whitney turbofan engines. Avionics will include four primary display units and multiple touchscreen controllers. The flight-control system is a three-axis, fly-by-wire (FBW) system incorporating active control/coupled side sticks.

The Model GVII–G500 will have a wingspan of approximately 87 ft. and a length of just over 91 ft. Maximum takeoff weight will be approximately 76,850 lbs and maximum takeoff thrust will be approximately 15,135 lbs. Maximum range will be approximately 5,000 nm and maximum operating altitude will be 51,000 ft.

The Model GVII–G500 airplane will incorporate a FBW flight-control system, through side-stick controllers, for pitch and roll control. Regulatory requirements, such as the pilot-control forces prescribed in the referenced regulations, are not applicable for the side-stick controller design. In addition, pilot-control authority may be uncertain because the side-stick controllers are not mechanically interconnected to flight controls as are conventional wheel-and-column controls.

Type Certification Basis

Under Title 14, Code of Federal Regulations (14 CFR) 21.17, Gulfstream must show that the Model GVII–G500 airplane meets the applicable provisions of 14 CFR part 25, effective February 1, 1965, including Amendments 25–1 through 25–137; 14 CFR part 34, as amended by Amendments 34–1 through the most current amendment at time of design approval; and 14 CFR part 36, Amendment 36–29.

In addition, the certification basis includes other regulations, special conditions, and exemptions that are not relevant to these proposed special conditions. Type Certificate no. TC–01–2010–0024 will be updated to include a complete description of the certification basis for this airplane model.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Gulfstream Model GVII–G500 airplane because of a novel or unusual design feature, special conditions are prescribed under § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the proposed special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and proposed special conditions, Gulfstream Model GVII–G500 airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36; and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in 14 CFR 11.19, under § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

Gulfstream Model GVII–G500 airplanes will incorporate the following novel or unusual design feature:

Side-stick controllers incorporating fly-by-wire technology for pitch and roll control, in place of conventional wheel-and-column controls.

Discussion

These proposed special conditions for the Gulfstream Model GVII–G500 airplane address the unique features of the side-stick controllers. The Model GVII–G500 airplane will incorporate side-stick controllers controlling a FBW flight-control system. The FBW control laws are designed to provide conventional flying qualities such as positive static longitudinal and lateral stability as prescribed in part 25, subpart B. However, the pilot-control forces prescribed in the referenced regulations are not applicable for the side-stick controller design.

Because current FAA regulations do not specifically address the use of side-stick controllers for pitch and roll control, the unique features of the side stick therefore must be demonstrated, through flight and simulator tests, to have suitable handling and control characteristics when considering the following:

- The handling-qualities tasks and requirements of the Gulfstream Model GVII–G500 Special Conditions and other 14 CFR part 25 requirements for stability, control, and maneuverability, including the effects of turbulence.
- General ergonomics: Armrest comfort and support, local freedom of movement, displacement-angle suitability, and axis harmony.
- Inadvertent pilot input in turbulence.
- Inadvertent pitch and roll crosstalk from pilot inputs on the side-stick controller.

Applicability

As discussed above, these proposed special conditions apply to Gulfstream Model GVII–G500 airplanes. Should Gulfstream apply later for a change to the type certificate to include another model incorporating the same or similar novel or unusual design feature, the proposed special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on Gulfstream Model GVII–G500 airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

The current airworthiness regulations pertaining to pilot strength and controllability for conventional-control column-and-wheel designs do not adequately address the side-stick controllers proposed for the Gulfstream Model GVII–G500 airplane. Accordingly, the FAA proposes the following special conditions as part of the type certification basis for Gulfstream GVII–G500 airplanes, in lieu of §§ 25.143(d), 25.143(i)(2), 25.145(b), 25.173(c), 25.175(b), and 25.175(d):

Pilot strength: In lieu of the control-force limits shown in § 25.143(d) for pitch and roll, and in lieu of specific pitch-force requirements of §§ 25.143(i)(2), 25.145(b), 25.173(c), 25.175(b), and 25.175(d), Gulfstream must show that the temporary and maximum prolonged-force levels for the side-stick controllers are suitable for all expected operating conditions and configurations, whether normal or non-normal.

Pilot-control authority: The electronic side-stick-controller coupling design must provide for corrective and overriding control inputs by either pilot with no unsafe characteristics. Annunciation of the controller status must be provided, and must not be confusing to the flightcrew.

Pilot control: Gulfstream must show by flight tests that the use of side-stick controllers does not produce unsuitable pilot-in-the-loop control characteristics when considering precision path control and tasks, and turbulence. In addition, pitch and roll control force and displacement sensitivity must be compatible, so that normal pilot inputs on one control axis will not cause significant unintentional inputs (crossover) on the other.

Issued in Renton, Washington, on August 5, 2015.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–20298 Filed 8–17–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2015–1482; Notice No. 25–15–08–SC]

Special Conditions: Gulfstream Model GVII–G500 Airplanes, Automatic Speed Protection for Design Dive Speed

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Gulfstream Model GVII–G500 airplanes. These airplanes will have a novel or unusual design feature associated with a reduced margin between design cruising speed, V_C/M_C, and design diving speed, V_D/M_D, based on the incorporation of a high-speed protection system that limits nose-down pilot authority at speeds above V_C/M_C. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send your comments on or before October 2, 2015.

ADDRESSES: Send comments identified by docket number FAA–2015–1482 using any of the following methods:

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

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/*, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov/*.

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Walt Sippel, FAA, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2774; facsimile 425–227–1232.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On March 29, 2012, Gulfstream Aerospace Corporation applied for a type certificate for their new Model GVII–G500 airplane. The Model GVII–G500 airplane will be a large-cabin business jet with seating for 19 passengers. It will incorporate a low, swept-wing design with winglets and a T-tail. The powerplant will consist of two aft-fuselage-mounted Pratt & Whitney turbofan engines. Avionics will include four primary display units and multiple touchscreen controllers. The flight-control system is a three-axis, fly-by-wire system incorporating active control/coupled side sticks.

The Model GVII–G500 will have a wingspan of approximately 87 feet and a length of just over 91 feet. Maximum takeoff weight will be approximately 76,850 pounds and maximum takeoff thrust will be approximately 15,135 pounds. Maximum range will be

approximately 5,000 nautical miles, and maximum operating altitude will be 51,000 feet.

Type Certification Basis

Under the provisions ofTitle 14, Code of Federal Regulations (14 CFR) 21.17, Gulfstream must show that the Model GVII–G500 airplane meets the applicable provisions of part 25 as amended by Amendments 25–1 through 25–137.

In addition, the certification basis includes other regulations, special conditions, and exemptions that are not relevant to these proposed special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for Model GVII–G500 airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Model GVII–G500 airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36; and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The Model GVII–G500 airplane will incorporate the following novel or unusual design features:

Gulfstream proposes to reduce the margin between V_C/M_C and V_D/M_D, required by 14 CFR 25.335(b), based on the incorporation of a high-speed protection system in the airplane's flight-control laws. The high-speed protection system limits nose-down pilot authority at speeds above V_C/M_C, and prevents the airplane from performing the maneuver required under § 25.335(b)(1).

These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Discussion

Title 14, Code of Federal Regulations (14 CFR) 25.335(b)(1) is an analytical envelope condition which was originally adopted in Part 4b of the Civil Air Regulations to provide an acceptable speed margin between design cruise speed and design dive speed. Flutter clearance design speeds and airframe design loads are impacted by the design dive speed. While the initial condition for the upset specified in the rule is 1g level flight, protection is afforded for other inadvertent overspeed conditions as well. Section 25.335(b)(1) is intended as a conservative enveloping condition for potential overspeed conditions, including non-symmetric ones. To establish that potential overspeed conditions are enveloped, Gulfstream must demonstrate that any reduced speed margin based on the high-speed protection system in the Model GVII–G500 airplane will not be exceeded in inadvertent or gust-induced upsets resulting in initiation of the dive from non-symmetric attitudes; or that the airplane is protected by the flight-control laws from getting into non-symmetric upset conditions. Gulfstream must conduct a demonstration that includes a comprehensive set of conditions as described below.

These special conditions are proposed in lieu of § 25.335(b)(1). Section 25.335(b)(2), which also addresses the design dive speed, is applied separately (Advisory Circular (AC) 25.335–1A provides an acceptable means of compliance to § 25.335(b)(2)).

Special conditions are necessary to address the Model GVII–G500 airplane high-speed protection system.These proposed special conditions identify various symmetric and non-symmetric maneuvers that will ensure that an appropriate design dive speed, V_D/M_D, is established.

Special Condition 2 of these proposed special conditions references AC 25–7C, section 8, paragraph 32, ''Gust Upset,'' included here for reference:

In the following three upset tests, the values of displacement should be appropriate to the airplane type and should depend upon airplane stability and inertia characteristics. The lower and upper limits should be used for airplanes with low and high maneuverability, respectively.

(i) With the airplane trimmed in wings-level flight, simulate a transient gust by rapidly rolling to the maximum bank angle appropriate for the airplane, but not less than 45 degrees nor more than 60 degrees. The rudder and longitudinal control should be held fixed during the time that the required bank is being attained. The rolling velocity should be arrested at this bank angle. Following this, the controls should be abandoned for a minimum of 3 seconds after V_{MO}/M_{MO}, or after 10 seconds, whichever occurs first.

(ii) Perform a longitudinal upset from normal cruise. Airplane trim is determined at V_{MO}/M_{MO} using power and thrust required for level flight, but with not more than maximum continuous power and thrust. This is followed by a decrease in speed, after which an attitude of 6 to l2 degrees nose down, as appropriate for the airplane type, is attained with the power, thrust, and trim initially required for V_{MO}/M_{MO} in level flight. The airplane is permitted to accelerate until 3 seconds after V_{MO}/M_{MO}. The force limits of § 25.143(d) for short term application apply.

(iii) Perform a two-axis upset, consisting of combined longitudinal and lateral upsets. Perform the longitudinal upset, as in paragraph (ii) above, and when the pitch attitude is set, but before reaching V_{MO}/M_{MO}, roll the airplane to between 15 and 25 degrees. The established attitude should be maintained until 3 seconds after V_{MO}/M_{MO}.

Special Conditions 3 and 4 of these proposed special conditions indicate that failures of the high-speed protection system must be improbable and must be annunciated to the pilots. If these two criteria are not met, then the probability that the established dive speed will be exceeded, and the resulting risk to the airplane, are too great. On the other hand, if the high-speed protection system is known to be inoperative, then dispatch of the airplane may be acceptable as allowed by proposed Special Condition 5. Dispatch would only be acceptable if appropriate reduced operating speeds, V_{MO}/M_{MO}, as well as the overspeed warning for exceeding those speeds, are provided in both the airplane flight manual and on the flightdeck display, and are equivalent to that of the normal airplane with the high-speed protection system operative.

We do not believe that application of the ''Interaction of Systems and Structures'' Special Conditions (reference GVI Issue Paper A–2), or EASA Certification Specification 25.302, are appropriate in this case, because design dive speed is, in and of itself, part of the design criteria. Stability and control, flight loads, and flutter evaluations all depend on the design dive speed. Therefore, a single design dive speed should be established

that will not be exceeded, taking into account the performance of the high-speed protection system as well as its failure modes, failure indications, and accompanying flight-manual instructions.

Applicability

As discussed above, these special conditions are applicable to the Model GVII–G500 airplane. Should Gulfstream apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

■ Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Gulfstream Model GVII–G500 airplanes.

1. In lieu of compliance with § 25.335(b)(1), if the flight-control system includes functions that act automatically to initiate recovery before the end of the 20-second period specified in § 25.335(b)(1), V_D/M_D must be determined from the greater of the speeds resulting from conditions (a) and (b) of these special cConditions. The speed increase occurring in these maneuvers may be calculated if reliable or conservative aerodynamic data are used.

(a) From an initial condition of stabilized flight at V_C/M_C, the airplane is upset so as to take up a new flight path 7.5 degrees below the initial path. Control application, up to full authority, is made to try to maintain this new flight path. Twenty seconds after initiating the upset, manual recovery is made at a load factor of 1.5g (0.5 acceleration increment), or such greater load factor that is automatically applied by the system with the pilot's pitch control neutral. Power, as specified in § 25.175(b)(1)(iv), is assumed until recovery is initiated, at which time power reduction, and the use of pilot-controlled drag devices, may be used.

(b) From a speed below V_C/M_C, with power to maintain stabilized level flight at this speed, the airplane is upset so as to accelerate through V_C/M_C at a flight path 15 degrees below the initial path (or at the steepest nose-down attitude that the system will permit with full control authority if less than 15 degrees). The pilot's controls may be in the neutral position after reaching V_C/M_C and before recovery is initiated. Recovery may be initiated 3 seconds after operation of the high-speed warning system by application of a load of 1.5g (0.5 acceleration increment), or such greater load factor that is automatically applied by the system with the pilot's pitch control neutral. Power may be reduced simultaneously. All other means of decelerating the airplane, the use of which is authorized up to the highest speed reached in the maneuver, may be used. The interval between successive pilot actions must not be less than 1 second.

2. The applicant must also demonstrate that the speed margin, established as above, will not be exceeded in inadvertent or gust-induced upsets resulting in initiation of the dive from non-symmetric attitudes, unless the airplane is protected by the flight-control laws from getting into non-symmetric upset conditions. The upset maneuvers described in Advisory Circular 25–7C, ''Flight Test Guide for Certification of Transport Category Airplanes,'' section 8, paragraph 32, sub-paragraphs c(3)(a), (b), and (c), may be used to comply with this requirement.

3. The probability of any failure of the high-speed protection system, which would result in an airspeed exceeding those determined by Special Conditions 1 and 2, must be less than 10^{-5} per flight hour.

4. Failures of the system must be annunciated to the pilots. Flight manual instructions must be provided that reduce the maximum operating speeds, V_{MO}/M_{MO}. With the system failed, the operating speed must be reduced to a value that maintains a speed margin between V_{MO}/M_{MO} and V_D/M_D, and that is consistent with showing compliance with § 25.335(b) without the benefit of the high-speed protection system.

5. The applicant may request that the Master Minimum Equipment List relief for the high-speed protection system be considered by the FAA Flight Operations Evaluation Board, provided that the flight manual instructions indicate reduced maximum operating speeds as described in Special Condition 4. In addition, the flightdeck display of the reduced operating speeds, as well as the overspeed warning for exceeding those speeds, must be equivalent to that of the normal airplane with the high-speed protection system operative. Also, the applicant must show that no additional hazards are introduced with the high-speed protection system inoperative.

Issued in Renton, Washington, on August 5, 2015.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 2015–20297 Filed 8–17–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2015–2271; Notice No. 25–15–06–SC]

Special Conditions: Cessna Airplane Company Model 680A Airplane, Side-Facing Seats Equipped With Airbag Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Cessna Model 680A airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design features side-facing seats equipped with airbag systems. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send your comments on or before October 2, 2015.

ADDRESSES: Send comments identified by docket number FAA–2015–2271 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in

Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/*, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov/*.

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, FAA, Airframe and Cabin Safety, ANM–115, Transport Airplane Directorate, Airplane Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2195; facsimile 425–227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On January 25, 2012, Cessna Airplane Company applied for an amendment to Type Certificate no. T00012WI to include the new Model 680A airplane. The Cessna 680A airplane, which is a derivative of the Cessna Model 680 airplane currently approved under Type Certificate no. T00012WI, is a new, high-performance, low-wing airplane derived from the Cessna Model 680 beginning with serial no. 680–0501. This airplane will have a maximum takeoff weight of 30,800 pounds with a wingspan of 72 feet, and will have two aft-mounted Pratt & Whitney PW306D1 FADEC-controlled turbofan engines.

The pressurized cabin of the Model 680A airplane is designed to accommodate a crew of two, plus nine passengers in the baseline interior configuration, and will make use of a forward, right-hand-belted, two-place, side-facing seat. An optional seven-passenger interior configuration is also offered, which has a single-place side-facing seat on the forward right-hand side of the airplane. Both the baseline multiple-place and optional single-place side-facing seats are to be occupied for taxi, takeoff, and landing, and will incorporate an integrated, inflatable-airbag occupant-protection system.

Type Certification Basis

Under the provisions of § 21.101, Cessna Airplane Company must show that the Model 680A airplane meets the applicable provisions of the regulations listed in Type Certificate no. T00012WI, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

The regulations listed in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations listed in T00012WI are as follows:

14 CFR part 25, effective February 1, 1965, including Amendments 25–1 through 25–98, with special conditions, exemptions, and later amended sections.

In addition, the certification basis includes other regulations, special conditions, and exemptions that are not relevant to these proposed special conditions. Type Certificate no. T00012WI will be updated to include a complete description of the certification basis for this airplane model.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Cessna Model 680A airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Cessna Model 680A airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.101.

Novel or Unusual Design Features

The Cessna Model 680A airplane will incorporate the following novel or unusual design features: Inflatable airbags on multiple-place and single-place side-facing seats of Cessna Model 680A airplanes to reduce the potential for both head and leg injury in the event of an accident.

Discussion

The FAA policy for side-facing seats at the time of application was provided in Policy Statement ANM–03–115–30. This policy statement describes the performance criteria and procedures to follow to certify single- and multiple-place side-facing seats.

Also at the time of Cessna's application, the FAA indicated that further research would be conducted to define criteria to establish a level of safety equivalent to that provided by the current regulations for forward- and aft-facing seats. Research later conducted by the FAA, as documented in report DOT/FAA/AR–09/41, resulted in new policy issued to identify new certification criteria based on the research findings. Policy Statement PS–ANM–25–03 was released on June 8, 2012 (and was subsequently revised and reissued as Policy Statement PS–ANM–25–03–R1 on November 5, 2012). This new policy statement describes how to certify all side-facing seats to the new performance criteria through the issuance of special conditions.

Along with the general seat-performance criteria, also included in the policy statement are the performance criteria for airbag systems used in shoulder-belt restraint systems. However, the policy statement does not specifically address airbag systems that are integrated into passenger-cabin monuments. Although the application date for the Model 680A airplane preceded Policy Statement PS–ANM–25–03, Cessna proposed using the guidance in Policy Statement PS–ANM–25–03–R1 to develop new special

conditions applicable to the Model 680A airplane's side-facing seats.

These proposed special conditions allow installation of an airbag system for a two-place side-facing seat and a single-place side-facing seat to protect the occupant from both head and leg-flail injury in Model 680A airplanes. Cessna's proposed airbag system is designed to limit occupant forward excursion in the event of an accident. This will reduce the potential for head injury by reducing the head-injury criteria (HIC) measurement, and will also provide a means for limiting the lower-leg flail of the occupant. The inflatable-airbag system behaves similarly to an automotive inflatable airbag, but in this design, the airbag system is integrated into passenger-cabin monuments; the airbags inflate away from the seated occupants. While inflatable airbags are now standard in the automotive industry, the use of inflatable-airbag systems in commercial aviation is novel and unusual.

14 CFR 25.785 requires that occupants must be protected from head injury by either the elimination of any injurious object within the striking radius of the head, or by padding. Traditionally, this has required a seat setback of 35 inches from any bulkhead or other rigid interior feature or, where such spacing is not practical, the installation of specified types of padding. The relative effectiveness of these means of injury protection was not quantified in the original rule. Amendment 25–64 to § 25.562 established a standard that quantifies required head-injury protection.

Section 25.562 specifies that each seat-type design, approved for crew or passenger occupancy during taxi, takeoff, and landing, must successfully complete dynamic tests, or be shown to be compliant by rational analysis based on dynamic tests of a similar type of seat. In particular, the regulations require that persons must not suffer serious head injury under the conditions specified in the tests, and that protection must be provided, or the seat must be designed such that the head impact does not exceed a HIC of 1000 units. While the test conditions described for HIC are detailed and specific, it is the intent of the requirement that an adequate level of head-injury protection must be provided for passengers the event of an airplane accident.

Because §§ 25.562 and 25.785 and associated guidance do not adequately address seats with inflatable-airbag systems, the FAA recognizes that appropriate pass/fail criteria are required to fully address the safety concerns specific to occupants of these seats. Previously issued special conditions addressed airbag systems integral to the shoulder belt for some forward-facing seats. The proposed special conditions for the Model 680A inflatable-airbag systems are based on the shoulder-belt airbag systems.

Although the special conditions are applicable to the inflatable-airbag system as installed, compliance with the special conditions is not an installation approval. Therefore, while the special conditions relate to each such system installed, the overall installation approval is a separate finding, and must consider the combined effects of all such systems installed.

Part 25 states the performance criteria for head-injury protection in objective terms. However, none of these criteria are adequate to address the specific issues raised concerning seats with inflatable-airbag systems. In addition to the requirements of part 25, special conditions are needed to address requirements particular to seats equipped with an integrated, inflatable-airbag system.

Part 25, appendix F, part I specifies the flammability requirements for interior materials and components. This rule does not reference inflatable-airbag systems because such devices did not exist at the time the flammability requirements were written. The existing requirements are based on material types as well as material applications, and have been specified in light of the state-of-the-art materials available to perform a given function. In the absence of such a specific reference, the default requirement, per the rule, would apply to the type of material used in constructing the inflatable restraint, which, in the case of the rule, would be a fabric.

In writing special conditions, the FAA must also consider how the material is used within the cabin interior, and whether the default requirement is appropriate. Here, the specialized function of the inflatable-airbag system means that highly specialized materials are required. The standard normally applied to fabrics is a 12-second vertical ignition test. However, materials that meet this standard do not perform adequately as inflatable restraints; and materials used in the construction of inflatable-airbag systems do not perform well in this test.

Because the safety benefit of the inflatable-airbag system is very significant, the FAA has determined that the flammability standard appropriate for these devices should not prohibit suitable inflatable-airbag system materials; disqualifying these materials would effectively not allow the use of inflatable-airbag systems. The FAA therefore is required to establish a balance between the safety benefit of the inflatable-airbag system and its flammability performance. At this time, the 2.5-inches-per-minute horizontal burn test provides that necessary balance. As the technology in materials progresses, the FAA may change this standard in subsequent special conditions to account for improved materials.

From the standpoint of a passenger-safety system, the inflatable-airbag system is unique in that it is both an active and entirely autonomous device. While the automotive industry has good experience with inflatable airbags, the conditions of use and reliance on the inflatable-airbag system as the sole means of injury protection are quite different. In automobile installations, the airbag is a supplemental system and works in conjunction with an upper-torso restraint. In addition, the crash event is more definable and of typically shorter duration, which can simplify the activation logic. The airplane-operating environment is quite different from automobiles, and includes the potential for greater wear and tear, and unanticipated abuse conditions (due to galley loading, passenger baggage, etc.); airplanes also operate where exposure to high-intensity electromagnetic fields could affect the activation system.

The inflatable-airbag system has two potential advantages over other means of head-impact protection. First, it can provide significantly greater protection than would be expected with energy-absorbing pads, and second, it can provide essentially equivalent protection for occupants of all stature. These are significant advantages from a safety standpoint because such devices will likely provide a level of safety that exceeds the minimum standards of the Federal aviation regulations. Conversely, inflatable-airbag systems are, in general, active systems and must be relied upon to activate properly when needed, as opposed to an energy-absorbing pad or upper torso restraint that is passive and always available. Therefore, the potential advantages must be balanced against this and other potential disadvantages in developing standards for this design feature.

The FAA considers the installation of inflatable-airbag systems to have two primary safety concerns: First, that they perform properly under foreseeable operating conditions, and second, that they do not perform in a manner or at such times as would constitute a hazard to the airplane or occupants. This latter point has the potential to be the more

rigorous of the requirements, owing to the active nature of the system.

The inflatable-airbag system will rely on electronic sensors for signaling, and a stored gas canister for inflation. The sensors and canister could be susceptible to inadvertent activation, causing a potentially unsafe deployment. The consequences of inadvertent deployment, as well as a failure to deploy in a timely manner, must be considered in establishing the reliability of the system. Cessna must substantiate that an inadvertent deployment in-flight either would not cause injuries to occupants, or that the probability of such a deployment meets the requirements of § 25.1309(b). The effect of an inadvertent deployment on a passenger or crewmember, who could be positioned close to an airbag, should also be considered. The person could be either standing or sitting. A minimum reliability level must be established for this case, depending upon the consequences, even if the effect on the airplane is negligible.

The potential for an inadvertent deployment could increase as a result of conditions in service. The installation must take into account wear and tear so that the likelihood of an inadvertent deployment is not increased to an unacceptable level. In this context, an appropriate inspection interval and self-test capability are considered necessary. In addition, outside influences, such as lightning and high-intensity radiated fields (HIRF), may also contribute to or cause inadvertent deployment. Existing regulations regarding lightning, § 25.1316, and HIRF, § 25.1317, are applicable to the Model 680A airplane.

The applicant must verify that electromagnetic interference (EMI) present, under foreseeable operating conditions, will not affect the function of the inflatable-airbag system or cause inadvertent deployment. Finally, the inflatable-airbag system installation must be protected from the effects of fire, so that an additional hazard is not created by, for example, a rupture of the pyrotechnic squib.

To be an effective safety system, the inflatable-airbag system must function properly and must not introduce any additional hazards to occupants or the airplane as a result of its functioning. The inflatable-airbag system differs from traditional occupant-protection systems in several ways, requiring special conditions to ensure adequate performance.

Because the inflatable-airbag system is a single-use device, it potentially could deploy under crash conditions that are not sufficiently severe as to require injury protection from the inflatable-airbag system. Because an actual crash is frequently composed of a series of impacts before the airplane comes to rest, this could render the inflatable-airbag system useless if a larger impact follows the initial impact. This situation does not exist with energy absorbing pads or upper-torso restraints, which tend to provide continuous protection regardless of severity or number of impacts in a crash event. Therefore, the inflatable-airbag system installation should provide protection, when it is required, and not expend its protection when it is not required. And while several large impact events may occur during the course of a crash, there are no requirements for the inflatable-airbag system to provide protection for multiple impacts.

Each occupant's restraint system provides protection for that occupant only. Likewise, the installation must address seats that are unoccupied. The applicant must show that the required protection is provided for each occupant regardless of the number of occupied seats, considering that unoccupied seats may have airbag systems that are active.

The inflatable-airbag system should be effective for a wide range of occupants. The FAA has historically considered the range from the 5th percentile female to the 95th percentile male as the range of occupants that must be taken into account. In this case, the FAA is proposing consideration of a broader range of occupants, *i.e.*, a two-year-old child to a 95th percentile male, plus pregnant females. This is due to the nature of the inflatable-airbag system installation and its close proximity to the occupant. In a similar vein, these persons could assume the brace position for those accidents where an impact is anticipated. Test data indicate that occupants in the brace position do not require supplemental protection, and so it would not be necessary to show that the inflatable-airbag system will enhance the brace position. However, the inflatable-airbag system must not introduce a hazard in the case of deploying into the seated, braced occupant.

Another area of concern is the use of seats so equipped, by children, whether lap-held, in approved child-safety seats, or occupying the seat directly. Similarly, if the seat is occupied by a pregnant woman, the installation should address such use, either by demonstrating that it will function properly, or by adding appropriate limitation on persons allowed to occupy the seat.

Given that the airbag system will be electrically powered, the possibility exists that the system could fail due to a separation in the fuselage. And because this system is intended as a means of crash/post-crash protection, failure to deploy due to fuselage separation is not acceptable. As with emergency lighting, the system should function properly if such a separation occurs at any point in the fuselage. As required by § 25.1353(a), operation of the existing airplane electrical equipment should not adversely impact the function of the inflatable-airbag system under all foreseeable conditions.

The inflatable-airbag system is likely to have a large volume displacement, and, likewise, the inflated airbag could potentially impede egress of passengers. Because the airbag deflates to absorb energy, it is likely that an inflatable-airbag system would be deflated at the time that persons would be trying to leave their seats. Nonetheless, the FAA considers it appropriate to specify a time interval after which the inflatable-airbag system may not impede rapid egress. Ten seconds is indicated as a reasonable time because this corresponds to the maximum time allowed for an exit to be openable (reference: § 25.809).

The FAA position is provided in Policy Statement PS–ANM–25–03–R1 ''Technical Criteria for Approving Side Facing Seats.'' This policy statement refers to airbag systems in the shoulder belts, while Cessna's design configuration has airbag systems integrated into the side-facing seats. The FAA genericized these proposed special conditions to be applicable to the Cessna design configuration.

These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Cessna Model 680A airplane. Should Cessna apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Airplane, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions are issued as part of the type certification basis for Cessna Model 680A airplanes.

In addition to the requirements of §§ 25.562 and 25.785, the following special conditions 1 and 2 are proposed as part of the type certification basis of the Model 680A airplane with side-facing seat installations. For seat places equipped with airbag systems, additional special conditions 3 through 16 are proposed as part of the type certification basis.

1. Additional requirements applicable to tests or rational analysis conducted to show compliance with §§ 25.562 and 25.785 for side-facing seats:

1.1. The longitudinal tests conducted in accordance with § 25.562(b)(2), to show compliance with the seat-strength requirements of § 25.562(c)(7) and (8) and these special conditions, must have an ES–2re anthropomorphic test dummy (ATD) (49 CFR part 572, subpart U) or equivalent, or a Hybrid-II ATD (49 CFR part 572, subpart B, as specified in § 25.562) or equivalent, occupying each seat position, and including all items contactable by the occupant (*e.g.,* armrest, interior wall, or furnishing) if those items are necessary to restrain the occupant. If included, the floor representation and contactable items must be located such that their relative position, with respect to the center of the nearest seat place, is the same at the start of the test as before floor misalignment is applied. For example, if floor misalignment rotates the centerline of the seat place nearest the contactable item 8 degrees clockwise about the airplane x-axis, then the item and floor representations also must be rotated by 8 degrees clockwise to maintain the same relative position to the seat place, as shown in Figure 1 of these special conditions. Each ATD's relative position to the seat, after application of floor misalignment, must be the same as before misalignment is applied. To ensure proper loading of the seat by the occupants, the ATD pelvis must remain supported by the seat pan, and the restraint system must remain on the pelvis and shoulder of the ATD until rebound begins. No injury-criteria evaluation is necessary for tests conducted only to assess seat-strength requirements.

1.2. The longitudinal tests conducted in accordance with § 25.562(b)(2), to show compliance with the injury assessments required by § 25.562(c) and these special conditions, may be conducted separately from the tests to show structural integrity. In this case, structural-assessment tests must be conducted as specified in paragraph 1.1 of these special conditions, and the injury-assessment test must be conducted without yaw or floor misalignment. Injury assessments may be accomplished by testing with ES–2re ATD (49 CFR part 572, subpart U) or equivalent at all places. Alternatively, these assessments may be accomplished by multiple tests that use an ES–2re at the seat place being evaluated, and a Hybrid-II ATD (49 CFR part 572, subpart B, as specified in § 25.562) or equivalent used in all seat places forward of the one being assessed, to evaluate occupant interaction. In this case, seat places aft of the one being assessed may be unoccupied. If a seat installation includes adjacent items that are contactable by the occupant, the injury potential of that contact must be assessed. To make this assessment, tests may be conducted that include the actual item, located and attached in a representative fashion. Alternatively, the injury potential may be assessed by a combination of tests with items having the same geometry as the actual item, but having stiffness characteristics that would create the worst case for injury (injuries due to both contact with the item and lack of support from the item).

1.3. If a seat is installed aft of structure (*e.g.,* an interior wall or furnishing) that does not have a homogeneous surface contactable by the occupant, additional analysis and/or tests may be required to demonstrate that the injury criteria are met for the area upon which an occupant could contact. For example, different yaw angles could result in different injury considerations, and may require additional analysis or separate tests to evaluate.

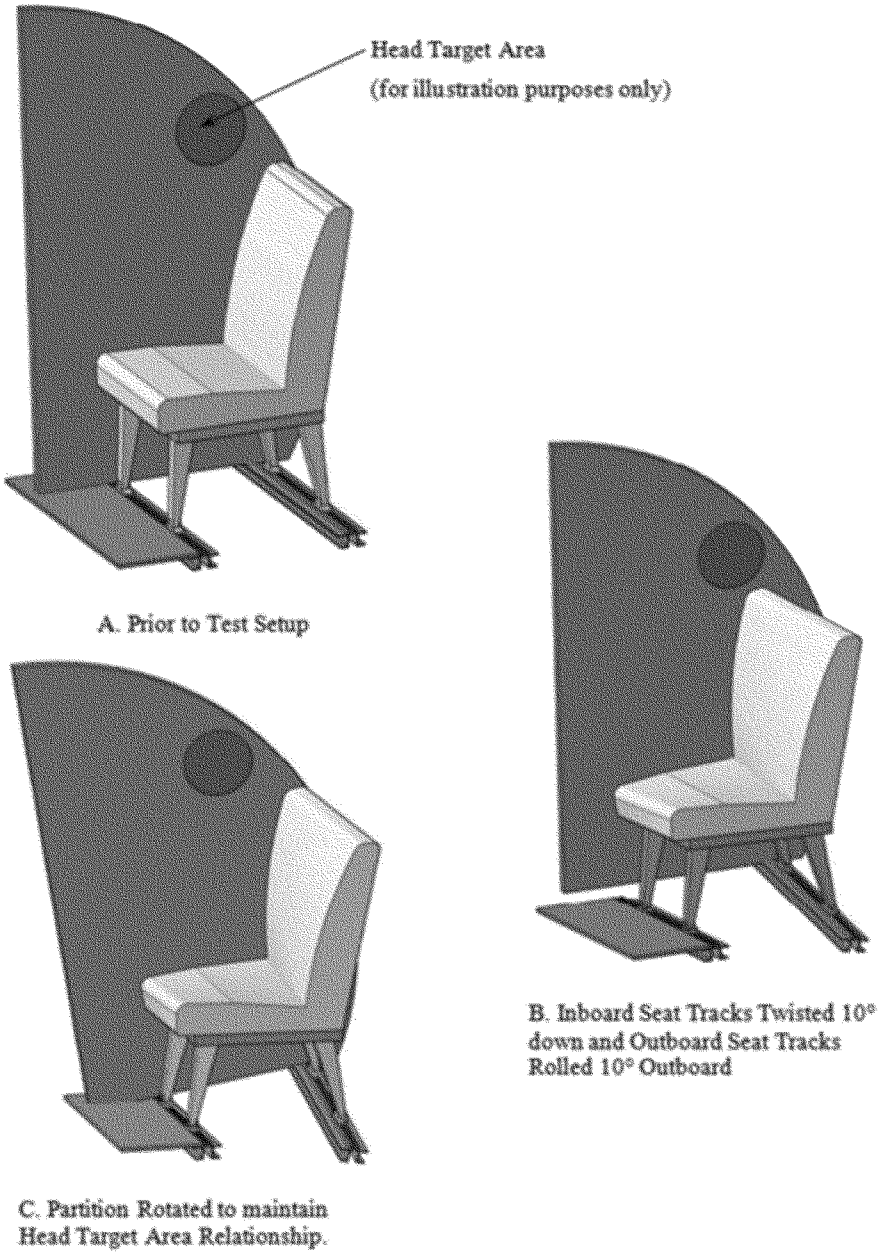

Figure 1: Head Target Areas Relative to Seat Position

1.4. To accommodate a range of occupant heights (5th percentile female to 95th percentile male), the surface of items contactable by the occupant must be homogenous 7.3 inches (185 mm) above and 7.9 inches (200 mm) below the point (center of area) that is contacted by the 50th percentile male-sized ATD's head during the longitudinal tests, conducted in accordance with paragraphs 1.1, 1.2, and 1.3 of these special conditions. Otherwise, additional HIC assessment tests may be necessary. Any surface (inflatable or otherwise) that provides support for the occupant of any seat place must provide that support in a consistent manner regardless of occupant stature. For example, if an inflatable shoulder belt is used to mitigate injury risk, then it must be demonstrated by inspection to bear against the range of occupants in a similar manner before and after inflation. Likewise, the means of limiting lower-leg flail must be demonstrated by inspection to provide protection for the range of occupants in a similar manner.

1.5. For longitudinal tests conducted in accordance with 14 CFR 25.562(b)(2) and these special conditions, the ATDs must be positioned, clothed, and have lateral instrumentation configured as follows:

1.5.1. ATD positioning: Lower the ATD vertically into the seat (see Figure 2 of these special conditions) while simultaneously:

1.5.1.1. Aligning the midsagittal plane (a vertical plane through the midline of the body; dividing the body into right and left halves) with approximately the middle of the seat place.

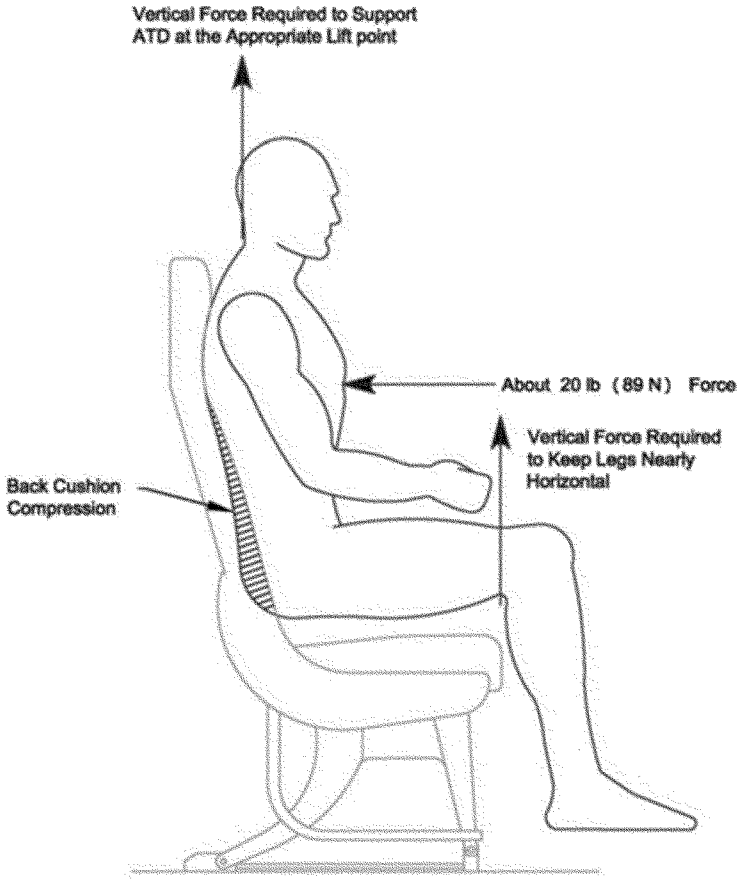

Figure 2: ATD Positioning

1.5.1.2. Applying a horizontal x-axis direction (in the ATD coordinate system) force of about 20 lb (89 N) to the torso, at approximately the intersection of the midsagittal plane and the bottom rib of the ES–2re or lower sternum of the Hybrid-II at the midsagittal plane, to compress the seat-back cushion.

1.5.1.3. Keeping the upper legs nearly horizontal by supporting them just behind the knees.

1.5.2. After all lifting devices have been removed from the ATD:

1.5.2.1. Rock it slightly to settle it into the seat.

1.5.2.2. Separate the knees by about 4 inches (100 mm).

1.5.2.3. Set the ES–2re's head at approximately the midpoint of the available range of z-axis rotation (to align the head and torso midsagittal planes).

1.5.2.4. Position the ES–2re's arms at the joint's mechanical detent that puts them at approximately a 40-degree angle with respect to the torso. Position the Hybrid-II ATD hands on top of its upper legs.

1.5.2.5. Position the feet such that the centerlines of the lower legs are approximately parallel to a lateral vertical plane (in the airplane coordinate system).

1.5.3. ATD clothing: Clothe each ATD in form-fitting, mid-calf-length (minimum) pants and shoes (size 11E), all clothing weighing about 2.5 lb (1.1 Kg) total. The color of the clothing should be in contrast to the color of the restraint system. The ES–2re jacket is sufficient for torso clothing, although a form-fitting shirt may be used in addition if desired.

1.5.4. ES–2re ATD lateral instrumentation: The rib-module linear slides are directional, *i.e.,* deflection occurs in either a positive or negative ATD y-axis direction. The modules must be installed such that the moving end of the rib module is toward the front of the airplane. The three abdominal-force sensors must be installed such that they are on the side of the ATD toward the front of the airplane.

1.6. The combined horizontal/vertical test, required by § 25.562(b)(1) and these special conditions, must be conducted with a Hybrid II ATD (49 CFR part 572, subpart B, as specified in § 25.562), or equivalent, occupying each seat position.

1.7. The design and installation of seatbelt buckles must prevent unbuckling due to applied inertial forces or impact of the hands/arms of the occupant during an emergency landing.

1.8. Inflatable-airbag systems must be active during all dynamic tests conducted to show compliance with § 25.562.

2. Additional performance measures applicable to tests and rational analysis conducted to show compliance with §§ 25.562 and 25.785 for side-facing seats:

2.1. Body-to-body contact: Contact between the head, pelvis, torso, or shoulder area of one ATD with the adjacent-seated ATD's head, pelvis, torso, or shoulder area is not allowed. Contact during rebound is allowed.

2.2. Thoracic: The deflection of any of the ES–2re ATD upper, middle, and lower ribs must not exceed 1.73 inches (44 mm). Data must be processed as defined in Federal Motor Vehicle Safety Standards (FMVSS) 571.214.

2.3. Abdominal: The sum of the measured ES–2re ATD front, middle, and rear abdominal forces must not exceed 562 lbs (2,500 N). Data must be

processed as defined in FMVSS 571.214.

2.4. Pelvic: The pubic symphysis force measured by the ES–2re ATD must not exceed 1,350 lbs (6,000 N). Data must be processed as defined in FMVSS 571.214.

2.5. Leg: Axial rotation of the upper leg (femur) must be limited to 35 degrees in either direction from the nominal seated position.

2.6. Neck: As measured by the ES–2re ATD and filtered at CFC 600 as defined in SAE J211:

2.6.1. The upper-neck tension force at the occipital condyle (O.C.) location must be less than 405 lb (1,800 N).

2.6.2. The upper-neck compression force at the O.C. location must be less than 405 lb (1,800 N).

2.6.3. The upper-neck bending torque about the ATD x-axis at the O.C. location must be less than 1,018 in.-lb (115 N-m).

2.6.4. The upper-neck resultant shear force at the O.C. location must be less than 186 lb (825 N).

2.7. Occupant (ES–2re ATD) retention: The pelvic restraint must remain on the ES–2re ATD's pelvis during the impact and rebound phases of the test. The upper-torso restraint straps (if present) must remain on the ATD's shoulder during the impact.

2.8. Occupant (ES–2re ATD) support:

2.8.1. Pelvis excursion: The load-bearing portion of the bottom of the ATD pelvis must not translate beyond the edges of its seat's bottom seat-cushion supporting structure.

2.8.2. Upper-torso support: The lateral flexion of the ATD torso must not exceed 40 degrees from the normal upright position during the impact.

3. For seats with an airbag system, show that the airbag system will deploy and provide protection under crash conditions where it is necessary to prevent serious injury. The means of protection must take into consideration a range of stature from a 2-year-old child to 95th percentile male. The airbag system must provide a consistent approach to energy absorption throughout that range of occupants. When the seat systems include airbag systems, the systems must be included in each of the certification tests as they would be installed in the airplane. In addition, the following situations must be considered:

3.1. The seat occupant is holding an infant.

3.2. The seat occupant is a pregnant woman.

4. The airbag systems must provide adequate protection for each occupant regardless of the number of occupants of the seat assembly, considering that unoccupied seats may have an active airbag system.

5. The design must prevent the airbag systems from being either incorrectly buckled or incorrectly installed, such that the airbag systems would not properly deploy. Alternatively, it must be shown that such deployment is not hazardous to the occupant and will provide the required injury protection.

6. It must be shown that the airbag system is not susceptible to inadvertent deployment as a result of wear and tear, or inertial loads resulting from in-flight or ground maneuvers (including gusts and hard landings), and other operating and environment conditions (vibrations, moisture, etc.) likely to occur in service.

7. Deployment of the airbag system must not introduce injury mechanisms to the seated occupant, nor result in injuries that could impede rapid egress. This assessment should include an occupant whose restraint is loosely fastened.

8. It must be shown that inadvertent deployment of the airbag system, during the most critical part of the flight, will either meet the requirement of § 25.1309(b) or not cause a hazard to the airplane or its occupants.

9. It must be shown that the airbag system will not impede rapid egress of occupants 10 seconds after airbag deployment.

10. The airbag systems must be protected from lightning and high-intensity radiated fields (HIRF). The threats to the airplane specified in existing regulations regarding lighting, § 25.1316, and HIRF, § 25.1317 apply to these special conditions for the purpose of measuring lightning and HIRF protection.

11. The airbag system must function properly after loss of normal airplane electrical power, and after a transverse separation of the fuselage at the most critical location. A separation at the location of the airbag systems does not have to be considered.

12. It must be shown that the airbag system will not release hazardous quantities of gas or particulate matter into the cabin.

13. The airbag system installations must be protected from the effects of fire such that no hazard to occupants will result.

14. A means must be available for a crew member to verify the integrity of the airbag system's activation system prior to each flight, or it must be demonstrated to reliably operate between inspection intervals. The FAA considers that the loss of the airbag-system deployment function alone (*i.e.*, independent of the conditional event that requires the airbag-system deployment) is a major-failure condition.

15. The inflatable material may not have an average burn rate of greater than 2.5 inches/minute when tested using the horizontal flammability test defined in 14 CFR part 25, appendix F, part I, paragraph (b)(5).

16. The airbag system, once deployed, must not adversely affect the emergency lighting system (*e.g.*, block floor proximity lights to the extent that the lights no longer meet their intended function).

Issued in Renton, Washington, on August 5, 2015.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–20300 Filed 8–17–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Parts 702 and 703

RIN 1240–AA09

Longshore and Harbor Workers' Compensation Act: Transmission of Documents and Information

AGENCY: Office of Workers' Compensation Programs, Labor.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: The Office of Workers' Compensation Programs (OWCP) published a notice of proposed rulemaking and companion direct final rule in the **Federal Register** on March 12, 2015, broadening the acceptable methods by which claimants, employers, and insurers can communicate with OWCP and each other regarding claims arising under the Longshore and Harbor Workers' Compensation Act and its extensions. The comment period closed on May 11, 2015. OWCP did not receive significant adverse comment and therefore the direct final rule took effect on June 10, 2015. For these reasons, OWCP is withdrawing the notice of proposed rulemaking.

DATES: Effective August 18, 2015, the notice of proposed rulemaking published on March 12, 2015 (80 FR 12957), is withdrawn.

FOR FURTHER INFORMATION CONTACT: Antonio Rios, Director, Division of Longshore and Harbor Workers' Compensation, Office of Workers' Compensation Programs, U.S.

Department of Labor, Suite C–4319, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 693–0038 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1–877–889–5627 for further information.

SUPPLEMENTARY INFORMATION: On March 12, 2015, OWCP published a notice of proposed rulemaking revising 20 CFR parts 702 and 703 to broaden the acceptable methods by which claimants, employers, and insurers can communicate with OWCP and each other regarding claims arising under the Longshore and Harbor Workers' Compensation Act and its extensions. (80 FR 12957). On the same date, OWCP published a direct final rule containing identical revisions because it believed that the proposed revisions were non-controversial and unlikely to generate significant adverse comment. (80 FR 12917). OWCP indicated that if it did not receive any significant adverse comments on either rule by May 11, 2015, the direct final rule would take effect and there would be no further need to proceed with the notice of proposed rulemaking. (*See* 80 FR 12918, 12957–58).

OWCP received two public comments that were not significant adverse comments. One expressed support for the proposed rule and the other did not substantively address the rule. Because OWCP did not receive any significant adverse comments within the specified comment period, it is withdrawing the notice of proposed rulemaking with this notice. For the same reason, OWCP is also confirming that the direct final rule took effect on June 10, 2015.

Signed at Washington, DC, this 11th day of August, 2015.

Leonard J. Howie III,

Director, Office of Workers' Compensation Programs.

[FR Doc. 2015–20422 Filed 8–17–15; 8:45 am]

BILLING CODE 4510–CR–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 41

[156A2100DD/AAKC001030/A0A501010.999900 253G] [Docket ID: BIA–2011–0002]

RIN 1076–AF08

Grants to Tribally Controlled Colleges and Universities and Diné College

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Tribally Controlled Colleges and Universities Assistance Act of 1978, as amended (TCCUA), authorizes Federal assistance to institutions of higher education that are formally controlled or have been formally sanctioned or chartered by the governing body of an Indian tribe or tribes. Passed at the same time as the TCCUA, the Navajo Community College Assistance Act of 1978, as amended (NCCA) authorizes Federal assistance to the Navajo Nation in construction, maintenance, and operation of Diné College. This proposed rule would update the TCCUA's implementing regulations in light of amendments to the TCCUA in 1983, 1986, 1998 and 2008 and the NCCA's implementing regulations in light of amendments to the NCCA in 2008.

DATES: Please submit written comments by October 19, 2015. See Section IV of **SUPPLEMENTARY INFORMATION** for information on tribal consultation sessions.

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

—*Federal rulemaking portal: http://www.regulations.gov.* The rule is listed under the agency name ''Bureau of Indian Affairs.'' The rule has been assigned Docket ID: BIA–2011–0002. If you would like to submit comments through the Federal e-Rulemaking Portal, go to *www.regulations.gov* and follow the instructions.

—*Email: Ms.Juanita.Mendoza@bie.edu.* Include the number 1076–AF08 in the subject line of the message.

—*Fax:* (202) 208–3312. Include the number 1076–AF08 in the subject line of the message.

—*Mail or hand delivery:* Ms. Juanita Mendoza, Acting Chief of Staff, Bureau of Indian Education, 1849 C Street NW., MIB—Mail Stop 4657, Washington, DC 20240. Include the number 1076–AF08 in the subject line of the message.

We cannot ensure that comments received after the close of the comment period (see **DATES**) will be included in the docket for this rulemaking and considered. Comments sent to an address other than those listed above will not be included in the docket for this rulemaking.

See Section IV of **SUPPLEMENTARY INFORMATION** for information on tribal consultation sessions.

FOR FURTHER INFORMATION CONTACT: Ms. Juanita Mendoza, Acting Chief of Staff, Bureau of Indian Education (202) 208–3559.

SUPPLEMENTARY INFORMATION:

I. Background

The TCCUA authorizes grants for operating and improving tribally controlled colleges and universities to insure [sic] continued and expanded educational opportunities for Indian students and to allow for the improvement and expansion of the physical resources of such institutions. *See,* 25 U.S.C. 1801 *et seq.* The TCCUA also authorizes grants for the encouragement of endowment funds for the operation and improvement of tribally controlled colleges and universities. The NCCA authorizes grants to the Navajo Nation to assist in the construction, maintenance, and operation of Diné College. *See* 25 U.S.C. 640a *et seq.*

In 1968, the Navajo Nation created the first tribally controlled college, now called Diné College—and other tribal colleges quickly followed in California, North Dakota, and South Dakota. Today, there are 37 tribally controlled colleges in 17 states. The tribally controlled institutions were chartered by one or more tribes and are locally managed.

Tribally controlled colleges generally serve geographically isolated populations. In a relatively brief period of time, they have become essential to educational opportunity for American Indian students. Tribally controlled colleges are unique institutions that combine personal attention with cultural relevance, in such a way as to encourage American Indians—especially those living on reservations—to overcome barriers to higher education.

II. Purpose of the Proposed Rule

The regulations at 25 CFR part 41 were originally published in 1979. *See,* 44 FR 67042 dated November 21, 1979. Since the Tribally Controlled Community College Assistance Act of

1978 (Pub. L. 95–471, Title I) was enacted on October 17, 1978, over 30 years of amendments to the Act have been made. These include Public Law 98–192 (December 1, 1983), Public Law 99–428 (September 30, 1996), Public Law 105–244 (October 7, 1998), and Public Law 110–315 (August 14, 2008). Similarly, the Navajo Community College Assistance Act of 1978 (Pub. L. 95–471, Title II) was amended by Public Law 110–315 (August 14, 2008). The revisions to the TCCUA and the NCCA have rendered areas of the current rule obsolete. Therefore, the proposed rule updates the regulations and:

- Makes changes required by Executive Order 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write in plain language;
- Updates institutional names (*e.g.,* changing ''Director, Office of Indian Education Programs'' to ''Director of the Bureau of Indian Education'');
- Adds statutory authorities and makes accompanying statutory updates; and
- Combines the purpose, scope, and definitions into a new subpart A.

III. Summary of the Proposed Rule

Significant changes include emphasizing that the calculation of an Indian Student Count (ISC) shall only include students making satisfactory progress, as defined by the tribally controlled college, towards a degree or certificate; no credit hours earned by a high school student that will be used towards the student's high school degree or its equivalent shall be included in the ISC; and grantees may exclude high school students for the purpose of calculating the total number of full-time equivalent students. Changes clarify often misunderstood requirements for an ISC and when high school students cannot be counted towards an ISC. The proposed rule updates definitions per amended legislation; reorganizes and clarifies institutional grant eligibility, grant application procedures, the Department of the Interior (DOI) grant reporting requirements, and essential information for determining Indian student eligibility. Presently, information is embedded in extended definitions and is difficult to find, the proposed changes increase accessibility and correct out of date language and requirements.

The proposed rule makes several terminology changes throughout to reflect statutory language. These include replacing ''tribally controlled community colleges'' with ''tribally controlled colleges and universities,'' replacing ''Navajo Community College'' with ''Diné College,'' and replacing ''feasibility'' with ''eligibility'' in appropriate places. The following table lists additional changes.

Current section	Current title	Proposed section	Proposed title	Change
41.1	Purpose	41.1	When does this subpart apply?	Removes purpose and replaces a reference to provisions in subpart A applying to subparts B and C.
41.2	Scope	41.9	What is the purpose of this subpart?	• Removes ''Scope.'' • Clarifies that subpart A applies to financial assistance to tribal colleges and universities specified by Title I of the Act and technical assistance to all institutions funded under the Act. • Clarifies that subpart A does not apply to financial assistance to Diné College or tribally controlled postsecondary career and technical institutions.
41.3	Definitions	41.3	What definitions are needed?	• Adds definition for ''Academic facilities.'' • Removes definition for ''The Act.'' • Adds ''BIE'' to mean the Bureau of Indian Education. • Adds ''Department'' to mean the Department of the Interior. • Adds ''Director.'' • Adds ''Eligible continuing education units (CEUs).'' • Adds definition for ''Full-time.'' • Adds ''Indian Student Count (ISC) or Indian Full-Time Equivalent (FTE)'' and moves information on the formula to 41.5. • Changes ''Indian'' to ''Indian student'' definition. • Amends definition of ''Institution of higher education'' to clarify that unaccredited institutions must have been granted pre-accreditation or candidate status and references 20 U.S.C. 100(a). • Amends ''national Indian organization'' to delete requirement for finding to be published in the Federal Register. • Adds definition for ''NCCA.'' • Amends ''operating expenses of education programs'' to add more examples of operating expenses. • Adds ''Satisfactory progress'' and defines it as what the tribal college or university defines it to be. • Adds definition for ''Secretary.'' • Adds definition for ''TCCUA'' to mean the Tribally Controlled Colleges and Universities Assistance Act of 1978. • Removed ''unused portion of received funds.''
41.4	Grants	41.11	Who is eligible for financial assistance under this subpart.	Defines tribal college or university eligibility for receiving financial assistance.
41.5	Eligible Activities.	41.5	How is Indian Student Count/Full Time Equivalent calculated?	• Refines formula for clarity and changes the week to conduct an ISC to the 3rd week of an academic term as opposed to the 6th week of an academic term.

Current section	Current title	Proposed section	Proposed title	Change
				• Adds credit hours toward computation of ISC by students who have not obtained a high school degree benefiting from education or training offered but exempts credit hours from ISC computation if they are applied towards the high school degree. • Adds toward a degree or certificate.
41.6	HHS Participation.	Removes Section.		Deletes section because the process is no longer relevant and moves the essence of the section to Sec. 41.17.
41.7	Feasibility Studies.	41.19	How can a tribal college or university establish eligibility to receive a grant?	
41.7	Feasibility Studies.	41.21	How can a tribe appeal the results of an eligibility study?	• Extends the amount of time the tribe may submit an appeal to the Assistant Secretary from 30 days to 45 days. • Changes Assistant Secretary's written ruling on an appeal from 30 days to 45 days.
41.7	Feasibility Studies (f).	41.23	Can a tribal college or university request a second eligibility study?	Clarifies that a college or university can request another eligibility study in 12 months from the date of the negative determination.
41.8(a)–(b)	Grants	41.25 & 41.5	How does a tribal college or university apply for a grant?	• Simplifies the formula for calculating the amount of a grant. • Changes submission deadline from January 31 to June 1st. • Outlines required information and provides an explanation for the required information. • Adds grantees may exclude high school students from the total number of FTE students. • Adds information that a grantee does not need to submit new required information if there has been no change in the information from the previous year.
41.8(c)	Grants	41.27	When can the tribal college or university expect a decision on its application.	Changes the approval and disapproval time frame from 30 days to 45 days.
41.8(d)		41.29	How will a grant be awarded?	Adds that the base amount is $8,000 (from $4,000) and that it will be adjusted annually for inflation.
41.8(e)		41.31 & 41.33	When will the tribal college or university receive funding?	• Adds that payments equal to 95 percent (from 50 percent) of funds available will be distributed by either July 1 (from October 1) or within 14 days of appropriations. • Adds BIE will not commingle funds appropriated for grants.
41.8 (g)		41.33	What if there isn't enough money to pay the full amount.	No change in information.
41.8(f)		41.35	What will happen if the tribal college or university doesn't receive its appropriate share?	No change in information.
41.8(h)		41.37	Is the tribal college or university eligible for other grants?	Adds clarification.
41.9	Reports	41.39	What reports does the tribal college or university need to provide?	No change in information.
41.10	Technical Assistance.	41.41	Can the tribal college or university receive technical assistance.	Adds that BIE will provide technical assistance.
41.11	General Provisions.	41.43	How must the tribal college or university administer its grant?	No change in information.
41.12	Annual Budget	Removes Section.		Deletes section because section is no longer applicable; appropriations are now sent directly to Bureau of Indian Education.
41.13			For what activities can financial assistance to tribal colleges and universities be used?	Provides examples of permissible activities.
41.13	Criminal penalties.	41.7	What happens if false information is submitted?	No change in information.
41.15			What activities are prohibited?	Lists prohibited activities.

Current section	Current title	Proposed section	Proposed title	Change
41.17			What is the role of the Secretary of Education?	Clarifies role.
41.20	Policy	Removes Section.		Deletes section because subpart A now sets out the policy.
41.21	Scope	41.51	What is the scope of this subpart?	Simplifies applicability statement.
41.22	Definitions	Removes Section.		Deletes section because definitions are now consolidated in subpart A.
41.23	Eligible activities.	41.63	How can financial assistance be used?	No change in information.
41.24(a)–(b)	Grants	41.53	How does Diné College request financial assistance?	Simplifies requirements.
41.24(c)		41.55	How are grant funds processed?	Clarifies funds will not be commingled with those designated for other titles of the TCCUA.
41.24(d)		41.57	When will the application be reviewed?	Changes time in which grant award will be made from 30 days to 45 days.
41.24(e)		41.29	How will a grant be awarded?	Refers to subpart B.
41.24(f)		41.59	When will grant funds be paid?	Simplifies when funds will be received.
41.24(g)		Refers to section § 41.35.		
41.24(h)		41.61	Is Diné College eligible for other grants?	No change in information.
41.25	Reports	41.65	What reports must be provided?	Changes reporting deadline from September 1st to December 1st.
41.26	Technical assistance.	41.67	Can Diné College receive technical assistance?	Refers back to procedures in subpart B.
41.27(a)–(b)	General provisions.	41.69	How shall Diné College administer its grant?	No change in information.
41.27(c)	Appeal	41.70		Changes time in which an appeal, a hearing and the Assistant Secretary's ruling will be made from 30 days to 45 days.
41.28	Criminal penalties.	41.7	What happens if false information is submitted?	Deletes section because it's included in subpart A.
41.45			How does the tribal college or university apply for programming grants?	Adds tribes and tribal entities may submit a request for a grant to conduct planning activities for the establishment of a tribally controlled college or university.
41.47			What is the purpose of this subpart?	Specifies Diné College and the Diné College Act.

IV. Tribal Consultation Sessions

BIE will be hosting two tribal consultation sessions by webex and teleconference on this proposed rule:

- Monday, September 21, 2015, 3 p.m. EDT. To register for this session, go to this link: *https://dcma100.webex.com/dcma100/k2/j.php?MTID=t23a171402a9f5518f3b863039378065a.* Once the host approves your registration, you will receive a confirmation email with instructions for joining the session. To join by teleconference, please call: 1–866–704–9181, Passcode: 10469100.
- Wednesday, September 23, 2015, 3 p.m. EDT. To register for this session go to this link: *https://dcma100.webex.com/dcma100/k2/j.php?MTID=tdf898f2b05e77536907260a8a358a52c.* Once you are approved by the host, you will receive a confirmation email with instructions for joining the session. To join by teleconference, please call: 1–866–704–9181, Passcode: 10469100.

V. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

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

B. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It does not change current funding requirements or regulate small entities.

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It will not result in the expenditure by

State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. Because this proposed rule is limited to the tribally controlled colleges or universities within tribal communities, it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Nor will this rule have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

E. Takings (E.O. 12630)

Under the criteria in Executive Order 12630, this rule does not affect individual property rights protected by the Fifth Amendment nor does it involve a compensable ''taking''. A takings implication assessment is not required.

F. Federalism (E.O.) 13132

Under the criteria in Executive Order 13132, this rule has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule implements provisions within the Tribally Controlled Community College Assistance Act of 1978 (Pub. L. 95–471 enacted on October 17, 1978) that authorizes grants for operating and improving tribally controlled colleges or universities to ensure continued and expanded educational opportunities for Indian students by providing financial assistance to be used for the operating expenses of education programs.

Because the rule does not affect the Federal government's relationship to the States or the balance of power and responsibilities among various levels of government, it will not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule has been reviewed to eliminate errors and ambiguity and written to minimize litigation; and is written in clear language and contains clear legal standards.

H. Consultation With Indian Tribes (E.O. 13175)

This rule will directly affect all those tribes planning to apply for or now receiving grants under the TCCUA and the NCCA. In accordance with Executive Order 13175 (59 FR 22951, November 6, 2000), the Bureau of Indian Education conducted consultation on the following dates in 2014: October 16, Anchorage, Alaska; October 20, Webinar; October 22, Gallup, New Mexico; October 27, Billings, Montana; and October 29, Bloomington, Minnesota. To develop the proposed rule, the Department collaborated with the American Indian Higher Education Consortium (AIHEC), which represents tribally controlled colleges and universities that will be affected by the rule. Presidents of tribally-controlled colleges and universities provided the initial comments and draft of the rule. AIHEC formally presented the draft for the proposed rule to the BIE via drafting sessions. The current proposed rule is the result of those drafting sessions, BIE input and recommendations, and comments provided at the consultations.

I. Paperwork Reduction Act

This rule contains the following information collections, which are currently approved by OMB: Tribal Colleges and University Grant Application Form, which is approved under OMB Control Number 1076–0018; and Tribal Colleges and University Annual Report Form, which is approved under OMB Control Number 1076–0105. Both of these information collections expire on November 30, 2015. The proposed rule does not add any new information collection burden beyond that covered by these existing OMB approvals; therefore, an information collection submission to OMB is not required for this rulemaking.

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment.

K. Information Quality Act

In developing this rule we did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

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

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

M. Clarity of This Regulation

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

(a) Be logically organized;

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

(c) Use clear language rather than jargon;

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

(e) Use lists and tables wherever possible.

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

N. Public Availability of Comments

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

List of Subjects

Colleges or universities, Grants programs—education, Grant programs—Indians, Indians—education, Reporting and recordkeeping requirements.

For the reasons given in the preamble, the Department of the Interior proposes to amend title 25 of the Code of Federal Regulations by revising part 41 to read as follows:

PART 41—GRANTS TO TRIBALLY CONTROLLED COLLEGES AND UNIVERSITIES, DINÉ COLLEGE, AND TRIBALLY CONTROLLED POSTSECONDARY CAREER AND TECHNICAL INSTITUTIONS

Subpart A—Purpose, Scope, Definitions

Subpart B—Tribally Controlled Colleges and Universities

Subpart C—Diné College

Authority: Pub. L. 95–471, Oct. 17, 1978, 92 Stat. 1325; amended Pub. L. 98–192, Dec. 1, 1983, 97 Stat. 1335; Pub. L. 99–428, Sept. 30, 1986, 100 Stat. 982; Pub. L. 105–244, Oct. 7, 1998, 112 Stat. 1619; Pub. L. 110–315, Aug. 14, 2008, 122 Stat. 3460; 25 U.S.C. 1801 *et seq.;* Pub. L. 98–192, Dec. 15, 1971, 85 Stat. 646; and Pub. L. 110–315, Aug. 14, 2008, 122 Stat. 3468; 25 U.S.C. 640a *et seq.*

Subpart A—Applicability and Definitions

§ 41.1 When does this subpart apply?

The provisions in this subpart A apply to subparts B and C.

§ 41.3 What definitions are needed?

As used in this part:

Academic facilities mean structures suitable for use as:

(1) Classrooms, laboratories, libraries, and related facilities necessary or appropriate for instruction of students;

(2) Research facilities;

(3) Facilities for administration of educational or research programs;

(4) Dormitories or student services buildings; or

(5) Maintenance, storage, support, or utility facilities essential to the operation of the foregoing facilities.

Academic term means a semester, trimester, or other such period (not less than six weeks in duration) into which a tribal college or university normally subdivides its academic year, but does not include a summer term.

Academic year means a twelve month period established by a tribal college or university as the annual period for the operation of the tribal college's or university's education programs.

Assistant Secretary means the Assistant Secretary—Indian Affairs of the Department of the Interior.

BIE means the Bureau of Indian Education.

College or university means an institution of higher education that is formally controlled, formally sanctioned, or chartered by the governing body of an Indian tribe or tribes. To qualify under this definition, the college or university must:

(1) Be the only institution recognized by the Department for the tribe, excluding Diné College; and

(2) If under the control, sanction, or charter of more than one tribe, be the only institution recognized by the Department for at least one tribe that currently has no other formally controlled, formally sanctioned, or chartered college or university.

Department means the Department of the Interior.

Director means the Director of the Bureau of Indian Education.

Eligible continuing education units (CEUs) means non-degree credits that meet the criteria established by the International Association of Continuing Education and Training.

Full-time means registered for 12 or more credit hours for an academic term.

Indian Student Count (ISC) or Indian Full-Time Equivalent (FTE) means a number equal to the total number of Indian students enrolled at a tribal college or university, determined according to the formula in Section § 41.5.

Indian student means a student who is a member of an Indian tribe, or (2) a biological child of a living or deceased member of an Indian tribe. Documentation is required to verify eligibility as a biological child of a living or deceased member of an Indian tribe, and may include birth certificate and marriage license; tribal records of student's parent; Indian Health Service eligibility cards; other documentation necessary to authenticate a student as eligible to be counted as an *Indian student* under this definition.

Indian tribe means an Indian tribe, band, nation, pueblo, rancheria, or other organized group or community, including any Alaska Native Village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, to be listed in the **Federal Register** pursuant to 25 CFR 83.5(a) as recognized by and eligible to receive services from the Bureau of Indian Affairs.

Institution of higher education means an institution as defined by section 1001(a) of Title 20 of the United States Code, except that clause (2) of such section shall not be applicable and the reference to Secretary in clause (5)(A) of such section shall be deemed to refer to the Secretary of the Interior.

National Indian organization means an organization which the Secretary finds to be nationally based, represents a substantial Indian constituency and has expertise in the fields of tribally controlled colleges and universities, and Indian higher education.

NCCA means the Navajo Community College Act of 1978, as amended (25 U.S.C. 640a *et seq.*).

Operating expenses of education programs means the obligations and expenditures of a tribal college or university for postsecondary except for acquisition or construction of academic facilities. Permissible expenditures may include:

(1) Administration;

(2) Instruction;

(3) Maintenance and repair of facilities;

(4) Acquisition and upgrade of equipment, technological equipment, and other physical resources.

Part-time means registered for less than 12 credit hours for an academic term.

Satisfactory progress means satisfactory progress toward a degree or certificate as defined by the tribal college or university.

Secretary, unless otherwise designated, means the Secretary of the Interior, or his/her duly authorized representative.

TCCUA means the Tribally Controlled Colleges and Universities Assistance Act of 1978, as amended (25 U.S.C. 1801 *et seq.*).

§ 41.5 How is ISC/FTE calculated?

(a) ISC is calculated on the basis of eligible registrations of Indian students as in effect at the conclusion of the third week of each academic term.

(b) To calculate ISC for an academic term, begin by adding all credit hours of full-time students and all credit hours of part-time students who are registered at the conclusion of the third week of the academic term.

(c) Credit hours earned by students who have not obtained a high school degree or its equivalent may be added if you have established criteria for the admission of such students on the basis of their ability to benefit from the education or training offered. You will be presumed to have established such criteria if your admission procedures include counseling or testing that measures students' aptitude to successfully complete the courses in which they enroll.

(d) No credit hours earned by a student attending high school and applied towards the student's high school degree or its equivalent may be counted toward computation of ISC; and no credit hours earned by a student not making satisfactory progress toward a degree or certificate may count toward the ISC.

(e) If ISC is being calculated for a fall term, add to the calculation in paragraph (b) of this section any credits earned in classes offered during the preceding summer term.

(f) Add to the calculation in paragraph (d) of this section those credits being earned in an eligible continuing education program at the conclusion of the third week of the academic term. Determine the number of those credits as follows:

(1) For institutions on a semester system: one credit for every 15 contact hours and

(2) For institutions on a quarter system: one credit for every 10 contact hours of participation in an organized continuing education experience under responsible sponsorship, capable direction, and qualified instruction, as described in the criteria established by the International Association for Continuing Education and Training. Limit the number of calculated eligible continuing education credits to 10 percent of your ISC.

(g) Divide by 12 the calculation in paragraph (e) of this section.

The formula for the full calculation is expressed mathematically as:

ISC = FTCR + PTCR + SCR + CECR/12

(h) In the formula in paragraph (f) of this section, the abbreviations used have the following meanings:

(1) FTCR = the number of credit hours carried by full-time Indian students (students carrying 12 or more credit hours at the end of the third week of each academic term); and

(2) PTCR = the number of credit hours carried by part-time Indian students (students carrying fewer than 12 credit hours at the end of the third week of each academic term).

(3) SCR = in a fall term, the number of credit hours earned during the preceding summer term.

(4) CECR = the number of credit hours being earned in an eligible continuing education program at the conclusion of the third week of the academic term, in accordance with subsection (e) of this section.

(i) Include a count of all registered students, including distance education students, at the conclusion of the third week of the academic term.

§ 41.7 What happens if false information is submitted?

Persons submitting or causing to be submitted any false information in connection with any application, report, or other document under this part may be subject to criminal prosecution under provisions such as sections 371 or 1001 of Title 18, U.S. Code.

Subpart B—Tribally Controlled Colleges and Universities

§ 41.9 What is the purpose of this subpart?

This subpart prescribes procedures for providing financial and technical assistance under the Tribally Controlled Colleges and Universities Assistance Act of 1978, as amended (25 U.S.C. 1801 *et seq.*) for the operation and improvement of tribal colleges and universities and advancement of educational opportunities for Indian Students. This subpart does not apply to Diné College.

§ 41.11 Who is eligible for financial assistance under this subpart?

A tribal college or university is eligible for financial assistance under this subpart only if:

(a) It is governed by a board of directors or board of trustees, a majority of whom are Indians;

(b) It demonstrates adherence to stated goals, a philosophy, or a plan of operation directed to meet the needs of Indians;

(c) It has a student body that is more than 50 percent Indian (unless it has been in operation for less than one year);

(d) Either is accredited by a nationally recognized accrediting agency or association determined by the Secretary of Education to be a reliable authority with regard to the quality of training offered, or, according to such agency or association, are making reasonable progress toward accreditation;

(e) It has received a positive determination after completion of an eligibility study; and

(f) It complies with the requirements of § 41.19.

(g) Priority to schools and the number of grants: priority in grants shall be given to institutions which were in operation on the date of enactment of this Act [enacted Oct. 17, 1978] and which have a history of service to Indian people.

§ 41.13 For what activities can financial assistance to tribal colleges and universities be used?

Financial assistance under this subpart may be used to defray, at the determination of the tribal college or university, expenditures for academic, educational, and administrative purposes and for the operation and maintenance of the college or university.

§ 41.15 What activities are prohibited?

Tribal colleges and universities shall not use financial assistance awarded under this subpart in connection with religious worship or sectarian instruction. However, nothing in this subpart shall be construed as barring instruction or practice in comparative religions or cultures or in languages of American Indian tribes.

§ 41.17 What is the role of the Secretary of Education?

(a) The Secretary is authorized to enter into an agreement with the Secretary of Education to obtain assistance to:

(1) Develop plans, procedures, and criteria for eligibility studies required under this subpart; and

(2) Conduct such studies.

(b) BIE must consult with the Secretary of Education to determine the reasonable number of students required to support a tribal college or university.

§ 41.19 How can a tribal college or university establish eligibility to receive a grant?

(a) Before a tribal college or university can apply for an initial grant under this part, the governing body of one or more Indian tribes must request on its behalf a determination of eligibility.

(b) Within 30 days of receiving a resolution or other duly authorized request from the governing body of one or more Indian tribes, BIE shall initiate an eligibility study to determine whether there is justification for a tribal college or university.

(c) The eligibility study will analyze the following factors:

(1) Financial feasibility based upon reasonable potential enrollment; considering:

(i) Tribal, linguistics, or cultural differences;

(ii) Isolation;

(iii) Presence of alternate educational sources;

(iv) Proposed curriculum;

(2) Levels of tribal matriculation in and graduation from postsecondary educational institutions; and

(3) The benefits of continued and expanded educational opportunities for Indian students.

(d) Based upon results of the study, the Director will send the tribe a written determination of eligibility.

(e) The Secretary and the BIE, to the extent practicable, will consult with national Indian organizations and with tribal governments chartering the institutions being considered.

§ 41.21 How can a tribe appeal the results of an eligibility study?

If a tribe receives a negative determination under § 41.19(e), it may submit an appeal to the Assistant Secretary within 45 days.

(a) Following the timely filing of a tribe's notice of appeal, the tribal college or university and the tribe have a right to a formal review of the eligibility study, including a hearing upon reasonable notice within 60 days. At the hearing, the tribal college or university and the appealing tribe may present additional evidence or arguments to justify eligibility.

(b) Within 45 days of the hearing, the Assistant Secretary will issue a written ruling confirming, modifying, or reversing the original determination. The ruling will be final and BIE will mail or deliver it within one week of its issuance.

(c) If the Assistant Secretary does not reverse the original negative determination, the ruling will specify the grounds for our decision and state the manner in which the determination relates to each of the factors in § 41.11.

§ 41.23 Can a tribal college or university request a second eligibility study?

If a tribe is not successful in its appeal under § 41.21, it can request another eligibility study 12 months or more after the date of the negative determination.

§ 41.25 How does a tribal college or university apply for a grant?

(a) If the college or university receives a positive determination of the eligibility study under § 41.19, it is entitled to apply for financial assistance under this subpart.

(b) To be considered for assistance, a tribal college or university must submit an application by or before June 1st of the year preceding the academic year for which the tribal college or university is requesting assistance. The application must contain the following:

Required information	Required details
(1) Identifying information.	(i) Name and address of the tribal college or university.
	(ii) Names of the governing board members, and the number of its members who are Indian.
	(iii) Name and address of the tribe or tribes that control or have sanctioned or chartered the tribal college or university.
(2) Eligibility verification	The date on which an eligibility determination was received
(3) Curriculum materials	(i) A statement of goals, philosophy, or plan of operation demonstrating how the education program is designed to meet the needs of Indians.
	(ii) A curriculum, which may be in the form of a college catalog or similar publication, or information located on the tribal college or university Web site.
(4) Financial information	(i) A proposed budget showing total expected education program operating expenses and expected revenues from all sources for the academic year to which the information applies.
	(ii) A description of record-keeping procedures used to track fund expenditures and to audit and monitor funded programs.
(5) Enrollment information.	(i) If the tribal college or university has been in operation for more than one year, a statement of the total number of ISC (FTE Indian students) and the total number of all FTE students. Grantees may exclude high school students for the purpose of calculating the total number of FTE students.
	(ii) If the tribal college or university has not yet begun operations, or has been in operation for less than one year, a statement of expected enrollment, including the total number of FTE students and the ISC (FTE Indian students) and may also require verification of the number of registered students after operations have started.
(6) Assurances and requests.	(i) Assurance that the tribal college or university will not deny admission to any Indian student because that student is, or is not, a member of a specific tribe.
	(ii) Assurance that the tribal college or university will comply with the requirements in § 41.39 of this subpart.
	(iii) A request and justification for a specific waiver of any requirement of 25 CFR part 276 which a tribal college or university believe to be inappropriate.
(7) Certification	Certification by the chief executive that the information on the application is complete and correct.

(c) Material submitted in a tribal college's or university's initial successful grant application shall be retained by the BIE. A tribal college or university submitting a subsequent application for a grant, shall either confirm the information previously submitted remains accurate or submit updated information, as necessary.

§ 41.27 When can the tribal college or university expect a decision on its application?

Within 45 days of receiving an application, the Director will notify the tribal college or university in writing whether or not the application has been approved.

(a) If the Director approves the application, written notice will explain when the BIE will send the tribal college or university a grant agreement under § 41.19.

(b) If the Director disapproves the application, written notice will include:

(1) The reasons for disapproval; and

(2) A statement advising the tribal college or university of the right to amend or supplement the tribal college's or university's application within 45 days.

(c) The tribal college or university may appeal a disapproval or a failure to act within 45 days of receipt following the procedures in § 41.21.

§ 41.29 How will a grant be awarded?

If the Director approves the tribal college's or university's application, the BIE will send the tribal college or university a grant agreement that incorporates the tribal college's or university's application and the provisions required by § 41.25. The tribal college or university grant will be for the fiscal year starting after the approval date of the application.

(a) The BIE will generally calculate the amount of the tribal college or university grant using the following procedure:

(1) Begin with a base amount of $8,000 (adjusted annually for inflation);

(2) Multiply the base amount by the number of FTE Indian students in attendance during each academic term; and

(3) Divide the resulting sum by the number of academic terms in the academic year.

(b) All grants under this section are subject to availability of appropriations.

(c) If there are insufficient funds to pay the amount calculated under paragraph (a) of this section, BIE will reduce the grant amount awarded to each eligible tribal college or university on a pro rata basis.

§ 41.31 When will the tribal college or university receive funding?

(a) BIE will authorize payments equal to 95 percent of funds available for allotment by either July 1 or within 14 days after appropriations become available, with the remainder of the payment made no later than September 30.

(b) BIE will not commingle funds appropriated for grants under this subpart with other funds expended by the BIE.

§ 41.33 What if there isn't enough money to pay the full grant amount?

This section applies if BIE has to reduce payments under § 41.29(c).

(a) If additional funds have not been appropriated to pay the full amount of grants under this part on or before June 1st of the year, the BIE will notify all grant recipients in writing. The tribal college or university must submit a written report to the BIE on or before July 1st explaining how much of the grant money remains unspent.

(b) After receiving the tribal college's or university's report under paragraph (a) of this section, BIE will:

(1) Reallocate the unspent funds using the formula in § 41.29 in proportion to the amount of assistance to which each grant recipient is entitled but has not received;

(2) Ensure that no tribal college or university will receive more than the total annual cost of its education programs;

(3) Collect unspent funds as necessary for redistribution to other grantees under this section; and

(4) Make reallocation payments on or before August 1st of the academic year.

§ 41.35 What will happen if the tribal college or university doesn't receive its appropriate share?

(a) If the BIE determines the tribal college or university has received financial assistance to which the tribal college or university was not entitled, BIE will:

(1) Promptly notify the tribal college or university; and

(2) Reduce the amount of the tribal college's or university's payments under this subpart to compensate for any overpayments or otherwise attempt to recover the overpayments.

(b) If a tribal college or university has received less financial assistance than the amount to which the tribal college or university was entitled, the tribal college or university should promptly notify the BIE. If the BIE confirms the miscalculation, BIE will adjust the amount of the tribal college's or university's payments for the same or subsequent academic years to compensate for the underpayments. This adjustment will come from the Department's general funds and not from future appropriated funds.

§ 41.37 Is the tribal college or university eligible for other grants?

Yes. Eligibility for grants under this subpart does not bar a tribal college or university from receiving financial assistance under any other federal program.

§ 41.39 What reports does the tribal college or university need to provide?

(a) The tribal college or university must provide the BIE, on or before December 1 of each year a report that includes:

(1) An accounting of the amounts and purposes for which the tribal college or university spent assistance received under this part during the preceding academic year;

(2) An accounting of the annual cost of the tribal college's or university's education programs from all sources for the academic year; and

(3) A final performance report based upon the criteria the tribal college's or university's goals, philosophy, or plan of operation.

(b) The tribal college or university must report to the BIE their FTE Indian student enrollment for each academic term of the academic year within three (3) weeks of the date the tribal college or university makes the FTE calculation.

§ 41.41 Can the tribal college or university receive technical assistance?

(a) If a tribal college or university sends the BIE a written request for technical assistance, BIE will respond within 30 days.

(b) The BIE will provide technical assistance either directly or through annual contract to a national Indian organization that the tribal college or university designates.

(c) Technical assistance may include consulting services for developing programs, plans, and eligibility studies and accounting, and other services or technical advice.

§ 41.43 How must the tribal college or university administer its grant?

In administering any grant provided under this subpart, a tribal college or university must:

(a) Provide services or assistance under this subpart in a fair and uniform manner;

(b) Not deny admission to any Indian student because they either are, or are not, a member of a specific Indian tribe; and

(c) Comply with part 276 of this title, unless the BIE expressly waives specific inappropriate provisions of part 276 in response to a tribal college or university request and justification for a waiver.

§ 41.45 How does the tribal college or university apply for programming grants?

(a) Tribes and Tribal entities may submit a written request to the BIE for a grant to conduct planning activities for the purpose of developing proposals for the establishment of tribally controlled colleges and universities, or to determine the need and potential for the establishment of such colleges and universities. BIE will provide written notice to the tribal college or university of its determination on the grant request within 30 days.

(b) Subject to the availability of appropriations, BIE may provide such grants to up to five tribes and tribal entities in the amount of $15,000 each.

§ 41.47 Are tribal colleges or universities eligible for endowments?

Yes. Tribal colleges and universities are eligible for endowments upon a signed agreement between the tribal college and university and the Secretary as described in 25 U.S.C. 1832. Endowments must be invested in a trust fund and the tribal college or university may only use the interest deposited for the purpose of defraying expenses associated with the operation of the tribal college or university (25 U.S.C. 1833).

Subpart C—Diné College

§ 41.49 What is the purpose of this subpart?

The purpose of this subpart is to assist the Navajo Nation in providing education to the members of the tribe and other qualified applicants through a community college, established by that tribe, known as Diné College. To that end, the regulations in this subpart prescribe procedures for providing financial and technical assistance for Diné College under the Diné College Act, as amended (25 U.S.C. 640a–c).

§ 41.51 What is the scope of this subpart?

The regulations in this subpart are applicable to the provision of financial assistance to Diné College pursuant to the Diné College Act of December 15, 1971 (Pub. L. 92–189, 85 Stat. 646, 25 U.S.C. 640a–c) as amended by the Diné College Assistance Act of 1978, title II of the Tribally Controlled Colleges and Universities Assistance Act of 1978 (Pub. L. 95–471, 92 Stat. 1325, 1329, 25 U.S.C. 640c).

§ 41.53 How does Diné College request financial assistance?

To request tribal college or university financial assistance, Diné College must submit an application. The application must be certified by the tribal college or university chief executive officer and include:

(a) A statement of Indian student enrollment and total FTE enrollment for the preceding academic year;

(b) A curriculum description, which may be in the form of a college catalog or like publication or information located on the tribal college or university Web site; and

(c) A proposed budget showing total expected operating expenses of educational programs and expected revenue from all sources for the grant year.

§ 41.55 How are grant funds processed?

(a) BIE will identify the budget request for Diné College separately in its annual budget justification.

(b) BIE will not commingle funds appropriated for grants under this subpart with appropriations that are historically expended by the Bureau of Indian Affairs for programs and projects normally provided on the Navajo Reservation for Navajo beneficiaries.

§ 41.57 When will the application be reviewed?

Within 45 days of receiving the application the BIE will send a grant agreement for signature by the Diné College president or his or her designee in an amount determined under § 41.29(a). The grant agreement shall incorporate the grant application and include the provisions required by § 41.25

§ 41.59 When will grant funds be paid?

(a) Initial grant funds will be paid in an advance installment of not less than 40 percent of the funds available for allotment by October 1st.

(b) The remainder of the grant funds will be paid by July 1st after the BIE adjusts the amount to reflect any overpayments or underpayments made in the first disbursement.

§ 41.61 Is Diné College eligible to receive other grants?

Yes. Eligibility for grants under this subpart does not bar Diné College from receiving financial assistance under any other Federal program.

§ 41.63 How can financial assistance be used?

(a) The tribal college or university must use financial assistance under this subpart only for operation and maintenance, including educations programs, annual capital expenditures, major capital improvements, mandatory payments, supplemental student services, and improvement and expansion, as described in 25 U.S.C. 640c–1(b)(1);

(b) Must not use financial assistance under this subpart for religious worship or sectarian instruction. However, this subpart does not prohibit instruction about religions, cultures or Indian tribal languages.

§ 41.65 What reports must be provided?

(a) Diné College must submit on or before December 1st of each year a report that includes:

(1) An accounting of the amounts and purposes for which Diné College spent the financial assistance during the preceding academic year;

(2) The annual cost of Diné College education programs from all sources for the academic year; and

(3) A final report of Diné College's performance based upon the criteria in its stated goals, philosophy, or plan of operation.

(b) Diné College must report its FTE Indian student enrollment for each academic term within six weeks of the date it makes the FTE calculation.

§ 41.67 Can Diné College receive technical assistance?

Technical assistance will be provided to Diné College as noted in § 41.41.

§ 41.69 How shall Diné College administer its grant?

In administering any grant provided under this subpart, Diné College must:

(a) Provide all services or assistance under this subpart in a fair and uniform manner;

(b) Not deny admission to any Indian student because the student is, or is not, a member of a specific Indian tribe;

(c) Comply with part 276 of this title, unless the BIE expressly waives specific inappropriate provisions of part 276 in response to Diné College's request and its justification for a waiver.

§ 41.71 Can Diné College appeal an adverse decision under a grant agreement by the Director?

Diné College has the right to appeal to the Assistant Secretary by filing a written notice of appeal within 45 days of the adverse decision. Within 45 days after receiving notice of appeal, the Assistant Secretary shall conduct a formal hearing at which time the Diné College may present evidence and argument to support its appeal. Within 45 days of the hearing, the Assistant Secretary shall issue a written ruling on the appeal confirming, modifying or reversing the decision of the Director. If the ruling does not reverse the adverse decision, the Assistant Secretary shall state in detail the basis of his/her ruling. The ruling of the Assistant Secretary on an appeal shall be final for the Department.

Dated: August 7, 2015.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2015–20242 Filed 8–17–15; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1902, 1903, 1904, 1952, 1953, 1954, 1955, and 1956

[Docket No. OSHA–2014–0009]

RIN 1218–AC76

Streamlining of Provisions on State Plans for Occupational Safety and Health

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document primarily proposes to amend OSHA regulations to remove the detailed descriptions of State plan coverage, purely historical data, and other unnecessarily codified information. In addition, this document proposes to move most of the general provisions of subpart A of part 1952 into part 1902, where the general regulations on State plan criteria are found. It also proposes to amend several other OSHA regulations to delete references to part 1952, which would no longer apply. The purpose of these proposed revisions is to eliminate the unnecessary codification of material in the Code of Federal Regulations and save the time and funds currently expended in publicizing State plan revisions. The proposed streamlining of OSHA State plan regulations would not change the areas of coverage or any other substantive components of any State plan. It also does not affect the rights and responsibilities of the State plans, or any employers or employees, except to eliminate the burden on State plan designees to keep paper copies of approved State plans and plan supplements in an office, and to submit multiple copies of proposed State plan documents to OSHA. This document also contains a request for comments for an Information Collection Request (ICR) under the Paperwork Reduction Act of 1995 (PRA), which covers all collection of information requirements in OSHA State plan regulations.

DATES: Comments and additional materials (including comments on the information-collection (paperwork) determination described under the section titled **SUPPLEMENTARY INFORMATION** of this document) must be submitted (post-marked, sent or received) by September 17, 2015.

ADDRESSES: You may submit comments, identified by docket number OSHA–2014–0009, or regulatory information number (RIN) 1218–AC76 by any of the following methods:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions on-line for making electronic submissions; or

Fax: If your submission, including attachments, does not exceed 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648; or

U.S. mail, hand delivery, express mail, messenger or courier service: You must submit your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2014–0009, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). Deliveries (hand, express mail, messenger and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., EST.

Instructions for submitting comments: All submissions must include the Docket Number (Docket No. OSHA–2014–0009) or the RIN number (RIN 1218–AC76) for this rulemaking. Because of security-related procedures, submission by regular mail may result in significant delay. Please contact the OSHA Docket Office for information about security procedures for making submissions by hand delivery, express delivery and messenger or courier service.

All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at *http://www.regulations.gov.* Therefore, caution should be taken in submitting personal information, such as Social Security numbers and birth dates.

Docket: To read or download submissions in response to this **Federal Register** document, go to docket number OSHA–2014–0009, at *http://www.regulations.gov.* All submissions are listed in the *http://www.regulations.gov* index: However, some information (*e.g.,* copyrighted material) is not publicly available to read or download through that Web page. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office.

Electronic copies of this **Federal Register** document are available at *http://www.regulations.gov.* This document, as well as news releases and other relevant information, is available at OSHA's Web page at *http://www.osha.gov.* A copy of the documents referenced in this document may be obtained from: Office of State Programs, Directorate of Cooperative and State Programs, Occupational Safety and Health Administration, Room N3700, 200 Constitution Avenue NW., Washington, DC 20210, (202) 693–2244, fax (202) 693–1671.

FOR FURTHER INFORMATION CONTACT: *For press inquiries:* Francis Meilinger, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999; email: *meilinger.francis2@dol.gov.*

For general and technical information: Douglas J. Kalinowski, Director, OSHA Directorate of Cooperative and State Programs, Room N–3700, U.S. Department of Labor, 200 Constitution Avenue NW, Washington DC 20210; telephone: (202) 693–2200; email: *kalinowski.doug@dol.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 18 of the Occupational Safety and Health Act of 1970 (the Act), 29 U.S.C. 667, provides that States that desire to assume responsibility for the development and enforcement of occupational safety and health standards may do so by submitting, and obtaining federal approval of, a State plan. States may obtain approval for plans that cover private-sector employers and State and local government employers (comprehensive plans) or for plans that only cover State and local government employers.

From time to time changes are made to these State plans, particularly with respect to the issues which they cover. Procedures for approval of and changes to comprehensive State plans are set forth in the regulations at 29 CFR part 1902 and 29 CFR part 1953. A description of each comprehensive State plan has previously been set forth in 29 CFR part 1952, subparts C–FF. These descriptions have contained the following sections: Description of the plan, Developmental schedule, Completion of developmental steps and certifications, Staffing benchmarks, Final approval determination (if applicable), Level of Federal enforcement, Location where the State plan may be physically inspected, and Changes to approved plan.

Procedures for approval of a State plan covering State and local government employees only are set forth in the regulations at 29 CFR part 1956, subparts A–C. Pursuant to 29 CFR 1956.21, procedures for changes to these State plans are also governed by 29 CFR part 1953. A description of each State

plan for State and local government employees only has previously been set forth in 29 CFR part 1956, subparts E–I. These subparts have contained the following sections: Description of the plan as certified (or as initially approved), Developmental schedule, Completed developmental steps and certification (if applicable), and Location of basic State plan documentation.

The area of coverage of each State plan has previously been codified at 29 CFR part 1952 under each State's subpart within the sections entitled ''Final approval determination'' and ''Level of Federal enforcement,'' and in 29 CFR part 1956 within the section on the description of the plan. Therefore, any change to a State plan's coverage or other part of the State plan description contained in 29 CFR part 1952 or 29 CFR part 1956 has thus far necessitated an amendment to the language of the CFR, which has required the expenditure of additional time and resources, such as those needed for printing. Furthermore, reprinting parts 1952 and 1956 in the annual CFR publication has necessitated the expenditure of additional time and resources. The individual descriptions of the State plans consisted of 103 pages in the July 1, 2013 revision of title 29, part 1927 to end, of the CFR. For these reasons, OSHA proposes to streamline parts 1952 and 1956 to delete the detailed descriptions of State plan coverage, purely historical data, and other unnecessarily codified information, thus saving time and funds currently expended in publishing changes to these parts of the CFR.

There is no legal statutory requirement that individual State plans be described in the CFR. The CFR is a codification of the documents of each agency of the Government having general applicability and legal effect, issued or promulgated by the agency in the **Federal Register**. 44 U.S.C. 1510(a) and (b). The description of a State plan is not a document of general applicability; it only applies to a particular State. Nevertheless, in this document, OSHA sets forth brief descriptions of each State plan that will be retained in the CFR in part 1952 in order to make this information readily available to those conducting legal research and relying on the CFR. Brief descriptions of comprehensive plans are included in subpart A of part 1952 and brief descriptions of State plans covering State and local government employees only are included in subpart B of part 1952. Any significant changes that would make these descriptions outdated, such as a withdrawal or grant of final approval, will continue to be codified in the CFR.

The proposed partial deletions of the State plan descriptions from the CFR will not decrease transparency. Each section of part 1952 would continue to note each State plan, the date of its initial approval, and, where applicable, the date of final approval, the existence of an operational status agreement, and the approval of staffing requirements (''benchmarks''). Each section would have a general statement of coverage indicating whether the plan covers all private-sector and State and local government employers, with some exceptions, or State and local government employers only. Each section would also note that current information about these coverage exceptions and additional details about the State plan could be obtained from the Web page on the OSHA public Web site describing the particular State plan (a link would be referenced). The OSHA Web page for each State plan would also be updated to include the latest information on coverage and other important changes. Furthermore, the other information about the State plan that is currently in the CFR would still be available in the **Federal Register**, and could be searched electronically at *https://www.federalregister.gov* and would also be available in printed form. The **Federal Register** could also be searched electronically on commercially available legal databases. When changes are made to State plan coverage, all of the information on coverage would be reprinted in the **Federal Register** along with the change, so that readers would not have to search through many **Federal Register** notices to obtain a comprehensive description of coverage.

In addition to changing the individual descriptions of all State plans within part 1952, OSHA proposes to make several other housekeeping changes. First, OSHA proposes to move the provisions of subpart A of part 1952 that pertain to the required criteria for State plans, to part 1902. (The following provisions would be moved to part 1902: 29 CFR 1952.4, Injury and illness recording and reporting requirements; 29 CFR 1952.6, Partial approval of State plans; 29 CFR 1952.8, Variations, tolerances, and exemptions affecting the national defense; 29 CFR1952.9, Variances affecting multi-state employers; 29 CFR 1952.10, Requirements for approval of State posters; and 29 CFR 1952.11, State and local government employee programs.) As a result, the complete criteria for State plans would be located within part 1902.

OSHA proposes to delete 29 CFR 1952.1 (Purpose and scope) and 29 CFR 1952.2 (Definitions) because the changes described above and the restructuring of part 1952 would make these provisions unnecessary. OSHA proposes to delete 29 CFR 1952.3 (Developmental plans) because that material is covered by 29 CFR 1902.2(b). The text of 29 CFR 1952.5 (Availability of State plans) requires complete copies of each State plan, including supplements thereto, to be kept at OSHA's National Office, the office of the nearest OSHA Regional Administrator, and the office of the State plan agency listed in part 1952. OSHA proposes to delete 29 CFR 1952.5 because with the widespread use of electronic document storage and the Internet, it is no longer necessary to physically store such information in order to make it available to the public. Information about State plans can now be found on each State's Web site, as well as on OSHA's Web site. For the same reasons, OSHA proposes to delete the language in 29 CFR 1953.3(c) (Plan supplement availability) which discusses making State plan documents available for public inspection and photocopying in designated offices. OSHA proposes to delete the text of 29 CFR 1952.7(a), which deals with product standards, because the explanation of section 18(c)(2) of the Act, 29 U.S.C. 667(c)(2), on product standards is already covered by 29 CFR 1902.3(c)(2). However, OSHA proposes to move § 1952.7(b) to the end of § 1902.3(c)(2) because that material was not previously included. In addition, OSHA proposes to delete references to part 1952 from several other parts of the regulations, such as parts 1903, 1904, 1953, 1954 and 1955, because these references would no longer be accurate due to the proposed changes. Where appropriate, OSHA proposes to insert references to the newly numbered part 1902.

Finally, OSHA proposes to make some further minor changes to part 1902. The text of 29 CFR 1902.3(j), which briefly describes State plans covering State and local government employees, would be deleted because a more detailed description of State plan coverage of State and local government employees, formerly set forth in 29 CFR 1952.11, would be incorporated into 29 CFR part 1902 as § 1902.4(d). This change would necessitate the re-designation of paragraphs in § 1902.3. Also, OSHA proposes to change 29 CFR 1902.10(a) to reduce the number of copies a State agency must submit in order to obtain approval of a State plan. With the advent of computer

technology, the submission of extra paper copies is not necessary. OSHA also proposes to delete outdated references to an address in 29 CFR 1902.11(c) and (d).

Administrative Procedure Act and Direct Final Rulemaking

The notice and comment rulemaking procedures of section 553 of the Administrative Procedure Act (APA) do not apply ''to interpretive rules, general statements of policy or, rules of agency organization, procedure, or practice'' or when the agency for good cause finds that ''notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(A), (B). The proposed revisions set forth in this document would not implement any substantive change in the development, operation or monitoring of State plans. Nor would these revisions change the coverage or other enforcement responsibilities of the State plans or federal OSHA. The compliance obligations of employers and the rights of employees remain unaffected. Therefore, OSHA for good cause finds that notice and comment is unnecessary. In addition, the proposed elimination of the requirement to make paper copies of State plan documents available in certain federal and State offices and the reduction of the number of copies of a proposed State plan which a State agency must submit would be purely procedural changes. Future alterations to State plan coverage would only require a simple, easily searchable notice to be published in the **Federal Register** and an update to OSHA's State plan Web page.

Although neither the Act nor the APA requires notice and comment rulemaking here, OSHA, as a matter of policy, is providing interested persons 30 days to submit comments. OSHA believes a 30-day timeframe for submitting comments is appropriate because the proposal is primarily a set of non-substantive technical changes.

OSHA is publishing a companion direct final rule along with this proposed rule in the ''Final Rules'' section of this **Federal Register**. An agency uses direct final rulemaking when it anticipates that a rule will not be controversial. OSHA does not consider this proposed rule to be such because it primarily consists of changes in the organization of State plan information housed within the CFR, and the resultant re-numbering and updates to cross-references throughout the CFR.

In direct final rulemaking, an agency publishes a direct final rule in the **Federal Register** with a statement that the rule will become effective unless the agency receives significant adverse comment within a specified period. The agency may publish an identical proposed rule at the same time. If the agency receives no significant adverse comment in response to the direct final rule, the agency typically confirms the effective date of a direct final rule through a separate **Federal Register** document. If the agency receives a significant adverse comment, the agency withdraws the direct final rule and treats such comment as a response to the proposed rule. For purposes of this proposed rule and the companion direct final rule, a significant adverse comment is one that explains why the rule would be inappropriate.

The comment period for the direct final rule runs concurrently with that of this proposed rule. OSHA will treat comments received on the companion direct final rule as comments regarding the proposed rule. OSHA also will consider significant adverse comment submitted to this proposed rule as comment to the companion direct final rule. If OSHA receives no significant adverse comment to either this proposal or the companion direct final rule, OSHA will publish a **Federal Register** document confirming the effective date of the direct final rule and withdrawing this companion proposed rule. Such confirmation may include minor stylistic or technical changes to the document. If OSHA receives a significant adverse comment on either the direct final rule or this proposed rule, it will publish a timely withdrawal of the companion direct final rule and proceed with this proposed rule. In the event that OSHA withdraws the direct final rule because of significant adverse comment, OSHA will consider all timely comments received in response to the direct final rule when it continues with the proposed rule. After carefully considering all comments to the direct final rule and the proposal, OSHA will decide whether to publish a new final rule.

OMB Review Under the Paperwork Reduction Act of 1995

This proposed rule revises ''collection of information'' (paperwork) requirements that are subject to review by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1995 (''PRA–95''), 44 U.S.C. 3501 *et seq.,* and OMB's regulations at 5 CFR part 1320. The Paperwork Reduction Act defines a ''collection of information'' as ''the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public of facts or opinions by or for an agency regardless of form or format'' (44 U.S.C. 3502(3)(A)). OMB approved the collection of information requirements currently contained in the regulations associated with OSHA-approved State Plans (29 CFR parts 1902, 1952, 1953, 1954, and 1956) under OMB Control Number 1218–0247.

Through emergency processing procedures, OSHA submitted a request that OMB revise the collection of information requirements contained in these regulations within 45 days of publication. The proposed rule would not impose new collection of information requirements for purposes of PRA–95; therefore, the Agency does not believe that this rule will impact burden hours or costs. The proposed rule would move the current collection of information requirement provisions of subpart A of part 1952, pertaining to required criteria for State plans, to part 1902. The proposed rule would delete the text of current 29 CFR 1952.5 (Availability of State plans) requiring complete copies of each State plan, including supplements thereto, to be kept at OSHA's National Office, the nearest OSHA Regional Office, and the office of the State plan agency. The rule would also delete the language in current 29 CFR 1953.3(c) (Plan supplement availability) which discusses making State plan documents available for public inspection and photocopying in designated offices. The rule would also reduce from ten to one the number of copies of the State Plan which a State agency must submit under 29 CFR 1902.10(a) in order to obtain approval of the State plan. Finally, the proposed rule would revise regulations containing current collection of information requirements at 29 CFR parts 1902, 1952, 1953, 1954, and 1956 to delete or update cross-references, remove duplicative provisions, and re-designate paragraphs.

OSHA has submitted an ICR addressing the collection of information requirements identified in this rule to OMB for review (44 U.S.C. 3507(d)). OSHA solicits comments on the proposed extension and revision of the collection of information requirements and the estimated burden hours associated with the regulations associated with OSHA-approved State Plans, including comments on the following:

Whether the proposed collection of information requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;

The accuracy of OSHA's estimate of the burden (time and cost) of the information collection requirements,

including the validity of the methodology and assumptions used;

Enhancing the quality, utility, and clarity of the information collected; and

Minimizing the burden on employers who must comply, for example, by using automated or other technological techniques for collecting and transmitting information.

Pursuant to 5 CFR 1320.5(a)(1)(iv), OSHA provides the following summary of the Occupational Safety and Health State Plans Information Collection Request (ICR):

1. *Type of Review:* Revision of a currently approved collection.

2. *Title:* Occupational Safety and Health State Plans

3. *OMB Control Number:* 1218–0247.

4. *Description of Collection of Information Requirements:* The proposed collection of information requirements, contained in the regulations associated with this rule are set forth below. The citations reflect the changes in this notice of proposed rulemaking and the accompanying direct final rule.

Part	Collection of Information Requirements
29 CFR 1902	1902.2(a), 1902.2(b), 1902.2(c)(2), 1902.2(c)(3), 1902.3(a), 1902.3(b)(1)–(b)(3), 1902.3(c)(1), 1902.3(d)(1), 1902.3(d)(2), 1902.3(e), 1902.3(f), 1902.3(g), 1902.3(h), 1902.3(i), 1902.3(j), 1902.3(k), 1902.4(a), 1902.4(a)(1), 1902.4(a)(2), 1902.4(b)(1), 1902.4(b)(2), 1902.4(b)(2)(i)–(b)(2)(vii), 1902.4(c)(1), 1902.4(c)(2), 1902.4(c)(2)(i)–(c)(2)(xiii), 1902.4(d)(1), 1902.4(d)(2), 1902.4(d)(2)(i)–(d)(2)(iii)(k), 1902.4(e), 1902.7(a), 1902.7(d), 1902.9(a)(1), 1902.9(a)(5), 1902.9(a)(5)(i)–(a)(5)(xii), 1902.10, 1902.10(a), 1902.10(b), 1902.31, 1902.32(e), 1902.33, 1902.38(b), 1902.39(a), 1902.39(b), 1902.44(a), 1902.46(d), 1902.46(d)(1).
29 CFR 1952.	
29 CFR 1953	1953.1(a), 1953.1(b), 1953.1(c), 1953.2(c)–1953.2(j), 1953.3(a)–(e), 1953.4(a)(1)–1953.4(a)(5), 1953.4(b)(1)–1953.4(b)(7), 1953.4(c)(1)–1953.4(c)(5), 1953.4(d)(1), 1953.4(d)(2), 1953.5(a)(1)–1953.5(a)(3), 1953.5(b)(1)–(b)(3), 1953.6(a), 1953.6(e).
29 CFR 1954	1954.2(a), 1954.2(b), 1954.2(b)(1)–1954.2(b)(3), 1954.2(c), 1954.2(d), 1954.2(e), 1954.2(e)(1)–(e)(4), 1954.3(f)(1), 1954.3(f)(1)(i)–1954.3(f)(1)(v), 1954.10(a), 1954.10(b), 1954.10(c), 1954.11, 1954.20(a), 1954.20(b), 1954.20(c)(1), 1954.20(c)(2), 1954.20(c)(2)(i)–1954.20(c)(2)(iv), 1954.21(a), 1954.21(b), 1954.21(c), 1954.21(d), 1954.22(a)(1), 1954.22(a)(2).
29 CFR 1955.	
29 CFR 1956	1956.2(b)(1), 1956.2(b)(1)(i)–(ii), 1956.2(b)(2), 1956.2(b)(3), 1956.2(c)(1), 1956.2(c)(2), 1956.10(a), 1956.10(b)(1), 1956.10(b)(2), 1956.10(b)(3), 1956.10(c), 1956.10(d)(1), 1956.10(d)(2), 1956.10(e), 1956.10(f), 1956.10(g), 1956.10(h), 1956.10(i), 1956.10(j), 1956.11(a), 1956.11(a)(1), 1956.11(a)(2), 1956.11(d), 1956.20, 1956.21, 1956.22, 1956.23.

5. *Affected Public:* Designated state government agencies that are seeking or have submitted and obtained approval for State Plans for the development and enforcement of occupational safety and health standards.

6. *Number of Respondents:* 28.

7. *Frequency:* On occasion; quarterly; annually.

8. *Average Time per Response:* Varies from 30 minutes (.5 hour) to respond to an information inquiry to 80 hours to document state annual performance goals.

9. *Estimated Total Burden Hours:* The Agency does not believe that this rule will impact burden hours or costs. However, based on updated data and estimates, the Agency is requesting an adjustment increase of 173 burden hours, from 11,196 to 11,369 burden hours. This burden hour increase is the result of the anticipated increase in the submission of state plan changes associated with one state (Maine) actively implementing a new State Plan. The burden hour increase was partially offset by the decrease in the estimated number of state-initiated state plan changes.

10. *Estimated Costs (Operation and Maintenance):* There are no capital costs for this collection of information.

Submitting comments. In addition to having an opportunity to file comments with the Department, the PRA provides that an interested party may file comments on the collection of information requirements contained in the rule directly with the Office of Management and Budget, at the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments to the Department. See **ADDRESSES** section of this preamble. The OMB will consider all written comments that the agency receives within forty-five (45) days of publication of this NPRM in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB control number 1218–0247. Comments submitted in response to this document are public records; therefore, OSHA cautions commenters about submitting personal information such as Social Security numbers and date of birth.

Docket and inquiries. To access the docket to read or download comments and other materials related to this paperwork determination, including the complete Information Collection Request (ICR) (containing the Supporting Statement with attachments describing the paperwork determinations in detail), use the procedures described under the section of this document titled **ADDRESSES.** You also may obtain an electronic copy of the complete ICR by visiting the Web page, *http://www.reginfo.gov/public/do/PRAMain,* select ''Department of Labor'' under ''Currently Under Review'' to view all of DOL's ICRs, including the ICR related to this rulemaking. To make inquiries, or to request other information, contact Mr. Todd Owen, Directorate of Standards and Guidance, OSHA, Room N–3609, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

OSHA notes that a Federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the PRA and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number.

Regulatory Flexibility Analysis, Unfunded Mandates, and Executive Orders on the Review of Regulations

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (as amended), OSHA examined the provisions of the proposal to determine whether it would have a significant economic impact on a substantial number of small entities. Since no employer of any size would have any new compliance obligations, the Agency certifies that the proposal would not have a significant economic impact on a substantial number of small entities. OSHA also reviewed this proposal in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA; 2 U.S.C. 1501 *et seq.*) and Executive Orders 12866 (58 FR 51735, September 30, 1993) and 13563 (76 FR 3821, January 21, 2011). Because this proposal would impose no new compliance obligations, it would require no additional expenditures by either private employers or State, local, or tribal governments.

Executive Order 13132, ''Federalism,'' (64 FR 43255, August 10, 1999) emphasizes consultation between Federal agencies and the States on policies not required by statute which have federalism implications, *i.e.,* policies, such as regulations, which 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, or which impose substantial direct compliance costs on State and local governments. This proposal has no federalism implications and would not impose substantial direct compliance costs on State or local governments.

OSHA has reviewed this proposal in accordance with Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' (65 FR 67249, November 6, 2000) and determined that the proposal would not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

List of Subjects in 29 CFR Parts 1902, 1903, 1904, 1952, 1953, 1954, 1955, and 1956

Intergovernmental relations, Law enforcement, Occupational safety and health.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC, authorized the preparation of this proposal. OSHA is issuing this proposal under the authority specified by Sections 8(c)(1), 8(c)(2), and 8(g)(2) and 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657(c)(1), (c)(2), and (g)(2) and 667) and Secretary of Labor's Order No. 1–2012 (76 FR 3912).

Signed at Washington, DC, on July 28, 2015.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

Amendments to Regulations

For the reasons set forth in the preamble of this proposal, OSHA proposes to amend 29 CFR parts 1902, 1903, 1904, 1952, 1953, 1954, 1955, and 1956 as follows:

PART 1902—STATE PLANS FOR THE DEVELOPMENT AND ENFORCEMENT OF STATE STANDARDS

■ 1. The authority citation for part 1902 is revised to read as follows:

Authority: Secs. 8 and 18, 84 Stat. 1608 (29 U.S.C. 657, 667); Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012).

Subpart B—Criteria for State Plans

■ 2. Amend § 1902.3 as follows:

■ a. Revise paragraph (c)(2);

■ b. Remove paragraph (j);

■ c. Redesignate paragraphs (k) and (l) as (j) and (k), respectively.

The revision reads as follows:

§ 1902.3 Specific criteria.

* * * * *

(c) * * *

(2) The State plan shall not include standards for products distributed or used in interstate commerce which are different from Federal standards for such products unless such standards are required by compelling local conditions and do not unduly burden interstate commerce. This provision, reflecting section 18(c)(2) of the Act, is interpreted as not being applicable to customized products or parts not normally available on the open market, or to the optional parts or additions to products which are ordinarily available with such optional parts or additions. In situations where section 18(c)(2) is considered applicable, and provision is made for the adoption of product standards, the requirements of section 18(c)(2), as they relate to undue burden on interstate commerce, shall be treated as a condition subsequent in light of the facts and circumstances which may be involved.

* * * * *

■ 3. Amend § 1902.4 by revising paragraph (d) and adding paragraph (e) to read as follows:

§ 1902.4 Indices of effectiveness.

* * * * *

(d) *State and local government employee programs.* (1) Each approved State plan must contain satisfactory assurances that the State will, to the extent permitted by its law, establish and maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions which program is as effective as the standards contained in an approved plan.

(2) This criterion for approved State plans is interpreted to require the following elements with regard to coverage, standards, and enforcement:

(i) *Coverage.* The program must cover all public employees over which the State has legislative authority under its constitution. The language in section 18(c)(6) which only requires such coverage to the extent permitted by the State's law specifically recognizes the situation where local governments exclusively control their own employees, such as under certain home rule charters.

(ii) *Standards.* The program must be as effective as the standards contained in the approved plan applicable to private employers. Thus, the same criteria and indices of standards effectiveness contained in §§ 1902.3(c) and 1902.4(a) and (b) would apply to the public employee program. Where hazards are unique to public employment, all appropriate indices of effectiveness, such as those dealing with temporary emergency standards, development of standards, employee information, variances, and protective equipment, would be applicable to standards for such hazards.

(iii) *Enforcement.* Although section 18(c)(6) of the Act requires State public employee programs to be as effective as standards contained in the State plan, minimum enforcement elements are required to ensure an effective and comprehensive public employee program as follows:

(A) Regular inspections of workplaces, including inspections in response to valid employee complaints;

(B) A means for employees to bring possible violations to the attention of inspectors;

(C) Notification to employees, or their representatives, of decisions that no

violations are found as a result of complaints by such employees or their representatives, and informal review of such decisions;

(D) A means of informing employees of their protections and obligations under the Act;

(E) Protection for employees against discharge of discrimination because of the exercise of rights under the Act;

(F) Employee access to information on their exposure to toxic materials or harmful physical agents and prompt notification to employees when they have been or are being exposed to such materials or agents at concentrations or levels above those specified by the applicable standards;

(G) Procedures for the prompt restraint or elimination of imminent danger situations;

(H) A means of promptly notifying employers and employees when an alleged violation has occurred, including the proposed abatement requirements;

(I) A means of establishing timetables for the correction of violations;

(J) A program for encouraging voluntary compliance; and

(K) Such other additional enforcement provisions under State law as may have been included in the State plan.

(3) In accordance with § 1902.3(b)(3), the State agency or agencies designated to administer the plan throughout the State must retain overall responsibility for the entire plan. Political subdivisions may have the responsibility and authority for the development and enforcement of standards: *Provided*, that the designated State agency or agencies have adequate authority by statute, regulation, or agreement to insure that the commitments of the State under the plan will be fulfilled.

(e) *Additional indices.* Upon his own motion or after consideration of data, views and arguments received in any proceeding held under subpart C of this part, the Assistant Secretary may prescribe additional indices for any State plan which shall be in furtherance of the purpose of this part, as expressed in § 1902.1.

■ 4. Add §§ 1902.7 through 1902.09 to read as follows:

Sec.

* * * * *

* * * * *

§ 1902.7 Injury and illness recording and reporting requirements.

(a) Injury and illness recording and reporting requirements promulgated by State-Plan States must be substantially identical to those in 29 CFR part 1904 on recording and reporting occupational injuries and illnesses. State-Plan States must promulgate recording and reporting requirements that are the same as the Federal requirements for determining which injuries and illnesses will be entered into the records and how they are entered. All other injury and illness recording and reporting requirements that are promulgated by State-Plan States may be more stringent than, or supplemental to, the Federal requirements, but, because of the unique nature of the national recordkeeping program, States must consult with OSHA and obtain approval of such additional or more stringent reporting and recording requirements to ensure that they will not interfere with uniform reporting objectives. State-Plan States must extend the scope of their regulation to State and local government employers.

(b) A State may not grant a variance to the injury and illness recording and reporting requirements for private sector employers. Such variances may only be granted by Federal OSHA to assure nationally consistent workplace injury and illness statistics. A State may only grant a variance to the injury and illness recording and reporting requirements for State or local government entities in that State after obtaining approval from Federal OSHA.

(c) A State must recognize any variance issued by Federal OSHA.

(d) A State may, but is not required, to participate in the Annual OSHA Injury/Illness Survey as authorized by 29 CFR 1904.41. A participating State may either adopt requirements identical to § 1904.41 in its recording and reporting regulation as an enforceable State requirement, or may defer to the Federal regulation for enforcement. Nothing in any State plan shall affect the duties of employers to comply with § 1904.41, when surveyed, as provided by section 18(c)(7) of the Act.

§ 1902.8 Variations and variances.

(a) The power of the Secretary of Labor under section 16 of the Act to provide reasonable limitations and variations, tolerances, and exemptions to and from any or all provisions of the Act as he may find necessary and proper to avoid serious impairment of the national defense is reserved.

(b) No action by a State under a plan shall be inconsistent with action by the Secretary under this section of the Act.

(c) Where a State standard is identical to a Federal standard addressed to the same hazard, an employer or group of employers seeking a temporary or permanent variance from such standard, or portion thereof, to be applicable to employment or places of employment in more than one State, including at least one State with an approved plan, may elect to apply to the Assistant Secretary for such variance under the provisions of 29 CFR part 1905.

(d) Actions taken by the Assistant Secretary with respect to such application for a variance, such as interim orders, with respect thereto, the granting, denying, or issuing any modification or extension thereof, will be deemed prospectively an authoritative interpretation of the employer or employers' compliance obligations with regard to the State standard, or portion thereof, identical to the Federal standard, or portion thereof, affected by the action in the employment or places of employment covered by the application.

(e) Nothing herein shall affect the option of an employer or employers seeking a temporary or permanent variance with applicability to employment or places of employment in more than one State to apply for such variance either to the Assistant Secretary or the individual State agencies involved. However, the filing with, as well as granting, denial, modification, or revocation of a variance request or interim order by, either authority (Federal or State) shall preclude any further substantive consideration of such application on the same material facts for the same employment or place of employment by the other authority.

(f) Nothing herein shall affect either Federal or State authority and obligations to cite for noncompliance with standards in employment or places of employment where no interim order, variance, or modification or extension thereof, granted under State or Federal law applies, or to cite for noncompliance with such Federal or State variance action.

§ 1902.9 Requirements for approval of State posters.

(a)(1) In order to inform employees of their protections and obligations under applicable State law, of the issues not covered by State law, and of the continuing availability of Federal monitoring under section 18(f) of the Act, States with approved plans shall develop and require employers to post a State poster meeting the requirements set out in paragraph (a)(5) of this section.

(2) Such poster shall be substituted for the Federal poster under section 8(c)(1) of the Act and § 1903.2 of this chapter where the State attains operational status for the enforcement of State standards as defined in § 1954.3(b) of this chapter.

(3) Where a State has distributed its poster and has enabling legislation as defined in § 1954.3(b)(1) of this chapter but becomes nonoperational under the provisions of § 1954.3(f)(1) of this chapter because of failure to be at least as effective as the Federal program, the approved State poster may, at the discretion of the Assistant Secretary, continue to be substituted for the Federal poster in accordance with paragraph (a)(2) of this section.

(4) A State may, for good cause shown, request, under 29 CFR part 1953, approval of an alternative to a State poster for informing employees of their protections and obligations under the State plans, provided such alternative is consistent with the Act, § 1902.4(c)(2)(iv) and applicable State law. In order to qualify as a substitute for the Federal poster under this paragraph (a), such alternative must be shown to be at least as effective as the Federal poster requirements in informing employees of their protections and obligations and address the items listed in paragraph (a)(5) of this section.

(5) In developing the poster, the State shall address but not be limited to the following items:

(i) Responsibilities of the State, employers and employees;

(ii) The right of employees or their representatives to request workplace inspections;

(iii) The right of employees making such requests to remain anonymous;

(iv) The right of employees to participate in inspections;

(v) Provisions for prompt notice to employers and employees when alleged violations occur;

(vi) Protection for employees against discharge or discrimination for the exercise of their rights under Federal and State law;

(vii) Sanctions;

(viii) A means of obtaining further information on State law and standards and the address of the State agency;

(ix) The right to file complaints with the Occupational Safety and Health Administration about State program administration;

(x) A list of the issues as defined in § 1902.2(c) which will not be covered by State plan;

(xi) The address of the Regional Office of the Occupational Safety and Health Administration; and

(xii) Such additional employee protection provisions and obligations under State law as may have been included in the approved State plan.

(b) Posting of the State poster shall be recognized as compliance with the posting requirements in section 8(c)(1) of the Act and § 1903.2 of this chapter, provided that the poster has been approved in accordance with subpart B of part 1953 of this chapter. Continued Federal recognition of the State poster is also subject to pertinent findings of effectiveness with regard to the State program under 29 CFR part 1954.

Subpart C—Procedures for Submission, Approval and Rejection of State Plans

■ 5. In § 1902.10, revise paragraph (a) to read as follows:

§ 1902.10 Submission.

(a) An authorized representative of the State agency or agencies responsible for administering the plan shall submit one copy of the plan to the appropriate Assistant Regional Director of the Occupational Safety and Health Administration, U.S. Department of Labor. The State plan shall include supporting papers conforming to the requirements specified in the subpart B of this part, and the State occupational safety and health standards to be included in the plan, including a copy of any specific or enabling State laws and regulations relating to such standards. If any of the representations concerning the requirements of subpart B of this part are dependent upon any judicial or administrative interpretations of the State standards or enforcement provisions, the State shall furnish citations to any pertinent judicial decisions and the text of any pertinent administrative decisions.

* * * * *

■ 6. In § 1902.11, revise paragraphs (c) and (d) to read as follows:

§ 1902.11 General notice.

* * * * *

(c) The notice shall provide that the plan, or copies thereof, shall be available for inspection and copying at the office of the Director, Office of State Programs, Occupational Safety and Health Administration, office of the Assistant Regional Director in whose region the State is located, and an office of the State which shall be designated by the State for this purpose.

(d) The notice shall afford interested persons an opportunity to submit in writing, data, views, and arguments on the proposal, subjects, or issues involved within 30 days after publication of the notice in the **Federal Register**. Thereafter the written comments received or copies thereof shall be available for public inspection and copying at the office of the Director, Office of State Programs, Occupational Safety and Health Administration, office of the Assistant Regional Director in whose region the State is located, and an office of the State which shall be designated by the State for this purpose.

* * * * *

■ 7. Add § 1902.16 immediately following § 1902.15 to read as follows:

§ 1902.16 Partial approval of State plans.

(a) The Assistant Secretary may partially approve a plan under this part whenever:

(1) The portion to be approved meets the requirements of this part;

(2) The plan covers more than one occupational safety and health issue; and

(3) Portions of the plan to be approved are reasonably separable from the remainder of the plan.

(b) Whenever the Assistant Secretary approves only a portion of a State lan, he may give notice to the State of an opportunity to show cause why a proceeding should not be commenced for disapproval of the remainder of the plan under subpart C of this part before commencing such a proceeding.

Subpart D—Procedures for Determinations Under Section 18(e) of the Act

■ 8. In § 1902.31, revise the definition of ''Development step'' to read as follows:

§ 1902.31 Definitions.

* * * * *

Development step includes, but is not limited to, those items listed in the published developmental schedule, or any revisions thereof, for each plan. A developmental step also includes those items specified in the plan as approved under section 18(c) of the Act for completion by the State, as well as those items which under the approval decision were subject to evaluations and changes deemed necessary as a result thereof to make the State program at least as effective as the Federal program within the 3 years developmental period. (See 29 CFR 1953.4(a)).

* * * * *

■ 9. Revise § 1902.33 to read as follows:

§ 1902.33 Developmental period.

Upon the commencement of plan operations after the initial approval of a State's plan by the Assistant Secretary, a State has three years in which to complete all of the developmental steps

specified in the plan as approved. Section 1953.4 of this chapter sets forth the procedures for the submission and consideration of developmental changes by OSHA. Generally, whenever a State completes a developmental step, it must submit the resulting plan change as a supplement to its plan to OSHA for approval. OSHA's approval of such changes is then published in the **Federal Register**.

■ 10. In § 1902.34, revise paragraph (c) to read as follows:

§ 1902.34 Certification of completion of developmental steps.

* * * * *

(c) After a review of the certification and the State's plan, if the Assistant Secretary finds that the State has completed all the developmental steps specified in the plan, he shall publish the certification in the **Federal Register**.

§ 1902.41 [Amended]

■ 11. In § 1902.41, remove paragraph (c) and redesignate paragraph (d) as (c).

■ 12. In § 1902.43, revise paragraph (a)(3) to read as follows:

§ 1902.43 Affirmative 18(e) decision.

(a) * * *

(3) An amendment to the appropriate section of part 1952 of this chapter;

* * * * *

PART 1903—INSPECTIONS, CITATIONS AND PROPOSED PENALTIES

■ 13. The authority citation for part 1903 is revised to read as follows:

Authority: Secs. 8 and 9 (29 U.S.C. 657, 658); 5 U.S.C. 553; Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012).

■ 14. In § 1903.2, revise paragraph (a)(2) to read as follows:

§ 1903.2 Posting of notice; availability of the Act, regulations and applicable standard.

(a) * * *

(2) Where a State has an approved poster informing employees of their protections and obligations as defined in § 1902.9 of this chapter, such poster, when posted by employers covered by the State plan, shall constitute compliance with the posting requirements of section 8(c)(1) of the Act. Employers whose operations are not within the issues covered by the State plan must comply with paragraph (a)(1) of this section.

* * * * *

PART 1904—RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES

■ 15. The authority citation for part 1904 is revised to read as follows:

Authority: 29 U.S.C. 657, 658, 660, 666, 669, 673, Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012).

Subpart D—Other OSHA Injury and Illness Recordkeeping Requirements

■ 16. In § 1904.37, revise paragraph (a) to read as follows:

§ 1904.37 State recordkeeping requirements.

(a) *Basic requirement.* Some States operate their own OSHA programs, under the authority of a State plan as approved by OSHA. States operating OSHA-approved State plans must have occupational injury and illness recording and reporting requirements that are substantially identical to the requirements in this part (see 29 CFR 1902.3(j), 29 CFR 1902.7, and 29 CFR 1956.10(i)).

* * * * *

PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

■ 17. The authority citation for part 1952 is revised to read as follows:

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR part 1902; Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012).

■ 18. Revise subpart A to read as follows:

Subpart A—List of Approved State Plans for Private-Sector and State and Local Government Employees

Sec.

Subpart A—List of Approved State Plans for Private-Sector and State and Local Government Employees

§ 1952.1 South Carolina.

(a) The South Carolina State plan received initial approval on December 6, 1972.

(b) The South Carolina State plan received final approval on December 18, 1987.

(c) Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall*, compliance officer staffing levels (benchmarks) necessary for a ''fully effective'' enforcement program were required to be established for each State operating an approved State plan. In September 1984, South Carolina, in conjunction with OSHA, completed a reassessment of the staffing levels initially established in 1980 and proposed revised compliance staffing benchmarks of 17 safety and 12 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on January 17, 1986.

(d) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and local government employers and employees, within the State. For current information on these exceptions and for additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/south_carolina.html*.

§ 1952.2 Oregon.

(a) The Oregon State plan received initial approval on December 28, 1972.

(b) The Oregon State plan received final approval on May 12, 2005.

(c) Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall*, compliance staffing levels (''benchmarks'') necessary for a ''fully effective'' enforcement program were required for each State operating an approved State plan. In October 1992, Oregon completed, in conjunction with OSHA, a reassessment of the health staffing level initially established in 1980 and proposed a revised health benchmark of 28 health compliance officers. Oregon elected to retain the safety benchmark level established in the 1980 Report to the Court of the U.S. District Court for the District of Columbia in 1980 of 47 safety compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on August 11, 1994.

(d) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and

local government employers and employees, within the State. For current information on these exceptions and for additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/oregon.html.*

§ 1952.3 Utah.

(a) The Utah State plan received initial approval on January 10, 1973.

(b) The Utah State plan received final approval on July 16, 1985.

(c) Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall,* compliance staffing levels (benchmarks) necessary for a ''fully effective'' enforcement program were required to be established for each State operating an approved State plan. In September 1984, Utah, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 10 safety and 9 health compliance officers. After opportunity for public comments and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements effective July 16, 1985.

(d) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and local government employers and employees, within the State. For current information on these exceptions and for additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/utah.html.*

§ 1952.4 Washington.

(a) The Washington State plan received initial approval on January 26, 1973.

(b) OSHA entered into an operational status agreement with Washington.

(c) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and local government employers and employees, within the State. For current information on these exceptions and for additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/washington.html.*

§ 1952.5 North Carolina.

(a) The North Carolina State plan received initial approval on February 1, 1973.

(b) The North Carolina State plan received final approval on December 18, 1996.

(c) Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall,* compliance staffing levels (''benchmarks'') necessary for a ''fully effective'' enforcement program were required for each State operating an approved State plan. In September 1984, North Carolina, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised benchmarks of 50 safety and 27 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on January 17, 1986. In June 1990, North Carolina reconsidered the information utilized in the initial revision of its 1980 benchmarks and determined that changes in local conditions and improved inspection data warranted further revision of its benchmarks to 64 safety inspectors and 50 industrial hygienists. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on June 4, 1996.

(d) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and local government employers and employees, within the State. For current information on these exceptions and for additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/north_carolina.html.*

§ 1952.6 Iowa.

(a) The Iowa State plan received initial approval on July 20, 1973.

(b) The Iowa State plan received final approval on July 2, 1985.

(c) Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall,* compliance staffing levels (benchmarks) necessary for a ''fully effective'' enforcement program were required to be established for each State operating an approved State plan. In September 1984, Iowa, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 16 safety and 13 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements effective July 2, 1985.

(d) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and local government employers and employees, within the State. For current information on these exceptions and for additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/iowa.html.*

§ 1952.7 California.

(a) The California State plan received initial approval on May 1, 1973.

(b) OSHA entered into an operational status agreement with California.

(c) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and local government employers and employees, within the State. For current information on these exceptions and for additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/california.html.*

§ 1952.8 Minnesota.

(a) The Minnesota State plan received initial approval on June 8, 1973.

(b) The Minnesota State plan received final approval on July 30, 1985.

(c) Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall,* compliance staffing levels (benchmarks) necessary for a ''fully effective'' enforcement program were required to be established for each State operating an approved State plan. In September 1984 Minnesota, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 31 safety and 12 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on July 30, 1985.

(d) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and local government employers and employees, within the State. For current information on these exceptions and for additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/minnesota.html.*

§ 1952.9 Maryland.

(a) The Maryland State plan received initial approval on July 5, 1973.

(b) The Maryland State plan received final approval on July 18, 1985.

(c) Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall,* compliance staffing levels (benchmarks) necessary for a ''fully effective'' enforcement program were required to be established for each State operating an approved State plan. In September 1984 Maryland, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 36 safety and 18 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on July 18, 1985.

(d) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and local government employers and employees, within the State. For current

information on these exceptions and for additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/maryland.html.*

§ 1952.10 Tennessee.

(a) The Tennessee State plan received initial approval on July 5, 1973.

(b) The Tennessee State plan received final approval on July 22, 1985.

(c) Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall,* compliance staffing levels (benchmarks) necessary for a ''fully effective'' enforcement program were required to be established for each State operating an approved State plan. In September 1984 Tennessee, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 22 safety and 14 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on July 22, 1985.

(d) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and local government employers and employees, within the State. For current information on these exceptions and for additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/tennessee.html.*

§ 1952.11 Kentucky.

(a) The Kentucky State plan received initial approval on July 31, 1973.

(b) The Kentucky State plan received final approval on June 13, 1985.

(c) Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall,* compliance staffing levels (benchmarks) necessary for a ''fully effective'' enforcement program were required to be established for each State operating an approved State plan. In September 1984 Kentucky, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 23 safety and 14 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on June 13, 1985.

(d) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and local government employers and employees, within the State. For current information on these exceptions and for additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/kentucky.html.*

§ 1952.12 Alaska.

(a) The Alaska State plan received initial approval on August 10, 1973.

(b) The Alaska State plan received final approval on September 28, 1984.

(c) Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall,* compliance staffing levels (benchmarks) necessary for a ''fully effective'' enforcement program were required to be established for each State operating an approved State plan. Alaska's compliance staffing benchmarks are 4 safety and 5 health compliance officers.

(d) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and local government employers and employees, within the State. For current information on these exceptions and for additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/alaska.html.*

§ 1952.13 Michigan.

(a) The Michigan State plan received initial approval on October 3, 1973.

(b) OSHA entered into an operational status agreement with Michigan.

(c) Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall,* compliance staffing levels (''benchmarks'') necessary for a ''fully effective'' enforcement program were required for each State operating an approved State plan. In 1992, Michigan completed, in conjunction with OSHA, a reassessment of the levels initially established in 1980 and proposed revised benchmarks of 56 safety and 45 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on April 20, 1995.

(d) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and local government employers and employees, within the State. For current information on these exceptions and for additional details about the plan, please visit *https://www.osha.gov/dcsp/osp/stateprogs/michigan.html.*

§ 1952.14 Vermont.

(a) The Vermont State plan received initial approval on October 16, 1973.

(b) OSHA entered into an operational status agreement with Vermont.

(c) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and local government employers and employees, within the State. For current information on these exceptions and for additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/vermont.html.*

§ 1952.15 Nevada.

(a) The Nevada State plan received initial approval on January 4, 1974.

(b) The Nevada State plan received final approval on April 18, 2000.

(c) Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall,* compliance staffing levels (benchmarks) necessary for a ''fully effective'' enforcement program were required to be established for each State operating an approved State plan. In July 1986 Nevada, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 11 safety and 5 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on September 2, 1987.

(d) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and local government employers and employees, within the State. For current information on these exceptions and for additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/nevada.html.*

§ 1952.16 Hawaii.

(a) The Hawaii State plan received initial approval on January 4, 1974.

(b) The Hawaii State plan received final approval on May 4, 1984.

(c) On September 21, 2012 OSHA modified the State Plan's approval status from final approval to initial approval, and reinstated concurrent federal enforcement authority pending the necessary corrective action by the State Plan in order to once again meet the criteria for a final approval determination. OSHA and Hawaii entered into an operational status agreement to provide a workable division of enforcement responsibilities.

(d) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and local government employers and employees, within the State. For current information on these exceptions and for additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/hawaii.html.*

§ 1952.17 Indiana.

(a) The Indiana State plan received initial approval on March 6, 1974.

(b) The Indiana State plan received final approval on September 26, 1986.

(c) Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall,* compliance staffing levels (benchmarks) necessary for a ''fully effective'' enforcement program were required to

be established for each State operating an approved State plan. In September 1984 Indiana, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 47 safety and 23 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on January 17, 1986.

(d) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and local government employers and employees, within the State. For current information on these exceptions and for additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/indiana.html.*

§ 1952.18 Wyoming.

(a) The Wyoming State plan received initial approval on May 3, 1974.

(b) The Wyoming State plan received final approval on June 27, 1985.

(c) Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall,* compliance staffing levels (benchmarks) necessary for a ''fully effective'' enforcement program were required to be established for each State operating an approved State plan. In September 1984 Wyoming, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 6 safety and 2 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on June 27, 1985.

(d) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and local government employers and employees, within the State. For current information on these exceptions and for additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/wyoming.html.*

§ 1952.19 Arizona.

(a) The Arizona State plan received initial approval on November 5, 1974.

(b) The Arizona State plan received final approval on June 20, 1985.

(c) Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall,* compliance staffing levels (benchmarks) necessary for a ''fully effective'' enforcement program were required to be established for each State operating an approved State plan. In September 1984, Arizona in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 9 safety and 6 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on June 20, 1985.

(d) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and local government employers and employees, within the State. For current information on these exceptions and for additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/arizona.html.*

§ 1952.20 New Mexico.

(a) The New Mexico State plan received initial approval on December 10, 1975.

(b) OSHA entered into an operational status agreement with New Mexico.

(c) Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall,* compliance staffing levels (''benchmarks'') necessary for a ''fully effective'' enforcement program were required for each State operating an approved State plan. In May 1992, New Mexico completed, in conjunction with OSHA, a reassessment of the staffing levels initially established in 1980 and proposed revised benchmarks of 7 safety and 3 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on August 11, 1994.

(d) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and local government employers and employees, within the State. For current information on these exceptions and for additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/new_mexico.html.*

§ 1952.21 Virginia.

(a) The Virginia State plan received initial approval on September 28, 1976.

(b) The Virginia State plan received final approval on November 30, 1988.

(c) Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall,* compliance staffing levels (benchmarks) necessary for a ''fully effective'' enforcement program were required to be established for each State operating an approved State plan. In September 1984 Virginia, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 38 safety and 21 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on January 17, 1986.

(d) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and local government employers and employees, within the State. For current information on these exceptions and for additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/virginia.html.*

§ 1952.22 Puerto Rico.

(a) The Puerto Rico State plan received initial approval on August 30, 1977.

(b) OSHA entered into an operational status agreement with Puerto Rico.

(c) The plan covers all private-sector employers and employees, with several notable exceptions, as well as State and local government employers and employees, within the State. For current information on these exceptions and for additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/puerto_rico.html.*

■ 19. Add subpart B to read as follows:

Subpart B—List of Approved State Plans for State and Local Government Employees

Sec.

Subpart B—List of Approved State Plans for State and Local Government Employees

§ 1952.23 Connecticut.

(a) The Connecticut State plan for State and local government employees received initial approval from the Assistant Secretary on November 3, 1978.

(b) In accordance with 29 CFR 1956.10(g), a State is required to have a sufficient number of adequately trained and competent personnel to discharge its responsibilities under the plan. The Connecticut Public Employee Only State plan provides for three (3) safety compliance officers and one (1) health compliance officer as set forth in the Connecticut Fiscal Year 1986 grant. This staffing level meets the ''fully effective'' benchmarks established for Connecticut for both safety and health.

(c) The plan only covers State and local government employers and employees within the State. For additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/connecticut.html.*

§ 1952.24 New York.

(a) The New York State plan for State and local government employees received initial approval from the Assistant Secretary on June 1, 1984.

(b) The plan, as revised on April 28, 2006, provides assurances of a fully trained, adequate staff, including 29 safety and 21 health compliance officers for enforcement inspections and 11 safety and 9 health consultants to perform consultation services in the public sector. The State has also given satisfactory assurances of continued adequate funding to support the plan.

(c) The plan only covers State and local government employers and employees within the State. For additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/new_york.html.*

§ 1952.25 New Jersey.

(a) The New Jersey State plan for State and local government employees received initial approval from the Assistant Secretary on January 11, 2001.

(b) The plan further provides assurances of a fully trained, adequate staff, including 20 safety and 7 health compliance officers for enforcement inspections, and 4 safety and 3 health consultants to perform consultation services in the public sector, and 2 safety and 3 health training and education staff. The State has assured that it will continue to provide a sufficient number of adequately trained and qualified personnel necessary for the enforcement of standards as required by 29 CFR 1956.10. The State has also given satisfactory assurance of adequate funding to support the plan.

(c) The plan only covers State and local government employers and employees within the State. For additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/new_jersey.html.*

§ 1952.26 The Virgin Islands.

(a) The Virgin Islands State plan for Public Employees Only was approved on July 23, 2003.

(b) The plan only covers State and local government employers and employees within the State. For additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/virgin_islands.html.*

§ 1952.27 Illinois.

(a) The Illinois State plan for state and local government employees received initial approval from the Assistant Secretary on September 1, 2009.

(b) The Plan further provides assurances of a fully trained, adequate staff within three years of plan approval, including 11 safety and 3 health compliance officers for enforcement inspections, and 3 safety and 2 health consultants to perform consultation services in the public sector. The state has assured that it will continue to provide a sufficient number of adequately trained and qualified personnel necessary for the enforcement of standards as required by 29 CFR 1956.10. The state has also given satisfactory assurance of adequate funding to support the Plan.

(c) The plan only covers State and local government employers and employees within the state. For additional details about the plan, please visit *http://www.osha.gov/dcsp/osp/stateprogs/illinois.html.*

Subparts C through FF [Removed]

■ 20. Remove subparts C through FF.

PART 1953—CHANGES TO STATE PLANS

■ 21. The authority citation for part 1953 is revised to read as follows:

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012).

■ 22. In § 1953.3, revise paragraph (c) to read as follows:

§ 1953.3 General policies and procedures.

* * * * *

(c) *Plan supplement availability.* The underlying documentation for identical plan changes shall be maintained by the State. Annually, States shall submit updated copies of the principal documents comprising the plan, or appropriate page changes, to the extent that these documents have been revised. To the extent possible, plan documents will be maintained and submitted by the State in electronic format and also made available in such manner.

* * * * *

PART 1954—PROCEDURES FOR THE EVALUATION AND MONITORING OF APPROVED STATE PLANS

■ 23. The authority citation for part 1954 is revised to read as follows:

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012).

Subpart A—General

■ 24. In § 1954.3, revise paragraphs (d)(1)(ii) and (iii) to read as follows:

§ 1954.3 Exercise of Federal discretionary authority.

* * * * *

(d) * * *

(1) * * *

(ii) Subject to pertinent findings of effectiveness under this part, and approval under part 1953 of this chapter, Federal enforcement proceedings will not be initiated where an employer has posted the approved State poster in accordance with the applicable provisions of an approved State plan and § 1902.9 of this chapter.

(iii) Subject to pertinent findings of effectiveness under this part, and approval under part 1953 of this chapter, Federal enforcement proceedings will not be initiated where an employer is in compliance with the recordkeeping and reporting requirements of an approved State plan as provided in § 1902.7 of this chapter.

* * * * *

PART 1955—PROCEDURES FOR WITHDRAWAL OF APPROVAL OF STATE PLANS

■ 25. The authority citation for part 1955 is revised to read as follows:

Authority: Secs. 8 and 18, 84 Stat. 1608 (29 U.S.C. 657, 667); Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012).

Subpart A—General

■ 26. In § 1955.2, revise paragraph (a)(4) to read as follows:

§ 1955.2 Definitions.

(a) * * *

(4) *Developmental step* includes, but is not limited to, those items listed in the published developmental schedule, or any revisions thereto, for each plan. A developmental step also includes those items in the plan as approved under section 18(c) of the Act, as well as those items in the approval decision which are subject to evaluations (see *e.g.,* approval of Michigan plan), which were deemed necessary to make the State program at least as effective as the Federal program within the 3 year developmental period. (See part 1953 of this chapter.)

* * * * *

PART 1956—STATE PLANS FOR THE DEVELOPMENT AND ENFORCEMENT OF STATE STANDARDS APPLICABLE TO STATE AND LOCAL GOVERNMENT EMPLOYEES IN STATES WITHOUT APPROVED PRIVATE EMPLOYEE PLANS

■ 27. The authority citation for part 1956 is revised to read as follows:

Authority: Section 18 (29 U.S.C. 667), 29 CFR parts 1902 and 1955, and Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012).

Subparts E through I [Removed]

■ 28. Remove subparts E through I.

[FR Doc. 2015–19226 Filed 8–17–15; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2015–0011]

RIN 1625–AA08

Special Local Regulation, Tennessee River 463.0 to 467.0; Chattanooga, TN

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing a special local regulated area for all waters of the Tennessee River, beginning at mile marker 463.0 and ending at mile marker 467.0. This proposed regulated area is necessary to provide safety for the approximately 2,500 swimmers that will be participating in the ''Ironman Chattanooga'' on the Tennessee River from mile marker 463.0 to mile marker 467.0. Entry into this area will be prohibited unless specifically authorized by the Captain of the Port Ohio Valley or designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before September 2, 2015.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Ashley Schad, MSD Nashville Nashville, TN, at 615–736–5421 or at *Ashley.M.Schad@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov,* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number (USCG–2015–0011) in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2015–0011) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not plan to hold a public meeting, but you may submit a request for one, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Basis and Purpose

The ''Ironman Chattanooga'' is a second year event being held on September 27, 2015. The Captain of the Port Ohio Valley has determined that additional safety measures are necessary to protect race participants, spectators, and waterway users during this event. Therefore, the Coast Guard proposes to establish a special local regulation for all waters of the Tennessee River beginning at mile marker 463.0 and ending at mile marker 467.0. This proposed regulation would provide safety for the approximately 2,500 swimmers that will be racing in the ''Ironman Chattanooga.''

The legal basis and authorities for this proposed rulemaking establishing a special local regulation are found in 33 U.S.C. 1233, which authorizes the Coast Guard to establish and define special local regulations for regattas under 33 CFR 100.

C. Discussion of Proposed Rule

The Captain of the Port Ohio Valley is proposing a special local regulated area for all waters of the Tennessee River beginning at mile marker 463.0 and ending at mile marker 467.0. Vessels or persons would not be permitted to enter into, depart from, or move within this area without permission from the Captain of the Port Ohio Valley or designated representative. Persons or vessels requiring entry into or passage through the proposed special local regulated area will be required to request permission from the Captain of the Port Ohio Valley, or designated representative. They would be contacted on VHF–FM Channel 13 or 16, or through Coast Guard Sector Ohio Valley at 1–800–253–7465. This proposed rule would be enforced from 5:00 a.m. until 11:00 a.m. on September 27, 2015. The Captain of the Port Ohio Valley would inform the public through broadcast notices to mariners of the enforcement period for the special local regulated area as well if any changes in the planned schedule.

E. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit mile marker 463.0 to mile marker 467.0 on the Tennessee River, from 5:00 a.m. to 11:00 a.m. on September 27, 2015. This proposed special local regulated area will not have a significant economic impact on a substantial number of small entities as it will be enforced for only hours. Additionally, although the proposed special local regulated area will apply to the entire width of the river, traffic will be allowed to pass through the area with the permission of the Captain of the Port Ohio Valley or designated representative.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such expenditures, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children From Environmental Health Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of

power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This proposed rule is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the Captain of the Port Ohio Valley establishing a special local regulation for all waters of the Tennessee River beginning at mile marker 463.0 and ending at mile marker 467.0 to provide safety for the approximately 2,500 swimmers that will be racing in the ''Ironman Chattanooga.'' This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—REGATTAS AND MARINE PARADES

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. A new temporary § 100.35T08–0011 is added to read as follows:

§ 100.35T08–0011 Special Local Regulation; Tennessee River Mile 463.0 to 467.0, Chattanooga, TN.

(a) *Location of Regulated Area.* All waters of the Tennessee River beginning at mile marker 463.0 and ending at mile marker 467.0.

(b) *Enforcement Period.* This rule will be enforced from 5:00 a.m. to 11:00 a.m. on September 27, 2015. The Captain of the Port Ohio Valley or a designated representative will inform the public through broadcast notice to mariners of the enforcement period for the special local regulation.

(c) *Special Local Regulations.* (1) The general regulations contained in 33 CFR 100.35 as well as the regulations in this section apply to the Regulated Area.

(2) Entry into the Regulated Area is prohibited unless authorized by the Captain of the Port Ohio Valley or a designated representative.

(3) Persons or vessels requiring entry into or passage through the Regulated Area must request permission from the Captain of the Port Ohio Valley or a designated representative. U.S. Coast Guard Sector Ohio Valley may be contacted on VHF Channel 13 or 16, or at 1–800–253–7465.

(4) All persons and vessels shall comply with the instructions of the Captain of the Port Ohio Valley and designated U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: July 29, 2015.

R.V. Timme,

Captain, U.S. Coast Guard, Captain of the Port Ohio Valley.

[FR Doc. 2015–20403 Filed 8–17–15; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2014–0259; FRL–9932–33–Region 6]

Clean Air Act Redesignation Substitute for the Houston-Galveston-Brazoria 1-Hour Ozone Nonattainment Area; Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a redesignation substitute demonstration provided by the State of Texas that the Houston-Galveston-Brazoria 1-hour ozone nonattainment area (HGB area) has attained the revoked 1-hour ozone National Ambient Air Quality Standards (NAAQS) due to permanent and enforceable emission reductions, and that it will maintain that NAAQS for ten years from the date of the EPA's approval of this demonstration. Final approval of the redesignation substitute demonstration will result in the State no longer being required to adopt any additional applicable 1-hour ozone NAAQS requirements for the area which have not already been approved into the State Implementation Plan (SIP). In addition, final approval will allow Texas to seek to revise the Texas SIP to remove anti-backsliding measures from the active portion of its SIP if it can demonstrate, pursuant to Clean Air Act (CAA) section 110(1), that such revision would not interfere with attainment or maintenance of any applicable NAAQS, or any other requirement of the CAA.

DATES: Written comments must be received on or before September 17, 2015.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2014–0259, by one of the following methods:

- *www.regulations.gov*. Follow the online instructions.
- *Email:* Ms. Tracie Donaldson at *Donaldson.tracie@epa.gov*.
- *Mail or delivery:* Ms. Mary Stanton, Chief, Air State and Tribal Operations Section (6PD–S), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

Instructions: Direct your comments to Docket No. EPA–R06–OAR–2014–0259. 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 electronically any information that you consider to be CBI or other information whose disclosure is restricted by statute. 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. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional information on submitting comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Tracie Donaldson, (214) 665–6633, *Donaldson.tracie@epa.gov*. To inspect the hard copy materials, please contact Ms. Donaldson.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

I. Background

In 1979, under section 109 of the Clean Air Act (CAA), EPA established primary and secondary NAAQS for ozone at 0.12 parts per million (ppm) averaged over a 1-hour period (44 FR 8202, February 8, 1979). Primary standards are set to protect human health while secondary standards are set to protect public welfare. In 1997 we revised the primary and secondary NAAQS for ozone to set the acceptable level of ozone in the ambient air at 0.08 ppm, averaged over an 8-hour period (62 FR 38856, July 18, 1997).[1] In 2008 we further revised the primary and secondary ozone NAAQS to 0.075 ppm, averaged over an 8-hour period (73 FR 16436, March 27, 2008). Ozone nonattainment areas are classified based on the severity of their ozone levels based on the area's ''design value'' (77 FR 30088, 30091, May 21, 2012). The design value represents air quality in the area for the most recent 3 years. The possible classifications are Marginal, Moderate, Serious, Severe, and Extreme. Nonattainment areas with a ''lower'' classification have ozone levels that are closer to the NAAQS than areas with a ''higher'' classification.

In 2004 we published a first phase rule governing implementation of the 1997 8-hour ozone NAAQS (Phase 1 Rule) (69 FR 23951, April 30, 2004). The Phase 1 Rule revoked the 1-hour ozone NAAQS and provided that 1-hour ozone nonattainment areas are required to adopt and implement ''applicable requirements'' according to the area's classification under the 1-hour ozone standard for anti-backsliding purposes (40 CFR 51.905(a)(i)). In a revision to the Phase 1 Rule, we determined that an area's 1-hour designation and classification as of June 15, 2005 would dictate what 1-hour obligations constitute ''applicable requirements'' (40 CFR 51.900(f), May 26, 2005, 70 FR 30592).[2] Applicable anti-backsliding requirements ensure continued momentum toward reducing ozone levels (80 FR 12264, 12297, March 6, 2015). The rules governing ongoing implementation of revoked ozone standards, including revisions to applicable requirements, was further revised effective April 6, 2015 (40 CFR 51.1100, March 6, 2015, 80 FR 12264). This final rule also contains provisions addressing a redesignation substitute for a revoked ozone standard. See 40 CFR 51.1105(b).

The final rule for implementing the 2008 ozone NAAQS provides that an area will be subject to the anti-backsliding obligations for a revoked NAAQS until we approve (1) a redesignation to attainment for the area for the 2008 ozone NAAQS or (2) a demonstration for the area in a redesignation substitute procedure for a revoked NAAQS (40 CFR 51.1105(b)(1)). As explained more fully in the preambles to the proposed and final rules, the redesignation substitute demonstration must show that the area (1) has attained that revoked NAAQS due to permanent and enforceable emission reductions and (2) will maintain that revoked NAAQS for 10 years from the date of EPA's approval of the showing. The rule also provides that if, after notice and comment rulemaking, we approve a redesignation substitute for a revoked NAAQS, the state may request that provisions for nonattainment new source review (NSR) for that revoked NAAQS be removed, and that other anti-backsliding obligations for that revoked NAAQS be shifted to contingency measures provided that such action is consistent with CAA sections 110(l) and 193 (40 CFR 51.1105(b)(2)).

The HGB area consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller counties in Texas. Under the 1990 CAA Amendments the area was classified as a Severe ozone nonattainment area for the 1-hour ozone NAAQS (November 6, 1991, 56 FR 56694 and CAA section 181(a)(1)). We approved a 1-hour ozone attainment demonstration for the area (71 FR 52670, September 6, 2006). However, the EPA subsequently determined that the area failed to attain the 1-hour ozone standard by its applicable attainment date of November 15, 2007 (June 19, 2012, 77 FR 36400). As discussed below, ambient air quality monitoring data for ozone indicates that the area is now attaining the 1-hour ozone standard.

Texas provided the ''Redesignation Substitute Report for the Houston-Galveston-Brazoria One-Hour Standard Nonattainment Area'' (redesignation substitute report) to EPA on July 22, 2014. This report was developed consistent with the redesignation substitute option we proposed to create in our June 6, 2013 proposal (which was subsequently adopted in the March 6, 2015 final rule). The report is available through *www.regulations.gov* (e-docket EPA–R06–OAR–2014–0259).

[1] Subsequently, we lowered the 8-hour ozone NAAQS to 0.075 ppm and classified the Houston area as a Marginal nonattainment area for the 2008 ozone NAAQS. *See* 73 FR 16436 (March 27, 2008); 77 FR 30088 30089 (May 21, 2012). This rulemaking does not address the 2008 ozone NAAQS.

[2] As of April 6, 2015, 40 CFR 51.900(f) was replaced by 40 CFR 51.1100(o). *See* 40 CFR 51.919 and 80 FR 12312, Mar. 6, 2015.

II. EPA's Evaluation of the Houston Redesignation Substitute Report

To determine whether we should approve the 1-hour ozone redesignation substitute for the HGB area we evaluated the redesignation substitute report provided by Texas and the ambient ozone data for the area in the EPA Air Quality System (AQS) database. To evaluate the report we used the applicable portions of our September 4, 1992 memo ''Procedures for Processing Requests to Redesignate Areas to Attainment'' (*www.epa.gov/ttn/oarpg/t5/memoranda/redesignmem090492.pdf*). A detailed discussion of our evaluation can be found in the Technical Support Document (TSD) for this action. The TSD can be accessed through *www.regulations.gov* (e-docket EPA–R06–OAR–2014–0259).

A. Has the area attained the revoked 1-hour ozone NAAQS due to permanent and enforceable emission reductions?

Ambient air quality found in the AQS database shows that the HGB area attained the 1-hour ozone standard at the end of 2013 and maintained the standard the following year (Table 1). The area continues to maintain the 1-hour ozone standard so far in 2015 based on available data.

TABLE 1—1-HOUR DESIGN VALUES FOR THE HGB AREA

[2011–2013 and 2012–2014]

Years	1-Hour ozone design value
2011–2013	0.12 ppm (121 parts per billion).
2012–2014	0.11 ppm (111 parts per billion).
Preliminary 2013–2015.	0.11 ppm (107 parts per billion).

In 2013, all monitors in the HGB area had expected exceedances less than the threshold of 1.0 per year and only one monitor in the HGB area, the Houston East monitor (C1), had more than 1.0 expected exceedance in 2011 and 2012. A more detailed table of expected 1-hour ozone exceedances for the HGB monitors based on ozone data can be found in the TSD.

The HGB area redesignation substitute report provides information on emissions of nitrogen oxides (NO_X) and volatile organic compounds (VOCs) and regulations that reduced these emissions. NO_X and VOCs are ozone precursors. Texas identified control measures for both the 1-hour ozone attainment demonstration SIP and the 1997 ozone attainment demonstration SIP that led to permanent and enforceable emission reductions. The 1-hour ozone attainment demonstration SIP was approved on September 6, 2006 (71 FR 52670). The 1997 ozone attainment demonstration SIP was approved on January 2, 2014 (79 FR 57). Additionally, we have approved SIPs for the HGB area that document continuous emissions reductions due to permanent and enforceable measures for the 1-hour and 1997 8-hour ozone standards (70 FR 7407, February 14, 2005; 74 FR 18298, April 22, 2009; 79 FR 51, January 2, 2014). Given our previous actions approving Texas SIPs pertaining to permanent and enforceable measures, we agree with Texas' conclusion that the area has attained the 1-hour ozone NAAQS due to permanent and enforceable emission reductions. More detail on our review can be found in the TSD.

B. Will the area maintain the revoked 1-hour ozone NAAQS for 10 years from the date of our approval?

To demonstrate that the HGB area will maintain the revoked 1-hour ozone NAAQS for 10 years from the date of our approval of the redesignation substitute, the Texas report provided information on projected emissions of ozone precursors (Tables 2 and 3). The emission projections show that (1) NOx emissions will continue to decrease through 2026 and (2) VOC emissions will decrease through 2023 and increase by 2.71 tons per year (tpy) from 2023 to 2026 (514.49 tpy in 2023 to 517.20 tpy in 2026, an increase of 0.5%). We reviewed this information and agree with the conclusion that the area will maintain the revoked 1-hour ozone NAAQS for 10 years from the date of our approval. Based on photochemical modeling analyses showing that the formation of ozone in the HGB area is more sensitive to NO_X than to VOC emissions, the small increase in VOC emissions during the 10-year maintenance period is expected to be more than offset by the 18% decrease in NO_X emissions during this same period. More detail on our review can be found in the TSD.

TABLE 2—NO_X EMISSION PROJECTIONS

[tons per day]

Category	2011	2014	2017	2020	2023	2026
Point Sources	108.48	126.31	126.82	127.01	127.20	127.39
Area Sources	21.15	22.19	22.90	23.28	23.17	23.23
On-Road Mobile Sources	181.28	127.70	88.85	69.80	59.28	54.51
Non-Road Mobile Sources	121.11	106.99	94.99	83.70	75.54	68.98
Total	432.02	383.19	333.56	303.79	285.19	274.11

TABLE 3—VOC EMISSION PROJECTIONS

[tons per day]

Category	2011	2014	2017	2020	2023	2026
Point Sources	96.11	100.81	102.86	103.29	103.71	104.12
Area Sources	308.74	321.92	332.43	339.67	342.58	346.13
On-Road Mobile Sources	80.92	60.43	46.51	40.51	38.09	36.93
Non-Road Mobile Sources	49.92	38.33	33.34	30.86	30.11	30.02
Total	535.69	521.49	515.14	514.33	514.49	517.20

III. Proposed Action

Based on the CAA's criteria for redesignation to attainment (CAA section 107(d)(3)(E)) and the regulation providing for a redesignation substitute (40 CFR 51.1105(b)), EPA is proposing to find that Texas has successfully demonstrated it has met the requirements for approval of a redesignation substitute for the revoked 1979 1-hour ozone NAAQS. We are proposing to approve the redesignation substitute for the HGB area based on our determination that the demonstration provided by the State of Texas shows that the HGB area has attained the revoked 1-hour ozone NAAQS due to permanent and enforceable emission reductions, and that it will maintain that NAAQS for ten years from the date of the EPA's approval of this demonstration. As we no longer redesignate nonattainment areas to attainment for the revoked 1-hour ozone NAAQS, approval of the demonstration would serve as a redesignation substitute under the EPA's implementing regulations. Under this proposed action, Texas would no longer be required to adopt any additional applicable 1-hour ozone NAAQS requirements for the area which have not already been approved into the SIP (40 CFR 51.1105(b)(1)). If this proposed action is finalized, it would also allow the state to request that the EPA approve the removal or revision of the 1-hour ozone NAAQS nonattainment NSR provisions in the SIP and, upon a showing of consistency with the anti-backsliding checks in CAA sections 110(1) and 193 (if applicable), shift 1-hour ozone NAAQS requirements that are contained in the active portion of the SIP to the contingency measures portion of the SIP (40 CFR 51.1105(b)(2)). We note that because the HGB area was classified as Severe nonattainment for the 1997 ozone NAAQS, the Severe classification NSR requirements would continue to apply if the 1-hour NSR provisions are removed (October 1, 2008, 73 FR 56983).

IV. Statutory and Executive Order Reviews

Under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely proposes to approve a demonstration provided by the State of Texas and find that the HGB area is no longer subject to the anti-backsliding obligations for additional measures for the revoked 1-hour ozone NAAQS; and imposes no additional requirements. Accordingly, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this proposed rule does not impose any additional enforceable duties, it 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). This proposed rule also does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a demonstration provided by the State of Texas and find that the HGB area is no longer subject to the anti-backsliding obligations for additional measures for the revoked 1-hour ozone NAAQS; and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

The proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Additionally, this proposed rule does not involve establishment of technical standards, and thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this proposed rule 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. The rulemaking does not affect the level of protection provided to human health or the environment because approving the demonstration provided by Texas and finding that the HGB area is no longer subject to the anti-backsliding obligations for additional measures for the revoked 1-hour ozone NAAQS does not alter the emission reduction measures that are required to be implemented in the HGB area, which was classified as Severe nonattainment for the 1997 8-hour ozone standard. *See* 73 FR 56983, October 1, 2008, and 40 CFR 51.1105. Additionally, the proposed rule is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone.

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

Dated: July 29, 2015.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2015–20024 Filed 8–17–15; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 409, 424, and 484

[CMS–1625–CN2]

RIN 0938–AS46

Medicare and Medicaid Programs; CY 2016 Home Health Prospective Payment System Rate Update; Home Health Value-Based Purchasing Model; and Home Health Quality Reporting Requirements; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects technical errors in the proposed rule that appeared in the July 10, 2015

Federal Register entitled ''Medicare and Medicaid Programs; CY 2016 Home Health Prospective Payment System Rate Update; Home Health Value-Based Purchasing Model; and Home Health Quality Reporting Requirements.''

DATES: The comment due date for the proposed rule published in the **Federal Register** on July 10, 2015 (80 FR 39839) remains September 4, 2015.

FOR FURTHER INFORMATION CONTACT: Michelle Brazil, (410) 786–1648.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2015–16790, published in the **Federal Register** on July 10, 2015 (80 FR 39839), there were technical errors that are identified and corrected in the Correction of Errors section of this correcting document.

II. Summary of Errors

On page 39898, in our discussion of collection of OASIS data, we inadvertently provided an incorrect Web address for a Web site.

On page 39898, in our discussion concerning the specifications and data for NQF #0678, we inadvertently provided an incorrect Web address for a Web site.

III. Correction of Errors

In proposed rule FR Doc. 2015–16790, beginning on page 39840 in the issue of July 10, 2015, make the following corrections in the **SUPPLEMENTARY INFORMATION**:

1. On page 39898, in the first column, in the second full paragraph, the reference to the Web site beginning on line 25, ''OASIS Manual *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/*'' is corrected to read ''downloads section *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/HomeHealthQualityInits/HHQIQualityMeasures.html*''.

2. On page 39898, in the second column, in the first full paragraph, the Web site in line 11, ''*http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/PAC-Quality-Initiatives.html*'' is corrected to read ''*https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/HomeHealthQualityInits/HHQIQualityMeasures.html*''.

Dated: August 12, 2015.

Madhura Valverde,

Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2015–20336 Filed 8–14–15; 11:15 am]

BILLING CODE 4120–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 150413357–5667–01]

RIN 0648–XD898

Atlantic Highly Migratory Species; 2016 Atlantic Shark Commercial Fishing Season

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would establish opening dates and adjust quotas for the 2016 fishing season for the Atlantic commercial shark fisheries. Quotas would be adjusted as allowable based on any over- and/or underharvests experienced during 2015 and previous fishing seasons. In addition, NMFS proposes season openings based on adaptive management measures to provide, to the extent practicable, fishing opportunities for commercial shark fishermen in all regions and areas. The proposed measures could affect fishing opportunities for commercial shark fishermen in the northwestern Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea.

DATES: Written comments must be received by September 17, 2015.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2015–0068, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0068,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Margo Schulze-Haugen, NMFS/SF1, 1315 East-West Highway, National Marine Fisheries Service, SSMC3, Silver Spring, MD 20910.

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: Guý DuBeck or Karyl Brewster-Geisz at 301–427–8503.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic commercial shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. For the Atlantic commercial shark fisheries, the 2006 Consolidated HMS FMP and its amendments established, among other things, commercial shark retention limits, commercial quotas for species and management groups, accounting measures for under- and overharvests for the shark fisheries, and adaptive management measures such as flexible opening dates for the fishing season and inseason adjustments to shark trip limits, which provide management flexibility in furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all regions and areas.

This proposed rule would establish quotas and opening dates for the 2016 Atlantic shark commercial fishing season based in part on the management measures in the recently published final rule for Amendment 6 to the 2006 Consolidated HMS FMP. In Amendment 6 to the 2006 Consolidated HMS FMP, NMFS established, among other things, an adjusted commercial shark retention limit for large coastal sharks (LCS) other than sandbar sharks, revised sandbar shark quota within the shark research fishery, sub-regional quotas in the Gulf of Mexico region for LCS, revised total allowable catches (TACs) and commercial quotas for the non-blacknose small coastal shark (SCS) fisheries in the Atlantic and Gulf of Mexico regions, and revised management measures for blacknose sharks.

2016 Proposed Quotas

This proposed rule would adjust the quota levels for the different shark stocks and management groups for the 2016 Atlantic commercial shark fishing season based on over- and underharvests that occurred during 2015 and previous fishing seasons, consistent with existing regulations at 50 CFR 635.27(b)(2). Over- and underharvests are accounted for in the same region, sub-region, and/or fishery in which they occurred the following year, except that large overharvests may be spread over a number of subsequent fishing years to a maximum of 5 years. Shark stocks or management groups that contain one or more stocks that are overfished, have overfishing occurring, or have an unknown status, will not have underharvest carried over in the following year. Stocks that are not overfished and have no overfishing occurring may have any underharvest carried over in the following year, up to 50 percent of the base quota.

The quotas in this proposed rule are based on dealer reports received as of July 17, 2015. In the final rule, NMFS will adjust the quotas based on dealer reports received as of a date in mid-October or mid-November 2015. For prior shark quota rules, NMFS has used information from dealer reports received as of October 15 through November 26, depending on the timing of the final rule. Thus, all of the 2016 proposed quotas for the respective stocks and management groups will be subject to further adjustment after NMFS considers the October/November dealer reports. All dealer reports that are received after the October or November date will be used to adjust the 2017 quotas, as appropriate.

For the sandbar shark, aggregated LCS, hammerhead shark, non-blacknose SCS, blacknose shark, blue shark, porbeagle shark, and pelagic shark (other than porbeagle or blue sharks) management groups, the 2015 underharvests cannot be carried over to the 2016 fishing season because those stocks or management groups have been determined to be overfished, overfished with overfishing occurring, or have an unknown status. Thus, for all of these management groups, the 2016 proposed quotas would be equal to the applicable base quota minus any overharvests that occurred in 2015 and previous fishing seasons, as applicable.

For the Gulf of Mexico blacktip shark management group, which has been determined not to be overfished and to have no overfishing occurring, available underharvest (up to 50 percent of the base quota) from the 2015 fishing season may be applied to the 2016 quota, and NMFS proposes to do so.

Regarding the blacknose shark management group, in the final rule establishing quotas for the 2014 shark season (78 FR 70500; November 26, 2013), NMFS decided to spread out the 2012 overharvest of the blacknose shark quota across 5 years (2014 through 2018) in both the Atlantic and Gulf of Mexico regions. In the final rule for Amendment 6 to the 2006 Consolidated HMS FMP, NMFS modified the regulations for blacknose shark fisheries in the Atlantic and Gulf of Mexico regions. In the Gulf of Mexico region and north of 34° N. latitude in the Atlantic region, NMFS has prohibited the retention of blacknose sharks. Thus, in this proposed rule, NMFS is not proposing any quotas for blacknose sharks in those areas. However, NMFS is proposing to reduce the blacknose shark quota for fishermen operating south of 34° N. latitude in the Atlantic region by 0.5 mt dw to account for the 2012 overharvest. Thus, before accounting for any landings from 2015, the 2016 adjusted annual quota for the Atlantic blacknose shark management group would be 16.7 mt dw (36,818 lb dw).

Based on current landings, the 2015 blacknose shark management group in the Atlantic region was overharvested by 2.9 mt dw (6,328 lb dw). NMFS is proposing to spread out the overharvest accounting over 3 years from 2016 through 2018, the same time period remaining for accounting for the 2012 overharvest, and NMFS is specifically requesting comments on whether NMFS should adjust the quotas over three or more (four or five) years or simply account for the entire overharvest in 2016. In the Atlantic region, accounting for the overharvest over 3 years would result in an overharvest reduction of 1.0 mt dw for 2016 and 2017, and 0.9 mt dw for 2018. This reduction combined with the 0.5 mt dw 2012 overharvest reduction represents 9 percent of the Atlantic region blacknose quota and thus would have both minimal economic impacts on the fishermen and minimal ecological impacts on the stocks. If NMFS reduced the 2016 quota by the full overharvest amount combined with the 2012 overharvest reduction (3.4 mt dw) in one year, this would result in a 20 percent reduction from the base quota, which could negatively impact fishermen and data collection, since the reduced quota would be below regional landings from past fishing seasons and could result in closing the non-blacknose SCS fishery in the Atlantic region south of 34° N. latitude earlier than it has in recent years. NMFS does not believe that accounting for the overharvests over time (1.0 mt dw for 2016 and 2017, and 0.9 mt dw for 2018) would affect the status of the Atlantic blacknose stock because fishing mortality levels would be maintained below levels established in the rebuilding plan. Thus, NMFS is proposing to reduce the 2016 base annual quota for the blacknose shark management group in the Atlantic region based on overharvests from 2012 and 2015.

The proposed 2016 quotas by species and management group are summarized in Table 1; the description of the calculations for each stock and management group can be found below.

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Table 1. 2016 Proposed Quotas and Opening Dates for the Atlantic Shark Management Groups. All quotas and landings are dressed weight (dw), in metric tons (mt), unless specified otherwise. Table includes landings data as of July 17, 2015; final quotas are subject to change based on landings as of October or November 2015. 1 mt = 2,204.6 lb.

Region or Sub-region	Management Group	2015 Annual Quota (A)	Preliminary 2015 Landings [1] (B)	Adjustments (C)	2016 Base Annual Quota (D)	2016 Proposed Annual Quota (D+C)	Season Opening Dates
Eastern Gulf of Mexico	Blacktip Sharks	25.1 mt dw (55,439 lb dw)	21.4 mt dw (47,351 lb dw) [2]	3.8 mt dw (8,396 lb dw) [3]	25.1 mt dw (55,439 lb dw)	28.9 mt dw (63,835 lb dw)	January 1, 2016
	Aggregated Large Coastal Sharks	85.5 mt dw (188,593 lb dw)	82.2 mt dw (181,262 lb dw) [2]	-	85.5 mt dw (188,593 lb dw)	85.5 mt dw (188,593 lb dw)	
	Hammerhead Sharks	13.4 mt dw (29,421 lb dw)	7.3 mt dw (16,012 lb dw) [2]	-	13.4 mt dw (29,421 lb dw)	13.4 mt dw (29,421 lb dw)	
Western Gulf of Mexico	Blacktip Sharks	231.5 mt dw (510,261 lb dw)	197.4 mt dw (435,818 lb dw) [2]	35.1 mt dw (77,277 lb dw) [3]	231.5 mt dw (510,261 lb dw)	266.6 mt dw (587,538 lb dw)	
	Aggregated Large Coastal Sharks	72.0 mt dw (158,724 lb dw)	69.2 mt dw (152,554 lb dw) [2]	-	72.0 mt dw (158,724 lb dw)	72.0 mt dw (158,724 lb dw)	
	Hammerhead Sharks	11.9 mt dw (23,301 lb dw)	6.5 mt dw (11,314 lb dw) [2]	-	11.9 mt dw (23,301 lb dw)	11.9 mt dw (23,301 lb dw)	
Gulf of Mexico	Non-Blacknose Small Coastal Sharks	45.5mt dw (100,317 lb dw)	46.2 mt dw (101,948 lb dw)	-5.3 mt dw (-11,612 lb dw) [4]	112.6 mt dw (248,215 lb dw)	107.3 mt dw (236,603 lb dw)	
	Blacknose Sharks	1.8 mt dw (4,076 lb dw)	1.0 mt dw (2,096 lb dw)	-	0.0 mt dw (0 lb dw)	0.0 mt dw (0 lb dw)	

Atlantic	Aggregated Large Coastal Sharks	168.9 mt dw (372,552 lb dw)	12.3 mt dw (27,100 lb dw)	-	168.9 mt dw (372,552 lb dw)	168.9 mt dw (372,552 lb dw)	January 1, 2016
	Hammerhead Sharks	27.1 mt dw (59,736 lb dw)	0.7 mt dw (1,476 lb dw)	-	27.1 mt dw (59,736 lb dw)	27.1 mt dw (59,736 lb dw)	
	Non-Blacknose Small Coastal Sharks	176.1 mt dw (388,222 lb dw)	98.6 mt dw (217,360 lb dw)	-	264.1 mt dw (582,333 lb dw)	264.1 mt dw (582,333 lb dw)	
	Blacknose Sharks (South of 34° N. lat. only)	17.5 mt dw (38,638 lb dw)	20.4 mt dw (44,966 lb dw)	-1.5 mt dw (-3,221 lb dw) [5]	17.2 mt dw (37,921 lb dw)	15.7 mt dw (34,700 lb dw)	
No regional quotas	Non-Sandbar LCS Research	50.0 mt dw (110,230 lb dw)	14.8 mt dw (32,593 lb dw)	-	50.0 mt dw (110,230 lb dw)	50.0 mt dw (110,230 lb dw)	January 1, 2016
	Sandbar Shark Research	116.6 mt dw (257,056 lb dw)	60.6 mt dw (133,496 lb dw)	-	90.7 mt dw (199,943 lb dw)	90.7 mt dw (199,943 lb dw)	
	Blue Sharks	273.0 mt dw (601,856 lb dw)	0.5 mt dw (1,114 lb dw)	-	273.0 mt dw (601,856 lb dw)	273.0 mt dw (601,856 lb dw)	
	Porbeagle Sharks	0 mt dw (0 lb dw)	0 mt dw (0 lb dw)	-	1.7 mt dw (3,748 lb dw)	1.7 mt dw (3,748 lb dw)	
	Pelagic Sharks Other Than Porbeagle or Blue	488.0 mt dw (1,075,856 lb dw)	50.7 mt dw (111,701 lb dw)	-	488.0 mt dw (1,075,856 lb dw)	488.0 mt dw (1,075,856 lb dw)	

[1] Landings are from January 1, 2015, through July 17, 2015, and are subject to change.

[2] The blacktip, aggregated LCS, and hammerhead shark management group preliminary 2015 landings were split based on the sub-regional quota percentage splits established in Amendment 6 to the 2006 Consolidated HMS FMP.

[3] This adjustment accounts for underharvest in 2014 and 2015. In the final rule establishing the 2015 quotas (79 FR 71331; December 2, 2014), the 2014 Gulf of Mexico blacktip shark quota was underharvested by 72.0 mt dw (158,602 lb dw). After the final rule establishing the 2015 quotas published, late dealer reports indicated the quota was

underharvested by an additional 1.4 mt dw (3,142 lb dw), for a total underharvest of 73.4 mt dw (161,744 lb dw). In 2015, the Gulf of Mexico blacktip shark quota was underharvested by 37.5 mt (82,531 lb dw). Therefore, this proposed rule would increase the Gulf of Mexico blacktip shark quota by 38.9 mt dw (37.5 mt dw underharvest in 2015 + 1.4 mt dw underharvest from 2014). Recently, NMFS implemented Amendment 6 to the 2006 Consolidated HMS FMP which, among other things, established sub-regional quotas for the Gulf of Mexico blacktip shark management group. NMFS would account for underharvest based on the sub-regional quota percentage split. Thus, the eastern Gulf of Mexico blacktip shark quota would be increased by 3.8 mt dw, or 9.8 percent of the underharvest, while the western Gulf of Mexico blacktip shark quota would be increased by 35.1 mt dw, or 90.2 percent of the underharvest.

[4] This adjustment accounts for overharvests from 2014. In the final rule establishing the 2015 quotas (79 FR 71331; December 2, 2014), the 2014 Gulf of Mexico non-blacknose SCS quota was not overharvested. After the final rule establishing the 2015 quotas published, late dealer reports indicated the quota was overharvested by 5.3 mt dw (11,612 lb dw) due to landings by state-water fishermen fishing in state-waters after the federal closure. NMFS will decrease the 2016 base annual quota based on the overharvest estimate of 5.3 mt from 2014. Based on the original 2015 annual commercial quota, the 2015 annual quota was overharvested by 0.7 mt dw (1,631 lb dw) as of July 17, 2015. In Amendment 6 to the 2006 Consolidated HMS FMP, NMFS increased the commercial Gulf of Mexico non-blacknose SCS quota to 112.6 mt dw (248,215 lb dw) and re-opened the fishery. Based on the revised annual commercial quota, reported landings have not exceeded the revised 2015 base quota to date.

[5] This adjustment accounts for overharvest in 2012 and 2015. After the final rule establishing the 2012 quotas published, late dealer reports indicated the blacknose shark quota was overharvested by 3.5 mt dw (7,742 lb dw). In the final rule establishing the 2014 quotas, NMFS implemented a 5-year adjustment of the overharvest amount by the percentage of landings in 2012. Thus, NMFS will reduce the Atlantic blacknose sharks by 0.5 mt dw (1,111 lb dw) each year for 5 years from 2014-2018. In 2015, the Atlantic blacknose shark quota was overharvested by 2.9 (6,328 lb dw). NMFS is proposing an additional 3-year adjustment of the overharvest amount in 2015. NMFS would reduce the quota by 1.0 mt dw (2,110 lb dw) each year for 2016 and 2017 and 0.9 mt dw (2,108 lb dw) for 2018. Therefore, this proposed rule would decrease the Atlantic blacknose shark quota by 1.5 mt dw (1.0 mt dw overharvest in 2015 + 0.5 mt dw overharvest from 2012).

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1. Proposed 2016 Quotas for the Blacktip Sharks in the Gulf of Mexico Region

The 2016 proposed commercial quota for blacktip sharks in the eastern Gulf of Mexico sub-region is 28.9 mt dw (63,835 lb dw) and the western Gulf of Mexico sub-region is 266.6 mt dw (587,538 lb dw). As of July 17, 2015, preliminary reported landings for blacktip sharks in the Gulf of Mexico region were at 89 percent (291.1 mt dw) of their 2015 quota levels. Reported landings have not exceeded the 2015 quota to date, and the fishery was closed on May 3, 2015 (80 FR 24836). Gulf of Mexico blacktip sharks have not been declared to be overfished, to have overfishing occurring, or to have an unknown status. Pursuant to § 635.27(b)(2)(ii), underharvests for blacktip sharks within the Gulf of Mexico region therefore could be applied to the 2015 quotas up to 50 percent of the base quota. In the final rule establishing the 2015 quotas (79 FR 71331; December 2, 2014), the 2014 Gulf of Mexico blacktip shark quota was underharvested by 72.0 mt dw (158,602 lb dw). After the final rule establishing the 2015 quotas published, late dealer reports indicated the quota was underharvested by an additional 1.4 mt dw (3,142 lb dw), for a total underharvest of 73.4 mt dw (161,744 lb dw). During the 2015 fishing season to date, the regional Gulf of Mexico blacktip shark quota has been underharvested by 37.5 mt (82,531 lb dw). Accordingly, NMFS proposes to increase the 2016 Gulf of Mexico blacktip shark quota by 38.9 mt dw (37.5 mt dw underharvest in 2015 + 1.4 mt dw additional underharvest from 2014), which is less than the 50 percent limit (128.3 mt dw) allowed pursuant to the regulations. Thus, the proposed commercial regional Gulf of Mexico blacktip shark quota is 295.5 mt dw.

Recently, NMFS implemented Amendment 6 to the 2006 Consolidated HMS FMP, which, among other things, established sub-regional quotas for the Gulf of Mexico blacktip shark management group. Under these regulations, the eastern sub-region receives 9.8 percent of the regional Gulf of Mexico quota and the western sub-region receives 90.2 percent. Thus, the proposed eastern sub-regional Gulf of Mexico blacktip shark commercial quota is 28.9 mt dw and the proposed western sub-regional Gulf of Mexico blacktip shark commercial quota is 266.6 mt dw.

2. Proposed 2016 Quotas for the Aggregated LCS in the Gulf of Mexico Region

The 2016 proposed commercial quota for aggregated LCS in the eastern Gulf of Mexico sub-region is 85.5 mt dw (188,593 lb dw) and the western Gulf of Mexico sub-region is 72.0 mt dw (158,724 lb dw). As of July 17, 2015, preliminary reported landings for aggregated LCS in the Gulf of Mexico region were at 96 percent (150.4 mt dw) of their 2015 quota levels. Reported landings have not exceeded the 2015 quota to date, and the fishery was closed on May 3, 2015 (80 FR 24836). Given the unknown status of some of the shark species within the Gulf of Mexico aggregated LCS management group, underharvests cannot be carried over pursuant to § 635.27(b)(2)(ii). Therefore, based on preliminary estimates and consistent with the current regulations at § 635.27(b)(2), NMFS is not proposing to adjust 2016 quotas for aggregated LCS in the eastern Gulf of Mexico and western Gulf of Mexico sub-regions, because there have not been any overharvests and because underharvests cannot be carried over due to stock status.

3. Proposed 2016 Quota for the Aggregated LCS in the Atlantic Region

The 2016 proposed commercial quota for aggregated LCS in the Atlantic region is 168.9 mt dw (372,552 lb dw). As of July 17, 2015, the aggregated LCS fishery in the Atlantic region is still open and preliminary landings indicate 93 percent of the quota is still available. Given the unknown status of some of the shark species within the Atlantic aggregated LCS management group, underharvests cannot be carried over pursuant to § 635.27(b)(2)(ii). Therefore, based on preliminary estimates and consistent with current regulations at § 635.27(b)(2), NMFS is not proposing to adjust the 2016 quota for aggregated LCS in the Atlantic region, because there has not been any overharvests and underharvests cannot be carried over due to stock status.

4. Proposed 2016 Quotas for Hammerhead Sharks in the Gulf of Mexico and Atlantic Regions

The 2016 proposed commercial quotas for hammerhead sharks in the eastern Gulf of Mexico sub-region, western Gulf of Mexico sub-region, and Atlantic region are 13.4 mt dw (29,421 lb dw), 11.9 mt dw (23,301 lb dw), and 27.1 mt dw (59,736 lb dw), respectively. As of July 17, 2015, preliminary reported landings for hammerhead sharks were at 54 percent (13.8 mt dw) of their 2015 quota levels in the Gulf of Mexico region. Reported landings have not exceeded the 2015 quota to date, and the fishery was closed on May 3, 2015 (80 FR 24836). Currently, the hammerhead shark fishery in the Atlantic region is still open and preliminary landings indicate 98 percent of the quota is still available. Given the overfished status of hammerhead sharks, underharvests cannot be carried forward pursuant to § 635.27(b)(2)(ii). Therefore, based on preliminary estimates and consistent with the current regulations at § 635.27(b)(2), NMFS is not proposing to adjust 2016 quotas for hammerhead sharks in the eastern Gulf of Mexico sub-region, western Gulf of Mexico sub-region, and Atlantic region, because there have not been any overharvests and because underharvests cannot be carried over due to stock status.

5. Proposed 2016 Quotas for Research LCS and Sandbar Sharks Within the Shark Research Fishery

The 2016 proposed commercial quotas within the shark research fishery are 50.0 mt dw (110,230 lb dw) for research LCS and 90.7 mt dw (199,943 lb dw) for sandbar sharks. Within the shark research fishery, as of July 17, 2015, preliminary reported landings of research LCS were at 30 percent (14.8 mt dw) of their 2015 quota levels, and sandbar shark reported landings were at 52 percent (60.6 mt dw) of their 2015 quota levels. Reported landings have not exceeded the 2015 quotas to date. Under § 635.27(b)(2)(ii), because sandbar sharks and scalloped hammerhead sharks within the research LCS management group have been determined to be either overfished or overfished with overfishing occurring, underharvests for these management groups cannot be carried forward to the 2016 quotas. Therefore, based on preliminary estimates and consistent with the current regulations at § 635.27(b)(2), NMFS is not proposing to adjust 2016 quotas in the shark research fishery because there have not been any overharvests and because underharvests cannot be carried over due to stock status.

6. Proposed 2016 Quota for the Non-Blacknose SCS in the Gulf of Mexico Region

The 2016 proposed commercial quota for non-blacknose SCS in the Gulf of Mexico region is 107.3 mt dw (236,603 lb dw). As of July 17, 2015, preliminary reported landings of non-blacknose SCS were at 102 percent (46.2 mt dw) of their 2015 quota levels in the Gulf of Mexico region. Because reported

landings had exceeded the 2015 quota, the fishery was closed on July 4, 2015 (80 FR 38016). In Amendment 6 to the 2006 Consolidated HMS FMP, NMFS increased the commercial Gulf of Mexico non-blacknose SCS quota to 112.6 mt dw (248,215 lb dw). Based on the current landings at that time, NMFS re-opened the non-blacknose SCS fishery and the reported landings have not exceeded the revised 2015 base quota to date. In the final rule establishing the 2015 quotas (79 FR 71331; December 2, 2014), the 2015 Gulf of Mexico non-blacknose SCS quota was not overharvested. However, after the final rule establishing the 2015 quotas published, late dealer reports indicated the quota was overharvested by 5.3 mt dw (11,612 lb dw) in 2014. Pursuant to § 635.27(b)(2)(i), overharvest of non-blacknose sharks would be applied to the regional quota over a maximum of 5 years. NMFS is proposing to apply the entire 2014 overharvest to the 2016 regional quota, because the overharvest is relatively small compared to the overall regional quota, and therefore NMFS anticipates minimal impacts from applying the overharvest in a single year. Therefore, based on preliminary estimates and consistent with the current regulations at § 635.27(b)(2), NMFS proposes to reduce the 2016 Gulf of Mexico non-blacknose SCS quota to 107.3 mt dw (112.6 mt dw annual base quota − 5.3 mt dw 2014 overharvest = 107.3 mt dw 2016 adjusted annual quota).

7. Proposed 2016 Quota for the Non-Blacknose SCS in the Atlantic Region

The 2016 proposed commercial quota for non-blacknose SCS in the Atlantic region is 264.1 mt dw (582,333 lb dw). As of July 17, 2015, preliminary reported landings of non-blacknose SCS were at 56 percent (98.6 mt dw) of their 2015 quota levels in the Atlantic region. Though reported landings had not yet reached or exceeded the 2015 quota, the fishery was closed on June 7, 2015 (80 FR 32040), due to the quota linkage with blacknose sharks in the Atlantic region. In Amendment 6 to the 2006 Consolidated HMS FMP, NMFS increased the commercial Atlantic non-blacknose SCS quota to 264.1 mt dw (582,333 lb dw), removed the quota linkage between non-blacknose SCS and blacknose sharks for fishermen fishing north of 34° N. latitude, and re-opened the non-blacknose SCS fishery north of 34° N. latitude. Non-blacknose SCS fishing south of 34° N. latitude remained closed in 2015. Given the unknown status of bonnethead sharks within the Atlantic non-blacknose SCS management group, underharvests cannot be carried forward pursuant to § 635.27(b)(2)(ii). Therefore, based on preliminary estimates and consistent with the current regulations at § 635.27(b)(2), NMFS is not proposing to adjust the 2016 quota for non-blacknose SCS in the Atlantic region, because there have not been any overharvests and because underharvests cannot be carried over due to stock status.

8. Proposed 2016 Quota for the Blacknose Sharks in the Atlantic Region

The 2016 proposed commercial quota for blacknose sharks in the Atlantic region is 15.7 mt dw (34,700 lb dw). As of July 17, 2015, preliminary reported landings of blacknose sharks were at 116 percent (20.4 mt dw) of their 2015 quota levels in the Atlantic region. Reported landings have exceeded the 2015 quota to date, and the fishery was closed on June 7, 2015 (80 FR 32040). In Amendment 6 to the 2006 Consolidated HMS FMP, NMFS removed the quota linkage between non-blacknose SCS and blacknose sharks for fishermen fishing north of 34° N. latitude, but the blacknose shark management group south of 34° N. latitude remained closed, since the quota had been landed. Blacknose sharks have been declared to be overfished with overfishing occurring in the Atlantic region. Pursuant to § 635.27(b)(2)(i), overharvests of blacknose sharks would be applied to the regional quota over a maximum of 5 years. As described above, the 2012 blacknose quota was overharvested and NMFS decided to adjust the regional quotas over 5 years from 2014 through 2018 to mitigate the impacts of adjusting for the overharvest in a single year. In 2015, the Atlantic blacknose shark quota was overharvested by 2.9 mt dw (6,328 lb dw). NMFS is proposing to spread the 2015 overharvest over 3 years to mitigate the impacts of adjusting for the overharvest in a single year. Therefore, based on preliminary estimates and consistent with the current regulations at § 635.27(b)(2), the 2016 proposed commercial adjusted base quota for blacknose sharks in the Atlantic region is 15.7 mt dw (34,700 lb dw) (17.2 mt dw annual base quota − 0.5 mt dw 2012 adjusted 5-year overharvest − 1.0 mt dw 2015 adjusted 3-year overharvest = 15.7 mt dw 2016 adjusted annual quota). Note, the blacknose shark quota is available in the Atlantic region only for those vessels operating south of 34° N. latitude; north of 34° N. latitude; retention, landing, and sale of blacknose sharks is prohibited.

9. Proposed 2019 Quotas for Pelagic Sharks

The 2016 proposed commercial quotas for blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle or blue sharks) are 273 mt dw (601,856 lb dw), 1.7 mt dw (3,748 lb dw), and 488 mt dw (1,075,856 lb dw), respectively. The porbeagle shark fishery was closed in 2015 due to overharvest in 2014. As of July 17, 2015, preliminary reported landings of blue sharks and pelagic sharks (other than porbeagle and blue sharks) were at less than 1 percent (0.5 mt dw) and 10 percent (50.7 mt dw) of their 2015 quota levels, respectively. Given these pelagic species are overfished, have overfishing occurring, or have an unknown status, underharvests cannot be carried forward pursuant to § 635.27(b)(2)(ii). Therefore, based on preliminary estimates and consistent with the current regulations at § 635.27(b)(2), NMFS is not proposing to adjust 2016 quotas for blue sharks and pelagic sharks (other than porbeagle and blue sharks), because there have not been any overharvests and because underharvests cannot be carried over due to stock status.

Proposed Fishing Season Notification for the 2015 Atlantic Commercial Shark Fishing Season

For each fishery, NMFS considered the seven ''Opening Commercial Fishing Season Criteria'' listed at § 635.27(b)(3). The ''Opening Fishing Season'' criteria consider factors such as the available annual quotas for the current fishing season, estimated season length and average weekly catch rates from previous years, length of the season and fishermen participation in past years, impacts to accomplishing objectives of the 2006 Consolidated HMS FMP and its amendments, temporal variation in behavior or biology target species (*e.g.*, seasonal distribution or abundance), impact of catch rates in one region on another, and effects of delayed season openings.

Specifically, NMFS examined the 2015 and previous fishing years' over- and/or underharvests of the different management groups to determine the effects of the 2016 proposed commercial quotas on fishermen across regional and sub-regional fishing areas. NMFS also examined the potential season length and previous catch rates to ensure that equitable fishing opportunities would be provided to fishermen in all areas. Lastly, NMFS examined the seasonal variation of the different species/management groups and the effects on fishing opportunities.

In addition to considering the seven ''Opening Commercial Fishing Season Criteria,'' NMFS is also considering the revised commercial shark retention limit and other management measures in the final rule for Amendment 6 to the 2006 Consolidated HMS FMP in determining the proposed opening dates for 2016.

NMFS is proposing that the 2016 Atlantic commercial shark fishing season for all shark management groups in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, open on or about January 1, 2016, after the publication of the final rule for this action. NMFS is also proposing to start the 2016 commercial shark fishing season with the default retention limit of 45 LCS other than sandbar sharks per vessel per trip.

In the Atlantic region, NMFS proposes opening the aggregated LCS and hammerhead shark management groups on or about January 1, 2016. This opening date takes into account all the criteria listed in § 635.27(b)(3), and particularly the criterion that NMFS consider the effects of catch rates in one part of a region precluding vessels in another part of that region from having a reasonable opportunity to harvest a portion of the different species and/or management quotas. In addition, during the comment periods for the 2015 shark season proposed rule (79 FR 54252; September 11, 2014) and proposed rule for Amendment 6 to the 2006 Consolidated HMS FMP (80 FR 2648; January 20, 2015), NMFS received comments from fishermen from all areas of the Atlantic requesting that the aggregated LCS and hammerhead shark management groups open in January. In public comments during Amendment 6 to the 2006 Consolidated HMS FMP, constituents suggested a January opening date such that a portion of the quota could be harvested in the beginning of the year and then the trip limits be reduced such that the rest of the quota could be harvested at the end of the fishing year. As such, NMFS is intending to use the inseason trip limit adjustment criteria in the regulations per § 635.24(a)(8) for the first time in 2016. The inseason trip limit adjustment criteria would allow more equitable fishing opportunities across the fishery. The proposed opening date with the default retention limit of 45 LCS other than sandbar sharks per vessel per trip should allow fishermen to harvest some of the 2016 quota at the beginning of the year, when sharks are more prevalent in the South Atlantic area. If it appears that the quota is being harvested too quickly to allow fishermen throughout the entire region an opportunity to fish, NMFS would reduce the commercial retention limits taking into account § 635.27(b)(3) and the inseason trip limit adjustment criteria listed in § 635.24(a)(8), particularly the consideration of whether catch rates in one part of a region or sub-region are precluding vessels in another part of that region or sub-region from having a reasonable opportunity to harvest a portion of the relevant quota (§ 635.24(a)(8)(vi)). If that occurs, NMFS would file with the Office of the Federal Register for publication notification of any inseason adjustments of the retention limit to an appropriate limit between 0 and 55 sharks per trip. NMFS would increase the commercial retention limits per trip at a later date to provide fishermen in the northern portion of the Atlantic region an opportunity to retain non-sandbar LCS.

For example, the aggregated LCS and hammerhead shark management groups could open in January and NMFS could allow approximately 30 percent of the quota to be retained. Once the quota reaches about 30 percent, NMFS could reduce the retention limit to incidental levels (3 LCS other than sandbar sharks per vessel per trip) or another level calculated to reduce the harvest of LCS. If the quota continues to be harvested quickly, NMFS could reduce the retention limit to 0 LCS other than sandbar sharks per vessel per trip to ensure enough quota remains until later in the year. At some point later in the year, potentially equivalent to recent fishing season opening dates (*e.g.*, July 1 or July 15), NMFS could increase the retention limit to the default level (45 LCS other than sandbar sharks per vessel per trip) or another amount, as deemed appropriate after considering the inseason trip limit adjustment criteria. If the quota is being harvested too fast or too slow, NMFS could adjust the retention limit appropriately to ensure the fishery remains open most of the rest of the year.

In the Gulf of Mexico region, opening the fishing season on or about January 1, 2016, for aggregated LCS, blacktip sharks, and hammerhead sharks with the default retention limit of 45 LCS other than sandbar sharks per vessel per trip would provide, to the extent practicable, equitable opportunities across the fisheries management sub-regions. This opening date takes into account all the criteria listed in § 635.27(b)(3), and particularly the criterion that NMFS consider the length of the season for the different species and/or management group in the previous years and whether fishermen were able to participate in the fishery in those years. Similar to the retention limit adjustment process described for the Atlantic region, NMFS may consider adjusting the retention limit in the Gulf of Mexico region throughout the season to ensure fishermen in all parts of the region have an opportunity to harvest aggregated LCS, blacktip sharks, and hammerhead sharks.

All of the shark management groups would remain open until December 31, 2016, or until NMFS determines that the fishing season landings for any shark management group has reached, or is projected to reach, 80 percent of the available quota. In the final rule for Amendment 6 to the 2006 Consolidated HMS FMP, NMFS revised non-linked and linked quotas and explained that the linked quotas are explicitly designed to concurrently close multiple shark management groups that are caught together to prevent incidental catch mortality from causing total allowable catch to be exceeded. If NMFS determines that a non-linked shark species or management group must be closed, then, consistent with § 635.28(b)(2) for non-linked quotas (*e.g.*, eastern Gulf of Mexico blacktip, western Gulf of Mexico blacktip, Gulf of Mexico non-blacknose SCS, or pelagic sharks), NMFS will file for publication with the Office of the Federal Register a notice of closure for that shark species, shark management group, region, and/or sub-region that will be effective no fewer than 5 days from date of filing. From the effective date and time of the closure until NMFS announces, via the publication of a notice in the **Federal Register**, that additional quota is available and the season is reopened, the fisheries for the shark species or management group are closed, even across fishing years.

If NMFS determines that a linked shark species or management group must be closed, then, consistent with § 635.28(b)(3) for linked quotas, NMFS will file for publication with the Office of the Federal Register a notice of closure for all of the species and/or management groups in a linked group that will be effective no fewer than 5 days from date of filing. From the effective date and time of the closure until NMFS announces, via the publication of a notice in the **Federal Register**, that additional quota is available and the season is reopened, the fisheries for all linked species and/or management groups are closed, even across fishing years. The linked quotas of the species and/or management groups are Atlantic hammerhead sharks and Atlantic aggregated LCS; eastern Gulf of Mexico hammerhead sharks and eastern Gulf of Mexico aggregated LCS; western Gulf of Mexico hammerhead sharks and western Gulf of Mexico

aggregated LCS; and Atlantic blacknose and Atlantic non-blacknose SCS south of 34° N. latitude. NMFS may close the fishery for the Gulf of Mexico blacktip shark before landings reach, or are expected to reach, 80 percent of the quota, after considering the criteria listed at § 635.28(b)(5).

NMFS determined that the final rules to implement Amendment 2 to the 2006 Consolidated HMS FMP (June 24, 2008, 73 FR 35778; corrected on July 15, 2008, 73 FR 40658), Amendment 5a to the 2006 Consolidated HMS FMP (78 FR 40318; July 3, 2013), and Amendment 6 to the 2006 Consolidated HMS FMP are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of coastal states on the Atlantic including the Gulf of Mexico and the Caribbean Sea. Pursuant to 15 CFR 930.41(a), NMFS provided the Coastal Zone Management Program of each coastal state a 60-day period to review the consistency determination and to advise the Agency of their concurrence. NMFS received concurrence with the consistency determinations from several states and inferred consistency from those states that did not respond within the 60-day time period. This proposed action to establish opening dates and adjust quotas for the 2016 fishing season for the Atlantic commercial shark fisheries does not change the framework previously consulted upon; therefore, no additional consultation is required.

Request for Comments

Comments on this proposed rule may be submitted via *http://www.regulations.gov* and mail. NMFS solicits comments on this proposed rule by September 17, 2015 (see **DATES** and **ADDRESSES**). In addition to comments on the entire rule, NMFS is specifically requesting comments on the proposed 3-year adjustment for the blacknose shark quota in the Atlantic Region to account for the overharvest of blacknose sharks in 2015. NMFS is proposing to spread the overharvested amount over a 3-year period (2016 to 2018) to reduce impacts on the blacknose shark and non-blacknose SCS fisheries, which are linked fisheries in the Atlantic region south of 34° N. latitude. Since the overharvested quota would be spread over 3 years in addition to the 2012 overharvest reduction which continues through 2018, the Atlantic blacknose shark quota would be reduced by 1.5 mt dw (3,221 lb dw) in 2016 and the adjusted quota would be 15.7 mt dw (34,700 lb dw). If additional overharvest occurs, the adjusted blacknose shark quota could be further reduced to account for this potential overharvest. If NMFS accounted for the full 2015 overharvest amount in the 2016 quota in addition to the 2012 overharvest reduction, the blacknose shark quota would be reduced by 3.4 mt dw (7,439 lb dw) and the adjusted quota would be 13.8 mt dw (30,482 lb dw), which could result in an early fishery closure in the Atlantic region south of 34° N. latitude and have adverse impacts for blacknose and non-blacknose fishermen and dealers. This second scenario would not have any 2015 overharvest impacts beyond 2016.

Public Hearings

Public hearings on this proposed rule are not currently scheduled. If you would like to request a public hearing, please contact Guý DuBeck or Karyl Brewster-Geisz by phone at 301–427–8503.

Classification

The NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

These proposed specifications are exempt from review under Executive Order 12866.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. The IRFA analysis follows.

Section 603(b)(1) of the RFA requires Agencies to explain the purpose of the rule. This rule, consistent with the Magnuson-Stevens Act and the 2006 Consolidated HMS FMP and its amendments, is being proposed to establish the 2016 commercial shark fishing quotas and fishing seasons. Without this rule, the commercial shark fisheries would close on December 31, 2015, and would not open until another action was taken. This proposed rule would be implemented according to the regulations implementing the 2006 Consolidated HMS FMP and its amendments. Thus, NMFS expects few, if any, economic impacts to fishermen other than those already analyzed in the 2006 Consolidated HMS FMP and its amendments, based on the quota adjustments.

Section 603(b)(2) of the RFA requires Agencies to explain the rule's objectives. The objectives of this rule are to: Adjust the baseline quotas for all Atlantic shark management groups based on any over- and/or underharvests from the previous fishing year(s) and to establish the opening dates of the various management groups in order to provide, to the extent practicable, equitable opportunities across the fishing management regions and/or sub-regions while also considering the ecological needs of the different shark species.

Section 603(b)(3) of the RFA requires Federal agencies to provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States, including fish harvesters. The SBA size standards are $20.5 million for finfish fishing, $5.5 million for shellfish fishing, and $7.5 million for other marine fishing, for-hire businesses, and marinas (79 FR 33467; June 12, 2014). NMFS considers all HMS permit holders to be small entities because they had average annual receipts of less than $20.5 million for finfish-harvesting. The commercial shark fisheries are comprised of fishermen who hold shark directed or incidental limited access permits and the related shark dealers, all of which NMFS considers to be small entities according to the size standards set by the SBA. The proposed rule would apply to the approximately 208 directed commercial shark permit holders, 255 incidental commercial shark permit holders, and 100 commercial shark dealers as of July 2015. NMFS solicits public comment on the IRFA.

This proposed rule does not contain any new reporting, recordkeeping, or other compliance requirements (5 U.S.C. 603(b)(4)). Similarly, this proposed rule would not conflict, duplicate, or overlap with other relevant Federal rules (5 U.S.C. 603(b)(5)). Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements as domestically implemented, domestic laws, and FMPs. These include, but are not limited to, the Magnuson-Stevens Act, the Atlantic Tunas Convention Act, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act.

Section 603(c) of the RFA requires each IRFA to contain a description of any significant alternatives to the proposed rule which would accomplish the stated objectives of applicable statutes and minimize any significant economic impact of the proposed rule on small entities. Additionally, the RFA (5 U.S.C.603 (c)(1)–(4)) lists four general

categories of significant alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and, (4) exemptions from coverage of the rule for small entities. In order to meet the objectives of this proposed rule, consistent with the Magnuson-Stevens Act, NMFS cannot exempt small entities or change the reporting requirements only for small entities because all the entities affected are considered small entities; therefore, there are no alternatives discussed that fall under the first, third, and fourth categories described above. NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act; therefore, there are no alternatives considered under the third category.

This rulemaking does not establish management measures to be implemented, but rather implements previously adopted and analyzed measures with adjustments, as specified in the 2006 Consolidated HMS FMP and its amendments and the Environmental Assessment (EA) that accompanied the 2011 shark quota specifications rule (75 FR 76302; December 8, 2010). Thus, NMFS proposes to adjust quotas established and analyzed in the 2006 Consolidated HMS FMP and its amendments by subtracting the underharvest or adding the overharvest as allowable. Thus, NMFS has limited flexibility to modify the quotas in this rule, the impacts of which were analyzed in previous regulatory flexibility analyses.

Based on the 2014 ex-vessel price, fully harvesting the unadjusted 2016 Atlantic shark commercial baseline quotas could result in total fleet revenues of $4,583,514 (see Table 2). For the Gulf of Mexico blacktip shark management group, NMFS is proposing to increase the baseline sub-regional quotas due to the underharvests in 2015. The increase for the eastern Gulf of Mexico blacktip shark management group could result in a $8,413 gain in total revenues for fishermen in that sub-region, while the increase for the western Gulf of Mexico blacktip shark management group could result in a $77,432 gain in total revenues for fishermen in that sub-region. For the Gulf of Mexico non-blacknose SCS management group, NMFS is proposing to reduce the baseline quota due to the overharvest in 2014. This would cause a potential loss in revenue of $7,571 for the fleet in the Gulf of Mexico region. For the Atlantic blacknose shark management group, NMFS will continue to reduce the baseline quota through 2018 to account for overharvest in 2012 and is proposing to reduce the baseline quota for the next 3 years to account for overharvest in 2015. These reductions would cause a potential loss in revenue of $3,157 for the fleet in the Atlantic region.

All of these changes in gross revenues are similar to the changes in gross revenues analyzed in the 2006 Consolidated HMS FMP and its amendments. The FRFAs for those amendments concluded that the economic impacts on these small entities are expected to be minimal. In the 2006 Consolidated HMS FMP and its amendments and the EA for the 2011 shark quota specifications rule, NMFS stated it would be conducting annual rulemakings and considering the potential economic impacts of adjusting the quotas for under- and overharvests at that time.

TABLE 2—AVERAGE EX-VESSEL PRICES PER LB DW FOR EACH SHARK MANAGEMENT GROUP, 2014

Region	Species	Average ex-vessel meat price	Average ex-vessel fin price
Gulf of Mexico	Blacktip Shark	$0.50	$9.53
	Aggregated LCS	0.54	10.04
	Hammerhead Shark	0.48	10.21
	Non-Blacknose SCS	0.36	5.84
	Blacknose Shark	0.86	5.84
Atlantic	Aggregated LCS	0.75	4.19
	Hammerhead Shark	0.57	2.33
	Non-Blacknose SCS	0.74	4.00
	Blacknose Shark	0.78	4.00
No Region	Shark Research Fishery (Aggregated LCS)	0.58	7.68
	Shark Research Fishery (Sandbar only)	0.69	10.12
	Blue shark	0.67	2.34
	Porbeagle shark	1.41	2.34
	Other Pelagic sharks	1.41	2.34

For this rule, NMFS also reviewed the criteria at § 635.27(b)(3) to determine when opening each fishery would provide equitable opportunities for fishermen while also considering the ecological needs of the different species. The opening of the fishing season could vary depending upon the available annual quota, catch rates, and number of fishing participants during the year. For the 2016 fishing season, NMFS is proposing to open all of the shark management groups on the effective date of the final rule for this action (expected to be on or about January 1). The direct and indirect economic impacts would be neutral on a short- and long-term basis, because NMFS is not proposing to change the opening dates of these fisheries from the status quo, except for aggregated LCS and hammerhead sharks in the Atlantic.

Opening the aggregated LCS and hammerhead shark management groups in the Atlantic region on the effective date of the final rule for this action (expected to be on or about January 1) would result in short-term, direct, moderate, beneficial economic impacts, as fishermen and dealers in the southern portion of the Atlantic region would be able to fish for aggregated LCS and hammerhead sharks starting on or about January. These fishermen would be able to fish earlier in the 2016 fishing season compared to the 2010, 2011, 2012, 2014, and 2015 fishing seasons, which did not start until June or July. These fishermen commented during the public comment

period for the past shark specification rulemakings and Amendment 6 to the 2006 Consolidated HMS FMP that they felt that opening the fishery in July was not fair to them because, by July, the sharks have migrated north and are no longer available. With the implementation of the HMS electronic reporting system in 2013, NMFS now monitors the quota on a more real-time basis compared to the paper reporting system that was in place before 2013. This ability, along with the inseason adjustment criteria in § 635.24(a)(8), should allow NMFS the flexibility to further provide equitable fishing opportunities for fishermen across all regions, to the extent practicable. Depending on how quickly the quota is being harvested, NMFS could reduce the retention limits to ensure that fishermen farther north have sufficient quota for a fishery later in the 2016 fishing season. The direct impacts to shark fishermen in the Atlantic region of reducing the trip limit would depend on the needed reduction in the trip limit and the timing of such a reduction. Therefore, such a reduction in the trip limit is only anticipated to have minor adverse direct economic impacts to fishermen in the short-term; long-term impacts are not anticipated as these reductions would not be permanent.

In the northern portion of the Atlantic region, a potential January 1 opening for the aggregated LCS and hammerhead shark management groups, with inseason trip limit adjustments to ensure quota is available later in the season, would have direct, minor, beneficial economic impacts in the short-term for fishermen as they would potentially have access to the aggregated LCS and hammerhead shark quotas earlier than in past seasons. Fishermen in this area have stated that, depending on the weather, some aggregated LCS species might be available to retain in January. Thus, fishermen would be able to target or retain aggregated LCS while targeting non-blacknose SCS. There would be indirect, minor, beneficial economic impacts in the short- and long-term for shark dealers and other entities that deal with shark products in this region as they would also have access to aggregated LCS products earlier than in past seasons. Thus, opening the aggregated LCS and hammerhead shark management groups in January and using inseaon trip limit adjustments to ensure a fishery later in the year in 2016 would cause beneficial cumulative economic impacts, since it would allow for a more equitable distribution of the quotas among constituents in this region, which was the original intent of Amendments 2 and 6.

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

Dated: August 6, 2015.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2015–19915 Filed 8–17–15; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 80, No. 159
Tuesday, August 18, 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

Rural Housing Service

Notice of Solicitation of Applications (NOSA) for the Multifamily Preservation and Revitalization (MPR) Demonstration Program Under Section 514, Section 515, and Section 516 for Fiscal Year 2015

AGENCY: Rural Housing Service, USDA.

ACTION: Notice; Correction.

SUMMARY: This document revises five items in the initial notice that appeared in the **Federal Register** on August 3, 2015, entitled ''Notice of Solicitation of Applications (NOSA) for the Multifamily Preservation and Revitalization (MPR) Demonstration Program under Section 514, Section 515, and Section 516 for Fiscal Year 2015.'' These items include an application deadline, three Web sites addresses, and a clarification.

DATES: This document is effective August 18, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Greenwalt, *dean.greenwalt@wdc.usda.gov,* (314) 457–5933, and/or Abby Boggs *abby.boggs@wdc.usda.gov,* (615) 783–1382, Finance and Loan Analyst, Multi-Family Housing Preservation and Direct Loan Division, STOP 0782, (Room 1263–S) U.S. Department of Agriculture, Rural Development, 1400 Independence Avenue SW., Washington, DC 20250–0782.

SUPPLEMENTARY INFORMATION: In FR Doc. 2015–19880 of August 3, 2015 (80 FR 45933), make the following corrections:

1. On page 45933, in the third column, under **DATES**: item (1), remove ''120 calendar days after August 3, 2015,'' and add ''December 1, 2015,'' in its place.

2. On page 45934, in the third column, under Section I.A.1, in the fourth sentence, remove the Web site address listed as ''*http://teamrrd.usda.gov/rd/emp_services/directory/states/Combined.doc''* and add ''*http://www.rd.usda.gov/contact-us/state-offices''* in its place.

3. On page 45937, in third column, under Section IV.B.2, in the second paragraph, last sentence, remove the Web site address listed as ''*http://teamrrd.usda.gov/rd/emp_services/directory/states/Combined.doc''* and add ''*http://www.rd.usda.gov/contact-us/state-offices''* in its place.

4. On page 45941, in the second column, under Section VI.C, in the second sentence, remove ''If no offer is made,'' and add ''If no offer is made or if the applicant fails to accept or reject the offer presented,'' in its place.

5. On page 45941, in the third column, under Section VIII, in the first sentence, remove the Web site address listed as ''*http://teamrrd.usda.gov/rd/emp_services/directory/states/Combined.doc''* and add ''*http://www.rd.usda.gov/contact-us/state-offices''* in its place.

Dated: August 11, 2015.

Tony Hernandez,

Administrator, Rural Housing Service.

[FR Doc. 2015–20399 Filed 8–17–15; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–93–2015]

Approval of Subzone Status; Toyota Motor Manufacturing Alabama, Inc.; Huntsville, Alabama

On June 19, 2015, the Acting Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Huntsville-Madison County Airport Authority, grantee of FTZ 83, requesting subzone status subject to the existing activation limit of FTZ 83 on behalf of Toyota Motor Manufacturing Alabama, Inc., in Huntsville, Alabama.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (80 FR 36506, 06–25–2015). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval.

Pursuant to the authority delegated to the FTZ Board's Executive Secretary (15 CFR Sec. 400.36(f)), the application to establish Subzone 83E is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 83's 2,000-acre activation limit.

Dated: August 12, 2015.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2015–20386 Filed 8–17–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–119–2015]

Foreign-Trade Zone 79—Tampa, Florida; Application for Subzone, Swisscosmet Corporation, New Port Richey, Florida

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Tampa, grantee of FTZ 79, requesting subzone status for the facility of Swisscosmet Corporation located in New Port Richey, Florida. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on August 12, 2015.

The proposed subzone (0.0187 acres) is located at 5540 Rowan Road in New Port Richey (Pasco County). The proposed subzone would be subject to the existing activation limit of FTZ 79. No authorization for production activity has been requested at this time.

In accordance with the Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 28, 2015. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to October 13, 2015.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room

21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: August 12, 2015.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2015–20388 Filed 8–17–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–53–2015]

Application for Additional Production Authority; The Coleman Company, Inc.; Subzone 119I; (Textile-Based Personal Flotation Devices) Sauk Rapids, Minnesota

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by The Coleman Company, Inc. (Coleman), operator of Subzone 119I, requesting additional production authority for its facility located in Sauk Rapids, Minnesota. The application conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.23) was docketed on August 12, 2015.

The Coleman facility (252 employees) is located at 1100 Stearns Drive, Sauk Rapids, Minnesota. The facility is used for the production of personal flotation devices and cushions constructed with textile fabrics. Coleman requested FTZ production authority in a notification proceeding (15 CFR 400.22) in 2014 (see 79 FR 18509–18510, 4–2–2014; Doc. B–31–2014). After an initial review, the requested production authority was approved subject to a restriction that precludes inverted tariff benefits on foreign textile fabrics and cases/bags of textile materials used in production of personal flotation devices and cushions for U.S. consumption.

The pending application seeks to remove the above-mentioned restriction and to add several new components to Coleman's scope of authority by requesting authority for Coleman to choose the duty rate during customs entry procedures that applies to personal flotation devices (4.5%, 7.0%) and flotation cushions (6.0%) for the foreign status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment. The request indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

Components and materials sourced from abroad (representing 16% of the value of the finished products) include: Water soluble sensing elements; plastic carry bags; nylon and polyester woven fabrics; webbing of man-made fibers; neoprene fabrics; and, knit polyester fleece fabrics (duty rate ranges from 5 to 20%).

In accordance with the FTZ Board's regulations, Pierre Duy of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is October 19, 2015. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to November 2, 2015.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Pierre Duy at *Pierre.Duy@trade.gov* (202) 482–1378.

Dated: August 12, 2015.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2015–20385 Filed 8–17–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–32–2015]

Authorization of Production Activity; Foreign-Trade Zone 83; Toyota Motor Manufacturing Alabama, Inc., (Motor Vehicle Engines and Transmissions); Huntsville, Alabama

On April 14, 2015, Toyota Motor Manufacturing Alabama, Inc., an operator of FTZ 83, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board for its facility in Huntsville, Alabama.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (80 FR 27286, 5–13–2015). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: August 12, 2015.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2015–20389 Filed 8–17–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–970]

Multilayered Wood Flooring From the People's Republic of China: Correction to the Final Results of Antidumping Duty Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian or William Horn, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6412 or (202) 482–2615, respectively.

SUPPLEMENTARY INFORMATION: On July 15, 2015, the Department of Commerce (''Department'') published the final results of the 2012–2013 administrative review of the antidumping duty order on multilayered wood flooring from the People's Republic of China.[1] The period of review (''POR'') is December 1, 2012, through November 30, 2013. The Department is issuing this notice to correct an inadvertent error in the *Final Results.* Specifically, the Department initiated a review of Jianfeng Wood (Suzhou) Co., Ltd. (''Jianfeng''),[2] and the company listed in the *Final Results* is also Jianfeng, however, the record reflects that the correct company name, and the company to which the Department assigned a separate rate, is Jiafeng Wood (Suzhou) Co., Ltd.

[1] *See Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013,* 80 FR 4476 (July 15, 2015) (''*Final Results*'').

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 79 FR 6147 (February 3, 2014).

(''Jiafeng'').[3] Accordingly, we intended to include Jiafeng, not Jianfeng, in the list of companies that received a separate rate during the POR as identified in our *Final Results.*[4]

This correction to the final results of administrative review is issued and published in accordance with sections 751(h) and 777(i) of the Tariff Act of 1930, as amended.

Dated: August 11, 2015.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2015–20390 Filed 8–17–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–951]

Certain Woven Electric Blankets From the People's Republic of China: Final Results of Sunset Review and Revocation of Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On July 1, 2015, the Department of Commerce (''the Department'') initiated the first sunset review of the antidumping duty order on certain woven electric blankets from the People's Republic of China (''PRC'').[1] Because no domestic interested party filed a notice of intent to participate in response to the *Initiation Notice* by the applicable deadline, the Department is revoking the antidumping duty order on certain woven electric blankets from the PRC.

DATES: *Effective date:* August 18, 2015.

FOR FURTHER INFORMATION CONTACT: Drew Jackson, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4406.

SUPPLEMENTARY INFORMATION:

Background

On August 18, 2010, the Department published the antidumping duty order on certain woven electric blankets from the PRC.[2] On July 1, 2015, the Department initiated the sunset review on the antidumping duty order on certain woven electric blankets from the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act'').[3] We received no notice of intent to participate in response to the *Initiation Notice* from domestic interested parties by the applicable deadline.[4] As a result, the Department has concluded that no domestic party intends to participate in this sunset review.[5] On July 21, 2015, we notified the International Trade Commission, in writing, that we intend to revoke the antidumping duty order on certain woven blankets from the PRC.[6]

Scope of the Order

The scope of this order covers finished, semi-finished, and unassembled woven electric blankets, including woven electric blankets commonly referred to as throws, of all sizes and fabric types, whether made of man-made fiber, natural fiber or a blend of both. Semi-finished woven electric blankets and throws consist of shells of woven fabric containing wire. Unassembled woven electric blankets and throws consist of a shell of woven fabric and one or more of the following components when packaged together or in a kit: (1) Wire; (2) controller(s). The shell of woven fabric consists of two sheets of fabric joined together forming a ''shell.'' The shell of woven fabric is manufactured to accommodate either the electric blanket's wiring or a subassembly containing the electric blanket's wiring (*e.g.,* wiring mounted on a substrate).

A shell of woven fabric that is not packaged together, or in a kit, with either wire, controller(s), or both, is not covered by this investigation even though the shell of woven fabric may be dedicated solely for use as a material in the production of woven electric blankets.

The finished, semi-finished and unassembled woven electric blankets and throws subject to this order are currently classifiable under subheading 6301.10.0000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, only the written description of the scope is dispositive.

Revocation

Pursuant to section 751(c)(3)(A) of the Act and 19 CFR 351.218(d)(1)(iii)(B)(3), if no domestic interested party files a notice of intent to participate, the Department shall issue a final determination revoking the order within 90 days of the initiation of the review. Because no domestic interested party filed a timely notice of intent to participate in this sunset review, the Department finds that no domestic interested party is participating in this sunset review. Therefore, we are revoking the antidumping duty order on certain woven blankets from the PRC. Pursuant to 19 CFR 351.222(i)(2)(i), the effective date of revocation is August 18, 2015, the fifth anniversary of the order.[7]

Pursuant to section 751(c)(3)(A) and 751(d)(3) of the Act and 19 CFR 351.222(i)(2)(i), the Department intends to issue instructions to U.S. Customs and Border Protection (''CBP'') to terminate the suspension of liquidation of and discontinue the collection of cash deposits on entries of the merchandise subject to the order which were entered, or withdrawn from warehouse, for consumption on or after August 18, 2015. Entries of subject merchandise prior to August 18, 2015, will continue to be subject to the suspension of liquidation and requirements for deposits of estimated antidumping duties. The Department will conduct administrative reviews of the order with respect to subject merchandise entered prior to the effective date of revocation if it receives appropriately filed requests for review.

These final results of this five-year (sunset) review and notice are published in accordance with sections 751(c) and 777(i)(1) of the Act.

Dated: August 11, 2015.

Paul Piquado,

Assistant Secretary, for Enforcement and Compliance.

[FR Doc. 2015–20393 Filed 8–17–15; 8:45 am]

BILLING CODE 3510–DS–P

[3] *See* April 3, 2014 Separate Rate Certification for Jiafeng Wood (Suzhou) Co., Ltd. (''Jiafeng'').

[4] Note that the Department has also placed a memorandum on the file clarifying how it will instruct U.S. Customs and Border Protection with respect to certain other companies covered by this review. *See* ''Memorandum Regarding Company Names in Final Results'' (August 6, 2015). This clarification is consistent with the names of the companies as published in the *Final Results,* and the Department is not correcting anything in the *Final Results* with respect to those companies.

[1] *See Initiation of Five-Year (''Sunset'') Review,* 80 FR 37586 (July 1, 2015) (''*Initiation Notice*'').

[2] *See Antidumping Duty Order: Certain Woven Electric Blankets from the People's Republic of China,* 75 FR 50991 (August 18, 2010) (''*Order*'').

[3] *See Initiation Notice.*

[4] *See* 19 CFR 351.218(d)(1)(i).

[5] *See* 19 CFR 351.218(d)(1)(iii)(A).

[6] *See* 19 CFR 351.218(d)(1)(iii)(B)(2).

[7] *See Order.*

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE107

Mid-Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC) Scientific and Statistical Committee's (SSC) Scientific Uncertainty Subcommittee will hold a public meeting.

DATES: The meeting will be held on Thursday, September 10, 2015, from 9 a.m. to 5 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held at the Double Tree by Hilton Baltimore–BWI Airport, 890 Elkridge Landing Road, Linthicum, MD 21090; telephone: (410) 859–8400.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to conduct a peer review of a scientific analysis submitted to the SSC at its July 2015 meeting concerning the use of data limited methods to specify the overfishing limit and acceptable biological catch for the northern stock (Cape Hatteras, North Carolina to Maine) of black sea bass (Centropristis striata). Pending the results of this review, this information/analysis may be used by the SSC in setting catch limits for this species for the fishing years 2016–17.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: August 13, 2015.

Tracey L. Thompson,

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

[FR Doc. 2015–20339 Filed 8–17–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Alaska Pacific Halibut & Sablefish Fisheries: Individual Fishing Quota Cost Recovery Program.

OMB Control Number: 0648–0398.

Form Number(s): None.

Type of Request: Regular (extension of a currently approved information collection).

Number of Respondents: 2,184.

Average Hours per Response: IFQ Registered Buyer Ex-vessel Value and Volume Report, 13 hours; IFQ Registered Buyer Ex-vessel Value and Volume Report, 2 hours if on paper, 5 minutes if online.

Burden Hours: 240.

Needs and Uses: This request is for extension of a currently approved information collection. The purpose of the IFQ fee is to recover actual costs incurred in managing and enforcing the IFQ Program (75%) and to make funds available for Congress to appropriate for support of the North Pacific IFQ Loan Program (25%).

An IFQ permit holder incurs a cost recovery fee liability for every pound of IFQ halibut and IFQ sablefish that is landed under his or her IFQ permit(s). The IFQ permit holder is responsible for self-collecting the fee liability for all IFQ halibut and IFQ sablefish landings on his or her permit(s). Fees must be collected at the time of a legal landing of halibut or sablefish, filing of a landing report, or sale of such fish during a fishing season or in the last quarter of the calendar year in which the fish is harvested.

Affected Public: Business or other for-profit organizations; individuals or households.

Frequency: Annually.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: August 13, 2015.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2015–20331 Filed 8–17–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE110

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its *Groundfish* Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Thursday, September 3, 2015 at 9:30 a.m.

ADDRESSES:

Meeting address: The meeting will be held at the Hilton Garden Inn, 100 Boardman Street, Boston, MA 02128; Phone: (617) 567–6789; Fax: (617) 561–0798.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

The items of discussion on the agenda are:

The committee will discuss Framework Adjustment 55 (FW55): (a) Receive an update on the development of FW55/specifications and the addition of a sector, (b) receive an overview of the Transboundary Resource Assessment Committee Assessments for Eastern Georges Bank (EGB) cod, EGB Haddock and Georges Bank yellowtail flounder, (c) review analysis from the Groundfish Plan Development Team (PDT), (d) discuss recommendations to the Council. The committee will receive an update on the development of the At-

Sea Monitoring Framework Adjustment and a review analysis from the PDT then discuss recommendations to the council. They will also receive an overview of the Amendment 18 (A18) Public Hearings and develop if necessary final recommendations to the council on preferred alternatives in A18. The committee also plans to discuss concerns raised by the recreational fishery regarding Gulf of Maine cod and haddock. Additionally, they will discuss enforcement concerns for the Groundfish Fishery on EGB in order to improve identification of the separator panel within the trawl net and discuss recommendations to the council. They will also discuss other business as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: August 13, 2015.

Tracey L. Thompson,

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

[FR Doc. 2015–20341 Filed 8–17–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE117

Groundfish Operational Assessment Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: NMFS and the Northeast Regional Stock Assessment Workshop (SAW) will convene a peer review of Operational Stock Assessments of twenty fish stocks. These stocks are managed by the New England Fishery Management Council and are included within the Northeast Multispecies Fishery Management Plan. This will be a formal, scientific peer review of operational assessments which incorporate recent data. Results of the review will be used as a basis for management decisions for fish stocks in U.S. waters of the northwest Atlantic. Assessments are prepared by stock assessment scientists primarily from the Northeast Fisheries Science Center and reviewed by a panel of stock assessment experts. The public is invited to attend the presentations and discussions by reviewers and scientists who have participated in the stock assessment process.

DATES: The public portion of the Stock Assessment Review Committee Meeting will be held from September 14, 2015 through September 18, 2015. The meeting will commence on September 14, 2015 at 10 a.m. Eastern Daylight Time. Please see **SUPPLEMENTARY INFORMATION** for the daily meeting agenda.

ADDRESSES: The meeting will be held in the S.H. Clark Conference Room in the Aquarium Building of the National Marine Fisheries Service, Northeast Fisheries Science Center (NEFSC), 166 Water Street, Woods Hole, MA 02543.

FOR FURTHER INFORMATION, CONTACT: Sheena Steiner, 508–495–2177; email: *sheena.steiner@noaa.gov;* or, James Weinberg, 508–495–2352; email: *james.weinberg@noaa.gov*

SUPPLEMENTARY INFORMATION: For further information, please visit the NEFSC Web site at *http://www.nefsc.noaa.gov/.*

Daily Meeting Agenda—Operational Assessments for 20 Groundfish Stocks *

Monday, September 14

10–10:30 a.m.
Welcome
Introductions
10:30 a.m.–6 p.m.
Gulf of Maine Cod
Georges Bank Cod
Gulf of Maine Haddock

Tuesday, September 15

8:30 a.m.–6 p.m.
Georges Bank Haddock
Cape Cod/Gulf of Maine Yellowtail Flounder
Southern New England/Mid-Atlantic Yellowtail Flounder
Georges Bank Winter Flounder
Southern New England/Mid-Atlantic Winter Flounder

Wednesday, September 16

8:30 a.m.–6 p.m.
Acadian Redfish
American Plaice
Witch Flounder
White Hake

Thursday, September 17

8:30 a.m.–6 p.m.
Pollock
Wolffish
Atlantic Halibut
Gulf of Maine/Georges Bank Windowpane
Southern New England/Mid-Atlantic Windowpane
Ocean Pout
Gulf of Maine Winter Flounder
Georges Bank Yellowtail Flounder

Friday, September 18

9 a.m.–5 p.m.—Assessment Report Writing

* Subject to Change

Special Accommodations

This meeting is physically accessible to people with disabilities. Special requests should be directed to Sheena Steiner at the NEFSC, 508–495–2177, at least 5 days prior to the meeting date.

Dated: August 13, 2015.

Tracey L. Thompson,

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

[FR Doc. 2015–20322 Filed 8–17–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE112

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will hold a two-day meeting of its Standing and Special Reef Fish Scientific and Statistical Committee (SSC).

DATES: The meeting will be held on Tuesday and Wednesday, September 1–2, 2015, starting at 1 p.m. on Tuesday and at 8:30 a.m. on Wednesday, and will end at approximately 3 p.m. on Wednesday.

ADDRESSES: The meeting will be held at the Hilton Westshore Tampa Airport Hotel, 2225 N. Lois Avenue, Tampa, FL 33607; telephone: (813) 877–6688.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; *steven.atran@gulfcouncil.org,* telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Agenda

The Chairman will start the meeting with introductions and adoption of the agenda, and will hold elections for a new chair and vice-chair. The Committee will then review and approve the minutes from the May 20, 2015 Standing and Special Reef Fish SSC meeting. The Committee will receive a report from the Southeast Fisheries Science Center (SEFSC) on the SEDAR 42 Red Grouper Benchmark Assessment. If the Committee accepts the assessment and sufficient information is available, the Committee will recommend overfishing limits (OFL) and acceptable biological catch (ABC) levels for red grouper. The Committee will discuss best practices for constant catch Acceptable Biological Catch (ABC) projections, and will recommend a constant catch ABC for the west Florida shelf stock of hogfish based on analysis provided by the Florida Fish and Wildlife Research Institute. The Committee will also receive a report from the SEFSC on the SEDAR 43 Gray Triggerfish Standard Assessment. If the Committee accepts the assessment and sufficient information is available, the Committee will recommend overfishing limits (OFL) and acceptable biological catch (ABC) levels for gray triggerfish. The Committee will review and discuss best practices for determining the number of years to provide Overfishing Limits (OFL) and ABC projections. They will review and approve the terms of reference for a review of an upcoming SEDAR 47 Goliath Grouper Standard Assessment, and will select two SSC members to participate as the Chair and Reviewer at the Review Workshop. The Committee will receive a report on Integrated Ecosystem Assessment and Management Strategy Evaluation as it pertains to single-species assessments. Finally, the Committee will review the SEDAR Assessment Schedule and tentative meeting dates for 2016 SSC meetings; and will discuss of Other Business, if any.

Meeting Adjourns

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on the Council's file server. To access the file server, the URL is *https://public.gulfcouncil.org:5001/webman/index.cgi,* or go to the Council's Web site and click on the FTP link in the lower left of the Council Web site (*http://www.gulfcouncil.org*). The username and password are both ''gulfguest''. Click on the ''Library Folder'', then scroll down to ''SSC meeting-2015–09''.

The meeting will be webcast over the internet. A link to the webcast will be available on the Council's Web site, *http://www.gulfcouncil.org.*

Although other non-emergency issues not on the agenda may come before the Scientific and Statistical Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Scientific and Statistical Committee will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Gulf Council Office (see **ADDRESSES**), at least 5 working days prior to the meeting.

Dated: August 13, 2015.

Tracey L. Thompson,

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

[FR Doc. 2015–20311 Filed 8–17–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE091

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Whiting Oversight Committee and Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Thursday, September 10, 2015 at 10 a.m.

ADDRESSES:

Meeting address: The meeting will be held at the Hampton Inn, 2100 Post Road, Warwick, RI 02886; telephone: (401) 739–8888; fax: (401) 739–1550.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Committee will review the 2015 Annual Monitoring Report produced by the Whiting Plan Development Team and a draft scoping document for Amendment 22 to develop limited access alternatives. Other business may be discussed if time permits.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: August 13, 2015.

Tracey L. Thompson,

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

[FR Doc. 2015–20338 Filed 8–17–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE109

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its

Groundfish Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, September 2, 2015 at 9:30 a.m.

ADDRESSES:

Meeting address: The meeting will be held at the Hilton Garden Inn, 100 Boardman Street, Boston, MA 02128; phone: (617) 567–6789; fax: (617) 561–0798.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion on the agenda are:

The Advisory Panel plans to discuss Framework Adjustment 55 (FW55): (a) Receive an update on the development of FW55/specifications and the addition of a sector, (b) receive an overview of Transboundary Resource Assessment Committee Assessments for Eastern Georges Bank (EGB) cod, EGB Haddock and Georges Bank yellowtail flounder, (c) discuss recommendations for the Groundfish Committee. The panel will receive an update on the development of the At-Sea Monitoring Framework Adjustment and discuss recommendations to the Groundfish Committee. They will also receive and overview of the Amendment 18 (A18) Public Hearings and develop if necessary final recommendations to the Groundfish Committee on preferred alternatives in A18. Additionally, they will discuss enforcement concerns for the groundfish fishery on EGB in order to improve identification of the separator panel within the trawl net and discuss recommendations to the Groundfish Committee. They will also discuss other business as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: August 13, 2015.

Tracey L. Thompson,

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

[FR Doc. 2015–20340 Filed 8–17–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE082

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Scientific and Statistical Committee (SSC) to review stock projections and consider fishing level recommendations for blueline tilefish.

DATES: The SSC meeting will be held via webinar on Wednesday, September 9, 2015, from 1 p.m. to 3 p.m.

ADDRESSES:

Meeting address: The meetings will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact John Carmichael at the Council office (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of the webinar.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: John Carmichael; 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *john.carmichael@safmc.net*

SUPPLEMENTARY INFORMATION: This meeting is held to review yield and stock status projections for blueline tilefish, and consider fishing level recommendations. The SSC reviewed the SEDAR 32 blueline tilefish stock assessment in October 2013 and revised projections in April 2014 and June 2015. The SSC requested additional projections in June 2015; these will be reviewed at this meeting.

Items to be addressed during this meeting:

1. Blueline Tilefish Stock Projections
2. Blueline Tilefish Fishing Level Recommendations

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: August 13, 2015.

Tracey L. Thompson,

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

[FR Doc. 2015–20337 Filed 8–17–15; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 15–C0006]

Johnson Health Tech Co. Ltd. and Johnson Health Tech North America, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Johnson Health Tech Co. Ltd. and Johnson Health Tech North America, Inc. containing a civil penalty in the amount of three million dollars ($3,000,000), within thirty (30) days of service of the Commission's final Order accepting the Settlement Agreement.[1]

[1] The Commission voted (3–2) to provisionally accept the Settlement Agreement and Order regarding Johnson Health Tech Co., Ltd. and Johnson Health Tech North America, Inc. Chairman Kaye, Commissioner Adler and Commissioner

Continued

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by September 2, 2015.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 15–C0006 Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Gregory M. Reyes, Trial Attorney, Office of the General Counsel, Division of Compliance, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7220.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: August 13, 2015.

Todd A. Stevenson,

Secretary.

United States Of America Consumer Product Safety Commission

In the Matter of: JOHNSON HEALTH TECH CO. LTD. and JOHNSON HEALTH TECH NORTH AMERICA, INC.
CPSC Docket No.: *15–C0006*

Settlement Agreement

1. In accordance with the Consumer Product Safety Act, 15 U.S.C. 2051–2089 (''CPSA'') and 16 CFR 1118.20, Johnson Health Tech Co. Ltd. (''JHT'') and Johnson Health Tech North America, Inc. (''JHTNA'') (collectively, ''Johnson Health Tech''), and the United States Consumer Product Safety Commission (''Commission''), through its staff, hereby enter into this Settlement Agreement (''Agreement''). The Agreement, and the incorporated attached Order, resolve staff's charges set forth below.

The Parties

2. The Commission is an independent federal regulatory agency, established pursuant to, and responsible for the enforcement of, the CPSA, 15 U.S.C. 2051–2089. By executing the Agreement, staff is acting on behalf of the Commission, pursuant to 16 CFR 1118.20(b). The Commission issues the Order under the provisions of the CPSA.

3. JHT is a Taiwanese corporation with its principal office located at #999, Sec. 2, DongDa Rd., Ta-Ya Dist. Taichung City, 428, Taiwan.

4. JHTNA is a corporation, organized and existing under the laws of the state of Wisconsin, with its principal place of business in Cottage Grove, Wisconsin.

Staff Charges

5. Between September 2011 and December 2012, JHTNA imported and sold approximately 3,025 Matrix Fitness Ascent Trainers and Elliptical Trainers (''Trainers'') in the United States. JHT manufactured the Trainers.

6. The Trainers are a ''consumer product,'' ''distributed in commerce,'' as those terms are defined or used in sections 3(a)(5) and (8) of the CPSA, 15 U.S.C. 2052(a)(5) and (8). Johnson Health Tech was a ''manufacturer'' and ''retailer'' of the Trainers, as such terms are defined in sections 3(a)(11) and (13) of the CPSA, 15 U.S.C. 2052(a)(11) and (13).

7. The Trainers contain a defect which could create a substantial product hazard and create an unreasonable risk of serious injury or death because moisture from perspiration or cleaning liquids can build up in the Trainers' power socket, causing a short circuit. This poses a fire hazard.

8. Between March 2012 and October 2013, Johnson Health Tech received incident reports of smoking, sparking, fire, and melted power components involving the Trainers. No property damage or injuries were reported.

9. In response to these incident reports, Johnson Health Tech implemented two design changes to remedy the defect and unreasonable risk of serious injury or death associated with the Trainers.

10. Despite having obtained information that the Trainers contained a defect or created an unreasonable risk, Johnson Health Tech did not notify the Commission immediately of such defect or risk, as required by sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. 2064(b)(3) and (4).

11. In failing to inform the Commission immediately about the Trainers, Johnson Health Tech knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4), as the term ''knowingly'' is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d).

12. Pursuant to section 20 of the CPSA, 15 U.S.C. 2069, Johnson Health Tech is subject to civil penalties for its knowing violation of section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4).

Response of Johnson Health Tech

13. This agreement does not constitute an admission by Johnson Health Tech to the staff's charges set forth in paragraphs 5 through 12 above, including, but not limited to, the charge that the Trainers contained a defect that could create a substantial product hazard or created an unreasonable risk of serious injury or death; that Johnson Health Tech failed to notify the Commission in a timely manner, in accordance with Section 15(b) of the CPSA, 15 U.S.C. 2064(b); and that there was any ''knowing'' violation of the CPSA as that term is defined in 15 U.S.C. 2069(d).

14. Johnson Health Tech enters into this Agreement to settle this matter without the delay and expense of litigation. Johnson Health Tech enters into this Agreement and agrees to pay the amount referenced below in compromise of the staff's charges.

15. JHTNA voluntarily notified the Commission in connection with the Trainers. JHTNA is not aware of any report of injury or property damage associated with the Trainers and reported issue but carried out a voluntary recall in cooperation with the Commission.

16. At all relevant times, JHTNA had a product safety compliance program, including dedicated quality control/product safety personnel and appropriate product safety testing.

Agreement of the Parties

17. Under the CPSA, the Commission has jurisdiction over the matter involving the Trainers and over JHTNA. JHT has agreed to a limited waiver of jurisdictional defenses solely for the purpose of entering into this Settlement Agreement.

18. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Johnson Health Tech or a determination by the Commission that Johnson Health Tech violated the CPSA's reporting requirements.

19. In settlement of staff's charges, and to avoid the cost, distraction, delay, uncertainty, and inconvenience of protracted litigation or other proceedings, Johnson Health Tech shall pay a civil penalty in the amount of three million dollars ($3,000,000) within thirty (30) calendar days after receiving service of the Commission's final Order accepting the Agreement. All payments to be made under the Agreement shall constitute debts owing to the United States and shall be made by electronic wire transfer to the United States via: *http://www.pay.gov* for allocation to and credit against the payment obligations of Johnson Health Tech under this Agreement. Failure to make such payment by the date

Robinson voted to provisionally accept the Settlement Agreement and Order. Commissioner Buerkle and Commissioner Mohorovic voted to reject the Settlement Agreement and Order.

specified in the Commission's final Order shall constitute Default.

20. All unpaid amounts, if any, due and owing under the Agreement shall constitute a debt due and immediately owing by Johnson Health Tech to the United States, and interest shall accrue and be paid by Johnson Health Tech at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b) from the date of Default until all amounts due have been paid in full (hereinafter ''Default Payment Amount'' and ''Default Interest Balance''). Johnson Health Tech shall consent to a Consent Judgment in the amount of the Default Payment Amount and Default Interest Balance, and the United States, at its sole option, may collect the entire Default Payment Amount and Default Interest Balance or exercise any other rights granted by law or in equity, including but not limited to referring such matters for private collection, and Johnson Health Tech agrees not to contest, and hereby waives and discharges any defenses to, any collection action undertaken by the United States or its agents or contractors pursuant to this paragraph. Johnson Health Tech shall pay the United States all reasonable costs of collection and enforcement under this paragraph, respectively, including reasonable attorney's fees and expenses.

21. After staff receives this Agreement executed on behalf of Johnson Health Tech, staff shall promptly submit the Agreement to the Commission for provisional acceptance. Promptly following provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the **Federal Register**, in accordance with the procedures set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the 16th calendar day after the date the Agreement is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

22. This Agreement is conditioned upon, and subject to, the Commission's final acceptance, as set forth above, and it is subject to the provisions of 16 CFR 1118.20(h). Upon the later of: (i) Commission's final acceptance of this Agreement and service of the accepted Agreement upon Johnson Health Tech, and (ii) the date of issuance of the final Order, this Agreement shall be in full force and effect and shall be binding upon the parties.

23. Effective upon the later of: (i) The Commission's final acceptance of the Agreement and service of the accepted Agreement upon Johnson Health Tech, and (ii) and the date of issuance of the final Order, for good and valuable consideration, Johnson Health Tech hereby expressly and irrevocably waives and agrees not to assert any past, present, or future rights to the following, in connection with the matter described in this Agreement: (i) An administrative or judicial hearing; (ii) judicial review or other challenge or contest of the Commission's actions; (iii) a determination by the Commission of whether Johnson Health Tech failed to comply with the CPSA and the underlying regulations; (iv) a statement of findings of fact and conclusions of law; and (v) any claims under the Equal Access to Justice Act.

24. JHTNA has, and shall maintain, a program designed to ensure compliance with the CPSA with respect to any consumer product imported, manufactured, distributed, or sold by JHTNA. This program contains, or will be modified to include, the following elements:

a. written standards and policies;
b. written procedures that provide for the appropriate forwarding to compliance personnel and the product hazard incident review committee of all information that may relate to, or impact, CPSA compliance including all reports and complaints involving consumer products, whether an injury is referenced or not;
c. a mechanism for confidential employee reporting of compliance-related questions or concerns to either a compliance officer or to another senior manager with authority to act as necessary;
d. effective communication of company compliance-related policies and procedures regarding the CPSA to all applicable employees through training programs or otherwise;
e. JHTNA senior management responsibility for CPSA compliance and for violations of the statutes and regulations enforced by the Commission;
f. board oversight of CPSA compliance; and
g. retention of all CPSA compliance-related records for at least five (5) years, and availability of such records to staff upon reasonable request.

25. JHTNA shall implement, maintain, and enforce a system of internal controls and procedures designed to ensure that, with respect to all consumer products imported, manufactured, distributed, or sold by JHTNA:

a. information required to be disclosed by JHTNA to the Commission is recorded, processed, and reported in accordance with applicable law;
b. all reporting made to the Commission is timely, truthful, complete, accurate, and in accordance with applicable law; and
c. prompt disclosure is made to JHTNA's management of any significant deficiencies or material weaknesses in the design or operation of such internal controls that are reasonably likely to affect adversely, in any material respect, JHTNA's ability to record, process, and report to the Commission in accordance with applicable law.

26. Upon reasonable request of staff, JHTNA shall provide written documentation of its internal controls and procedures, including, but not limited to, the effective dates of the procedures and improvements thereto. JHTNA shall cooperate fully and truthfully with staff and shall make available all non-privileged information and materials, and personnel deemed necessary by staff to evaluate JHTNA's compliance with the terms of the Agreement.

27. The parties acknowledge and agree that the Commission may publicize the terms of the Agreement and the Order.

28. Johnson Health Tech represents that the Agreement: (i) Is entered into freely and voluntarily, without any degree of duress or compulsion whatsoever; (ii) has been duly authorized; and (iii) constitutes the valid and binding obligation of Johnson Health Tech, enforceable against Johnson Health Tech in accordance with its terms. Johnson Health Tech will not directly or indirectly receive any reimbursement, indemnification, insurance-related payment, or other payment in connection with the civil penalty to be paid by Johnson Health Tech pursuant to the Agreement and Order. The individuals signing the Agreement on behalf of Johnson Health Tech represent and warrant that they are duly authorized by Johnson Health Tech to execute the Agreement.

29. The signatories represent that they are authorized to execute this Agreement.

30. The Agreement is governed by the laws of the United States.

31. The Agreement and the Order shall apply to, and be binding upon, Johnson Health Tech and each of its

successors, transferees, and assigns, and a violation of the Agreement or Order may subject Johnson Health Tech, and each of its successors, transferees, and assigns, to appropriate legal action.

32. The Agreement and the Order constitute the complete agreement between the parties on the subject matter contained therein.

33. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. For purposes of construction, the Agreement shall be deemed to have been drafted by both of the parties and shall not, therefore, be construed against any party for that reason in any subsequent dispute.

34. The Agreement may not be waived, amended, modified, or otherwise altered, except as in accordance with the provisions of 16 CFR 1118.20(h). The Agreement may be executed in counterparts.

35. If any provision of the Agreement or the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Johnson Health Tech agree in writing that severing the provision materially affects the purpose of the Agreement and the Order.

Johnson Health Tech Co. LTD.

Dated: *July 31, 2015*

By: _____

Jason Lo
Chief Executive Officer
Johnson Health Tech Co. Ltd.
#999, Sec. 2, DongDa Rd., Ta-Ya Dist.
Taichung City, 428, Taiwan

Johnson Health Tech North America, Inc.

Dated: *July 31, 2015*

By: _____

Nathan Pyles
President
Johnson Health Tech North America, Inc.
1600 Landmark Drive
Cottage Grove, WI 53527

Dated: *July 29, 2015*

By: _____

Matthew R. Howsare
Counsel to Johnson Health Tech North America, Inc.
Mintz Levin
701 Pennsylvania Avenue NW, Suite 900
Washington, DC 20004

U.S. Consumer Product Safety Commission

Stephanie Tsacoumis
General Counsel

Mary T. Boyle
Deputy General Counsel

Mary B. Murphy
Assistant General Counsel

Dated: *July 31, 2015*

By: _____

Gregory M. Reyes
Trial Attorney
Division of Compliance
Office of the General Counsel

United States of America Consumer Product Safety Commission

In the Matter of: Johnson Health Tech Co. LTD. and Johnson Health Tech North America, Inc.

CPSC Docket No.: *15–C0006*

Order

Upon consideration of the Settlement Agreement entered into between Johnson Health Tech Co. Ltd. and Johnson Health Tech North America, Inc. (''Johnson Health Tech''), and the U.S. Consumer Product Safety Commission (''Commission''), and the Commission having jurisdiction over the subject matter and over Johnson Health Tech, and it appearing that the Settlement Agreement and the Order are in the public interest, it is:

ORDERED that the Settlement Agreement be, and is, hereby, accepted; and it is

FURTHER ORDERED that Johnson Health Tech shall comply with the terms of the Settlement Agreement and shall pay a civil penalty in the amount of three million dollars ($3,000,000) within thirty (30) days after service of the Commission's final Order accepting the Settlement Agreement. The payment shall be made by electronic wire transfer to the Commission via: *http://www.pay.gov.* Upon the failure of Johnson Health Tech to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Johnson Health Tech at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b). If Johnson Health Tech fails to make such payment or to comply in full with any other provision of the Settlement Agreement, such conduct will be considered a violation of the Settlement Agreement and Order.

Provisionally accepted and provisional Order issued on the *13th* day of *August,* 2015.

By Order of the Commission:

_____

Todd A. Stevenson, Secretary
U.S. Consumer Product Safety Commission

[FR Doc. 2015–20332 Filed 8–17–15; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

National Commission on the Future of the Army; Notice of Federal Advisory Committee Meeting

AGENCY: Department of Defense (DoD), Deputy Chief Management Officer.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The DoD is publishing this notice to announce two days of meetings of the National Commission on the Future of the Army (''the Commission''). The meetings will be partially closed to the public.

DATES: Date of the Closed Meetings: Monday, August 24, 2015, from 9:00 a.m. to 11:25 a.m. and Monday, August 24 2015, from 12:25 p.m. to 4:30 p.m.

Date of the Open Meeting: Tuesday, August 25, 2015, from 8:00 a.m. to 10:00 a.m.

ADDRESSES: Address of Closed Meeting, August 24, 2015 from 9:00 a.m. to 11:25 a.m.: Operations Group Conference Room, Building 990, National Training Center, Fort Irwin, CA 92310.

Address of Closed Meeting, August 24, 2015 from 12:25 p.m. to 4:30 p.m.: Operations Group Conference Room, Building 990, National Training Center, Fort Irwin, CA 92310.

Address of Open Meeting, August 25, 2015: Long Beach Marriott Conference Room, Long Beach Marriott, 4700 Airport Plaza Drive, Long Beach, CA 90815.

FOR FURTHER INFORMATION CONTACT: Mr. Don Tison, Designated Federal Officer, National Commission on the Future of the Army, 700 Army Pentagon, Room 3E406, Washington, DC 20310–0700, Email: *dfo.public@ncfa.ncr.gov.* Desk (703) 692–9099. Facsimile (703) 697–8242.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Designated Federal Officer and the Department of Defense, the National Commission on the Future of the Army was unable to provide public notification of its meeting of August 24–25, 2015, as required by 41 CFR 102–3.150(a). Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement. This meeting will be held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

Purpose of Meetings

During the closed meeting on Monday, August 24, 2015, from 9:00 a.m. to 11:25 a.m., the Commission will hear classified testimony from individual witnesses, and engage in discussion on Evaluation metrics in relation to Unit Status Reporting Data and Observations of Training and Evaluation at the National Training Center (NTC).

During the closed meeting on Monday, August 24, 2015, from 12:25 p.m. to 4:30 p.m., the Commission will hear classified testimony from individual witnesses, and engage in discussions on an Assessment of Unit Training and performance.

During the open meeting on Tuesday, August 25, 2015, from 8:00 a.m. to 10:00 a.m., the Commission will hear updates from the Subcommittee chairs, a recap of the NTC engagement from the day prior and verbal comments from the Public.

Agendas

August 24, 2015, 9:00 a.m. to 11:25 a.m.—Closed Hearing: The Commission will hear comments on Evaluation metrics in relation to Unit Status Reporting, Readiness Status of units training at Ft. Irwin in preparation for deployment, and the applicability and correlation of training scenarios at Ft. Irwin as related to OPLANs of deploying units.

Speakers include, but are not limited to: Commanding General Ft. Irwin, NTC Training and Evaluation Cadre. All presentations and resulting discussion are classified.

August 24, 2015, 12:25 p.m. to 4:30 p.m.—Closed Hearing: The Commission will hear comments on Assessment by NTC Cadre of participating units' readiness, resourcing needs for units rotating through the NTC and needs of NTC resident units and personnel to support their training and evaluation mission. Additionally, representatives from the Army National Guard rotational units will comment on Home station training preparation and results achieved.

Speakers include, but are not limited to NTC Training and Evaluation Cadre, and ARNG Senior Leaders from participating States. All presentations and resulting discussion are classified.

August 25, 2015—Open Hearing: The Commission will hear updates from subcommittee chairs and recap the previous day's NTC engagement. The public will have the opportunity to make verbal comments.

Meeting Accessibility

In accordance with applicable law, 5 U.S.C. 552b(c), and 41 CFR 102–3.155, the DoD has determined that the two meetings scheduled for Monday, August 24, 2015, between 9:00 a.m. to 4:30 p.m. will be closed to the public. Specifically, the Assistant Deputy Chief Management Officer, with the coordination of the DoD FACA Attorney, has determined in writing that these portions of the meeting will be closed to the public because they will discuss matters covered by 5 U.S.C. 552b(c)(1).

Pursuant to 41 CFR 102–3.140 through 102–3.165 and the availability of space, the meeting scheduled for August 25, 2015 from 8:00 a.m. to 10:00 a.m. at the Long Beach Marriott Conference Room is open to the public. Seating is limited and pre-registration is strongly encouraged. Media representatives are also encouraged to register. Members of the media must comply with the rules of photography and video filming published by Marriot Inc. The closest public parking facility is located on the property. Visitors will be required to present one form of photograph identification. Visitors should keep their belongings with them at all times.

Written Comments

Pursuant to section 10(a)(3) of the FACA and 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written comments to the Commission in response to the stated agenda of the open and/or closed meeting or the Commission's mission. The Designated Federal Officer (DFO) will review all submitted written statements. Written comments should be submitted to Mr. Donald Tison, DFO, via facsimile or electronic mail, the preferred modes of submission. Each page of the comment must include the author's name, title or affiliation, address, and daytime phone number. All comments received before Friday, August 21, 2015, will be provided to the Commission before the August 25, 2015, meeting. Comments received after Friday, August 21, 2015, will be provided to the Commission before its next meeting. All contact information may be found in the **FOR FURTHER INFORMATION CONTACT** section.

Oral Comments

In addition to written statements, one hour will be reserved for individuals or interest groups to address the Commission on August 25, 2015. Those interested in presenting oral comments to the Commission must summarize their oral statement in writing and submit with their registration. The Commission's staff will assign time to oral commenters at the meeting; no more than five minutes each for individuals. While requests to make an oral presentation to the Commission will be honored on a first come, first served basis, other opportunities for oral comments will be provided at future meetings.

Registration

Individuals and entities who wish to attend the public hearing and meeting on Tuesday, August 25, 2015 are encouraged to register for the event with the DFO using the electronic mail and facsimile contact information found in the **FOR FURTHER INFORMATION CONTACT** section. The communication should include the registrant's full name, title, affiliation or employer, email address, day time phone number. This information will assist the Commission in contacting individuals should it decide to do so at a later date. If applicable, include written comments and a request to speak during the oral comment session. (Oral comment requests must be accompanied by a summary of your presentation.) Registrations and written comments should be typed.

Additional Information

The DoD sponsor for the Commission is the Deputy Chief Management Officer. The Commission is tasked to submit a report, containing a comprehensive study and recommendations, by February 1, 2016 to the President of the United States and the Congressional defense committees. The report will contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislation and administrative actions it may consider appropriate in light of the results of the study. The comprehensive study of the structure of the Army will determine whether, and how, the structure should be modified to best fulfill current and anticipated mission requirements for the Army in a manner consistent with available resources.

Dated: August 13, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–20362 Filed 8–17–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that it is renewing the charter for the Defense Policy Board (''the Board'').

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: This committee's charter is being renewed in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended) and 41 CFR 102–3.50(a).

The Board is a discretionary Federal advisory committee that, through the Under Secretary of Defense for Policy (USD(P)), provides the Secretary of Defense and the Deputy Secretary of Defense, independent, informed advice and opinions concerning matters of defense policy in response to specific tasks from the Secretary of Defense, the Deputy Secretary of Defense, or the USD(P). Specifically, the Board focuses on issues central to strategic DoD planning; policy implications of U.S. force structure and force modernization on DoD's ability to execute U.S. defense strategy; U.S. regional defense policies; and any other topics raised by the Secretary of Defense, the Deputy Secretary of Defense, or the USD(P).

The DoD, through the Office of the USD(P), shall provide support for the Board's performance and shall ensure compliance with the requirements of the FACA, the Government in the Sunshine Act of 1976 (''the Sunshine Act'') (5 U.S.C. 552b, as amended), governing Federal statutes and regulations, and established DoD policies and procedures.

The Board shall be composed of no more than 35 members who have distinguished backgrounds in defense and national security affairs.

Board members appointed by the Secretary of Defense or the Deputy Secretary of Defense, who are not full-time or permanent part-time Federal employees, shall be appointed as experts or consultants pursuant to 5 U.S.C. 3109 to serve as special government employee (SGE) members. Board members who are full-time or permanent part-time Federal officers or employees will be appointed pursuant to 41 CFR 102–3.130(a) to serve as regular government employee (RGE) members. Board members shall serve a term of service of one-to-four years on the Board, subject to annual renewals. No member may serve more than two consecutive terms of service without Secretary of Defense or Deputy Secretary of Defense approval.

The Secretary of Defense has approved the appointment of the Chairs of the Defense Business Board and the Defense Science Board to serve as non-voting ex-officio members of the Board, whose appointments shall not count toward the Board's total membership.

The Chair will be appointed by the Secretary of Defense or in accordance with DoD policy from among those Board members previously appointed by the Secretary of Defense and permitted to vote.

With the exception of reimbursement of official Board-related travel and per diem, members of the Board serve without compensation.

The USD(P), pursuant to DoD policies and procedures and as deemed necessary, may appoint, non-voting subject matter experts (SMEs) to assist the Board or its subcommittees on an ad hoc basis. These non-voting SMEs are not members of the Board or its subcommittees and will not engage or participate in any deliberations by the Board or its subcommittees. These non-voting SMEs, if not full-time or permanent part-time Federal officers or employees, will be appointed as experts or consultants pursuant to 5 U.S.C. 3109 to serve on an intermittent basis to address specific issues under consideration by the Board.

DoD, when necessary and consistent with the Board's mission and DoD policies and procedures, may establish subcommittees, task forces, or working groups to support the Board. Establishment of subcommittees will be based upon a written determination, to include terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense, or the USD(P), as the DoD Sponsor.

Such subcommittees shall not work independently of the Board and shall report all of their recommendations and advice solely to the Board for full and open deliberation and discussion. Subcommittees, task forces, or working groups have no authority to make decisions and recommendations, verbally or in writing, on behalf of the Board. No subcommittee or any of its members can update or report, verbally or in writing, on behalf of the Board, directly to the DoD or any Federal officer or employee.

Each subcommittee member, based upon his or her individual professional experience, provides his or her best judgment on the matters before the Board, and he or she does so in a manner that is free from conflict of interest. All subcommittee members will be appointed by the Secretary of Defense or the Deputy Secretary of Defense for a term of service of one-to-four years, with annual renewals, even if the individual in question is already a member of the Board. Subcommittee members will not serve more than two consecutive terms of service, unless authorized by the Secretary of Defense or the Deputy Secretary of Defense.

Subcommittee members who are not full-time or permanent part-time Federal officers or employees will be appointed as experts or consultants pursuant to 5 U.S.C. 3109 to serve as SGE members. Subcommittee members who are full-time or permanent part-time Federal officers or employees will be appointed pursuant to 41 CFR 102–3.130(a) to serve as RGE members. With the exception of reimbursement of official travel and per diem related to the Board or its subcommittees, subcommittee members will serve without compensation.

All subcommittees operate under the provisions of FACA, the Sunshine Act, governing Federal statutes and regulations, and established DoD policies and procedures.

The Board's Designated Federal Officer (DFO) must be a full-time or permanent part-time DoD officer or employee, appointed in accordance with established DoD policies and procedures. The Board's DFO is required to attend at all meetings of the Board and its subcommittees for the entire duration of each and every meeting. However, in the absence of the Board's DFO, a properly approved Alternate DFO, duly appointed to the Board according to established DoD policies and procedures, must attend the entire duration of all meetings of the Board and its subcommittees.

The DFO, or the Alternate DFO, calls all meetings of the Board and its subcommittees; prepares and approves all meeting agendas; and adjourns any meeting when the DFO, or the Alternate DFO, determines adjournment to be in the public interest or required by governing regulations or DoD policies and procedures.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to Board membership about the Board's mission and functions. Written statements may be submitted at

any time or in response to the stated agenda of planned meeting of the Board.

All written statements shall be submitted to the DFO for the Board, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Board's DFO can be obtained from the GSA's FACA Database—*http://www.facadatabase.gov/.*

The DFO, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Board. The DFO, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: August 12, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–20293 Filed 8–17–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the U.S. Naval Academy Board of Visitors

AGENCY: Department of the Navy, DoD.

ACTION: Notice of Partially Closed Meeting.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the Board shall deem necessary, into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. The executive session of this meeting from 11:00 a.m. to 12:00 p.m. on September 28, 2015, will include discussions of new and pending administrative/minor disciplinary infractions and non-judicial punishment proceedings involving Midshipmen attending the Naval Academy to include but not limited to individual honor/conduct violations within the Brigade; the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. For this reason, the executive session of this meeting will be closed to the public.

DATES: The open session of the meeting will be held on September 28, 2015, from 8:30 a.m. to 11:00 a.m. The executive session held from 11:00 a.m. to 12:00 p.m. will be the closed portion of the meeting.

ADDRESSES: The meeting will be held at the Library of Congress in Washington, DC. The meeting will be handicap accessible.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Eric Madonia, USN, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, (410) 293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act, as amended (5 U.S.C. App.). The executive session of the meeting from 11:00 a.m. to 12:00 p.m. on September 28, 2015, will consist of discussions of new and pending administrative/minor disciplinary infractions and non-judicial punishments involving midshipmen attending the Naval Academy to include but not limited to, individual honor/conduct violations within the Brigade. The discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. Accordingly, the Department of the Navy/Assistant for Administration has determined in writing that the meeting shall be partially closed to the public because the discussions during the executive session from 11:00 a.m. to 12:00 p.m. will be concerned with matters protected under sections 552b(c) (5), (6), and (7) of title 5, United States Code.

Authority: 5 U.S.C. 552b.

Dated: July 11, 2015.

N.A. Hagerty-Ford

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2015–20376 Filed 8–17–15; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Office of Science; Department of Energy; Notice of Renewal of the High Energy Physics Advisory Panel

Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act, App. 2, and section 102–3.65, title 41, Code of Federal Regulations and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the High Energy Physics Advisory Panel has been renewed for a two-year period.

The Panel will provide advice to the Director, Office of Science (DOE), and the Assistant Director, Mathematical & Physical Sciences Directorate (NSF), on long-range planning and priorities in the national high-energy physics program. The Secretary of Energy has determined that renewal of the Panel is essential to conduct business of the Department of Energy and the National Science Foundation and is in the public interest in connection with the performance of duties imposed by law upon the Department of Energy.

The Panel will continue to operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), the General Services Administration Final Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

FOR FURTHER INFORMATION CONTACT: John Kogut at (301) 903–1298.

Issued in Washington DC on August 12, 2015.

Erica De Vos,

Acting Committee Management Officer.

[FR Doc. 2015–20354 Filed 8–17–15; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2014–0068, 2014–0730, 2015–0081, 2015–0491; FRL–9929–31]

Availability of Work Plan Chemical Problem Formulation and Initial Assessment and Data Needs Assessment Documents for Flame Retardant Clusters; Notice and Public Comment Periods

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the availability and opening of a 60-day public comment period for TSCA Work Plan Chemical problem formulation and initial assessment documents for three flame retardant clusters. EPA is also making available and opening a 120-day public comment period for the TSCA Work Plan Chemical data needs assessment document for the Brominated Phthalates flame retardant cluster. Based on experience in conducting TSCA Work Plan Chemical assessments and public input, starting in 2015 EPA will publish a problem formulation and initial assessment, or a data needs assessment, for each TSCA Work Plan assessment as a stand-alone document to facilitate public input prior to conducting further risk analysis. EPA believes publishing problem formulation and initial assessment documents for TSCA Work Plan assessments will increase transparency about EPA's thinking and analysis process, provide opportunity for the public to comment on EPA's approach, and give EPA the opportunity to receive additional information/data prior to EPA conducting detailed risk analysis

and risk characterization. There are three clusters of flame retardant on the TSCA Work Plan for which there are problem formulation and initial assessment documents: Brominated Bisphenol A, Chlorinated Phosphate Esters, and Cyclic Aliphatic Bromides. In addition, there is a data needs assessment document for the Brominated Phthalates flame retardant cluster. There is a separate docket assigned to each TSCA Work Plan Chemical flame retardant cluster.

DATES: Comments on the three problem formulation and initial assessment documents (Brominated Bisphenol A (TBBPA), Chlorinated Phosphate Esters (CPE), and Cyclic Aliphatic Bromides (HBCD)) must be received on or before October 19, 2015. Comments on the data needs assessment document for Brominated Phthalates (TBB & TBPH) must be received on or before December 16, 2015.

ADDRESSES: Submit your comments, identified by docket identification (ID) number for the corresponding TSCA Work Plan chemicals as identified in this document, 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:* 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.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: *For technical information contact:* Stanley Barone, Risk Assessment Division (7403M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–1169; email address: *barone.stan@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. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including those interested in environmental and human health; the chemical industry; chemical users; consumer product companies and members of the public interested in the assessment of chemical risks. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

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.*

II. What action is the Agency taking?

EPA is announcing the availability of and opening of a public comment period for three problem formulation and initial assessment documents, and a data needs assessment document, for the following TSCA Work Plan Chemicals: Brominated Bisphenol A; Chlorinated Phosphate Esters; Cyclic Aliphatic Bromides; and Brominated Phthalates flame retardant clusters. This **Federal Register** Notice identifies the individual Work Plan Chemical problem formulation and initial assessment documents and the data needs assessment document by title, docket ID number, and chemical or chemicals covered. Use the specific docket ID number provided in this **Federal Register** Notice to locate a copy of the chemical-specific document, as well as to submit comments via *http://www.regulations.gov.*

A. Docket ID Number EPA–HQ–OPPT–2015–0068

Title: TSCA Work Plan Chemical Problem Formulation and Initial Assessment: Chlorinated Phosphate Esters Cluster.

Chemicals covered: Ethanol, 2-chloro-, phosphate (3:1) (TCEP) (CASRN: 115-96-8); 2-Propanol, 1-chloro-, 2,2',2''-phosphate (TCPP) (CASRN: 13674-84-5); and 2-Propanol, 1,3-dichloro-, phosphate (3:1) (TDCPP) (CASRN: 13674-87-8).

Summary: Chlorinated phosphate esters are high production volume chemicals that have been used as flame retardants in furniture foams, textiles, paints and coatings. EPA initiated scoping and problem formulation to determine the feasibility of conducting a quantitative risk assessment. During problem formulation, EPA reviewed previous assessments by EPA and other organizations and additional published studies on the exposure and hazard for members of the CPE cluster. EPA examined likely exposure and hazard scenarios based on current production, use, and fate information to identify scenarios amenable to a risk analysis.

B. Docket ID Number EPA–HQ–OPPT–2015–0081

Title: TSCA Work Plan Chemical Problem Formulation and Initial Assessment: Cyclic Aliphatic Bromides Cluster.

Chemicals covered: Hexabromocyclododecane (HBCD, CASRN 25637-99-4); 1,2,5,6,9,10-Hexabromocyclododecane (CASRN 3194-55-6); and 1,2,5,6-Tetrabromocyclooctane (CASRN 3194-57-8).

Summary: Cyclic Aliphatic Bromides have been used as a flame retardant in: extruded and expanded polystyrene foams (EPS/XPS), polystyrene (PS) products, textiles, paints and coatings. EPA initiated scoping and problem formulation to determine the feasibility of conducting a quantitative risk assessment. During problem formulation, EPA reviewed previous assessments by EPA and other organizations and additional published studies on the exposure and hazard for members of this flame retardant cluster. EPA examined likely exposure and hazard scenarios based on current production, use, and fate information to identify scenarios amenable to a risk analysis. During problem formulation, EPA identified inhalation, dermal and lifetime exposure assessments as data gaps that add uncertainty to EPA's risk

assessment of HBCD. EPA welcomes comment on addressing these data gaps.

C. Docket ID Number EPA–HQ–OPPT–2014–0730

Title: TSCA Work Plan Chemical Problem Formulation and Initial Assessment: Tetrabromobisphenol A and Related Chemicals Cluster.

Chemicals covered: Tetrabromobisphenol A (TBBPA, CASRN 79-94-7); TBBPA-bis(dibromopropyl ether) (CASRN 21850-44-2); TBBPA-bis(ally ether) (CASRN 25327-89-3); and TBBPA-bis(methyl ether) (CASRN 37853-61-5).

Summary: Tetrabromobisphenol A is a compound commonly used as a flame retardant in plastics/printed circuit boards for electronics and has been found in children's products and other consumer products. EPA initiated scoping and problem formulation to determine the feasibility of conducting a quantitative risk assessment. During problem formulation, EPA reviewed previous assessments by EPA and other organizations and additional published studies on the exposure and hazard for members of this flame retardant cluster. EPA examined likely exposure and hazard scenarios based on current production, use, and fate information to identify scenarios amenable to a risk analysis.

D. Docket ID Number EPA–HQ–OPPT–2014–0491

Title: TSCA Work Plan Chemical Problem Formulation and Data Needs Assessment: Brominated Phthalates Cluster.

Chemicals covered: 1,2-Benzenedicarboxylic acid, 3,4,5,6-tetrabromo-, 1,2-bis(2-ethylhexyl) ester (TBPH) (CASRN 26040–51–7); Benzoic acid, 2,3,4,5-tetrabromo-, 2-ethylhexyl ester (TBB) (CASRN: 183658-27-7); 1,2-Benzenedicarboxylic acid, 3,4,5,6-tetrabromo-, 1-[2-(2-hydroxyethoxy)ethyl] 2-(2-hydroxypropyl) ester (CASRN: 20566-35-2); 1,2-Benzene dicarboxylic acid, 3,4,5,6-tetrabromo-, mixed esters with diethylene glycol and propylene glycol (CASRN: 77098-07-8); 1,2-Benzenedicarboxylic acid, 1,2-bis(2,3-dibromopropyl) ester (CASRN: 7415-86-3); Chemical A—Chemical Identity claimed confidential by manufacturer; Chemical B—Chemical Identity claimed confidential by manufacturer.

Summary: The Brominated Phthalates Cluster is a group of seven chemicals at least two of which, TBB and TBPH, are found in commercial flame retardant formulations. During problem formulation, EPA reviewed previous assessments by EPA and other organizations and additional published studies on the exposure and hazard for members of the Brominated Phthalates Cluster. This review identified critical data gaps and uncertainties that limit EPA's ability to conduct a quantitative risk assessment for any of the chemicals in the Brominated Phthalates cluster. Specifically, the review identified numerous gaps in toxicity data and exposure data, testing conducted on limited commercial mixtures but not all constituents of the mixtures, and uncertain attribution of toxicity for commercial mixtures. As an initial step toward conducting a robust risk assessment, EPA is releasing a ''Data Needs Assessment'' for the Brominated Phthalates Cluster. This Data Needs Assessment is intended to guide the collection of additional data and information to fill the critical data gaps and reduce uncertainties identified during problem formulation.

If you have any questions about any of these problem formulation and initial assessment documents and the data needs assessment document, or the Agency's programs in general, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: August 12, 2015.

Wendy C. Hamnett,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 2015–20370 Filed 8–17–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Board, the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) (collectively, 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.

On May 6, 2015, the Board, under the auspices of the Federal Financial Institutions Examination Council (FFIEC) and on behalf of the agencies, published a notice in the **Federal Register** (80 FR 26050) requesting public comment on the extension, without revision, of the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002), the Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank (FFIEC 002S), and the Country Exposure Report for U.S. Branches and Agencies of Foreign Banks (FFIEC 019), which are currently approved information collections. The comment period for this notice expired on July 6, 2015. The agencies received one comment expressing support for the renewal of the FFIEC 002 and FFIEC 002S. The Board hereby gives notice that it plans to submit to OMB on behalf of the agencies a request for approval of the extension, without revision, of the FFIEC 002, FFIEC 002S, and FFIEC 019.

DATES: Comments must be submitted on or before September 17, 2015.

ADDRESSES: Interested parties are invited to submit written comments to the agency listed below. All comments will be shared among the agencies. You may submit comments, identified by FFIEC 002, FFIEC 002S, or FFIEC 019, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments on *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include the OMB control numbers in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street NW. (between 18th and 19th Streets NW.), Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB

desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503; by fax to (202) 395–6974; or by email to *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Additional information or a copy of the collections may be requested from Nuha Elmaghrabi, Federal Reserve Board Clearance Officer, (202) 452–3829, Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

SUPPLEMENTARY INFORMATION: Proposal to request approval from OMB of the extension for three years, without revision, of the following reports:

1. Report titles: Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks; Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank.

Agency form numbers: FFIEC 002; FFIEC 002S.

OMB control number: 7100–0032.

Frequency of response: Quarterly.

Affected public: U.S. branches and agencies of foreign banks.

Number of respondents: FFIEC 002—223; FFIEC 002S—49.

Estimated average time per response: FFIEC 002—25.43 hours; FFIEC 002S—6.0 hours.

Estimated total annual burden: FFIEC 002—22,684 hours; FFIEC 002S—1,176 hours.

General description of reports: These information collections are mandatory (12 U.S.C. 3105(c)(2), 1817(a)(1) and (3), and 3102(b)). Except for select sensitive items, the FFIEC 002 is not given confidential treatment; the FFIEC 002S is given confidential treatment (5 U.S.C. 552(b)(4) and (8)).

Abstract: On a quarterly basis, all U.S. branches and agencies of foreign banks are required to file the FFIEC 002, which is a detailed report of condition with a variety of supporting schedules. This information is used to fulfill the supervisory and regulatory requirements of the International Banking Act of 1978. The data are also used to augment the bank credit, loan, and deposit information needed for monetary policy and other public policy purposes. The FFIEC 002S is a supplement to the FFIEC 002 that collects information on assets and liabilities of any non-U.S. branch that is managed or controlled by a U.S. branch or agency of the foreign bank. Managed or controlled means that a majority of the responsibility for business decisions, including but not limited to decisions with regard to lending or asset management or funding or liability management, or the responsibility for recordkeeping in respect of assets or liabilities for that foreign branch, resides at the U.S. branch or agency. A separate FFIEC 002S must be completed for each managed or controlled non-U.S. branch. The FFIEC 002S must be filed quarterly along with the U.S. branch or agency's FFIEC 002. The data from both reports are used for (1) monitoring deposit and credit transactions of U.S. residents; (2) monitoring the impact of policy changes; (3) analyzing structural issues concerning foreign bank activity in U.S. markets; (4) understanding flows of banking funds and indebtedness of developing countries in connection with data collected by the International Monetary Fund and the Bank for International Settlements that are used in economic analysis; and (5) assisting in the supervision of U.S. offices of foreign banks. The Federal Reserve System collects and processes these reports on behalf of all three agencies. No changes were proposed to the FFIEC 002 and FFIEC 002S reporting forms or instructions.

2. Report title: Country Exposure Report for U.S. Branches and Agencies of Foreign Banks.

Agency form number: FFIEC 019.

OMB control number: 7100–0213.

Frequency of response: Quarterly.

Affected public: U.S. branches and agencies of foreign banks.

Number of respondents: 167.

Estimated average time per response: 10 hours.

Estimated total annual burden: 6,680 hours.

General description of reports: This information collection is mandatory (12 U.S.C. 3906 for all agencies); 12 U.S.C. 3105 and 3108 for the Board; 12 U.S.C. 1817 and 1820 for the FDIC; and 12 U.S.C. 161 for the OCC. This information collection is given confidential treatment under the Freedom of Information Act (5 U.S.C. 552(b)(8)).

Abstract: All individual U.S. branches and agencies of foreign banks that have more than $30 million in direct claims on residents of foreign countries must file the FFIEC 019 report quarterly. Currently, all respondents report adjusted exposure amounts to the five largest countries having at least $20 million in total adjusted exposure. The agencies collect this data to monitor the extent to which such branches and agencies are pursuing prudent country risk diversification policies and limiting potential liquidity pressures. No changes were proposed to the FFIEC 019 reporting form or instructions.

Board of Governors of the Federal Reserve System, August 12, 2015.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2015–20275 Filed 8–17–15; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 2, 2015.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *Robert G. Lowe,* Fort Myers, Florida; to acquire voting shares of Palmetto Heritage Bancshares, Inc., and thereby indirectly acquire voting shares of Palmetto Heritage Bank & Trust, both in Pawleys Island, South Carolina.

Board of Governors of the Federal Reserve System, August 13, 2015.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2015–20321 Filed 8–17–15; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed changes to the currently approved information collection project: ''*Medical Expenditure Panel Survey (MEPS) Household Component and the MEPS Medical Provider Component.*'' In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on September 20, 2015 and allowed 60 days for public comment. AHRQ received no substantive comments. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by September 17, 2015.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by email at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Medical Expenditure Panel Survey (MEPS) Household Component (HC)

For over thirty years, results from the MEPS and its predecessor surveys (the 1977 National Medical Care Expenditure Survey, the 1980 National Medical Care Utilization and Expenditure Survey and the 1987 National Medical Expenditure Survey) have been used by OMB, DHHS, Congress and a wide number of health services researchers to analyze health care use, expenses and health policy.

Major changes continue to take place in the health care delivery system. The MEPS is needed to provide information about the current state of the health care system as well as to track changes over time. The MEPS permits annual estimates of use of health care and expenditures and sources of payment for that health care. It also permits tracking individual change in employment, income, health insurance and health status over two years. The use of the National Health Interview Survey (NHIS) as a sampling frame expands the MEPS analytic capacity by providing another data point for comparisons over time.

Households selected for participation in the MEPS–HC are interviewed five times in person. These rounds of interviewing are spaced about 5 months apart. The interview will take place with a family respondent who will report for him or herself and for other family members.

The goal of MEPS–HC is to provide nationally representative estimates for the U.S. civilian noninstitutionalized population for health care use, expenditures, sources of payment and health insurance coverage.

Medical Expenditure Panel Survey (MEPS) Medical Provider Component (MPC)

The MEPS–MPC will contact medical providers (hospitals, physicians, home health agencies and institutions) identified by household respondents in the MEPS–HC as sources of medical care for the time period covered by the interview, and all pharmacies providing prescription drugs to household members during the covered time period. The MEPS–MPC is not designed to yield national estimates as a stand-alone survey. The sample is designed to target the types of individuals and providers for whom household reported expenditure data was expected to be insufficient. For example, Medicaid enrollees are targeted for inclusion in the MEPS–MPC because this group is expected to have limited information about payments for their medical care.

There is one addition to the MEPS–MPC being implemented in this renewal request, the MEPS MPC Medical Organizations Survey (MOS). The MEPS MOS will expand current MPC data collection activities to include information on the organization of the practices of office-based care providers identified as a usual source of care in the MEPS MPC. This additional data collection will be for a subset of office-based care providers already included in the MEPS MPC sample. In the MEPS MPC sample, for a nationally representative sample of adults, primary location for individual's office-based usual sources of care will be identified. The MEPS MPC will contact these places where medical care is provided, determine the appropriate respondent and administer a MEPS MOS. The design of the survey will be multimodal including some telephone contact. Additional data collection methods may include phone, fax, mail, self administration, electronic transmission, and the Web. The data collection method chosen for a provider shall be the method that results in the most complete and accurate data with least burden to the provider.

The MEPS–MPC collects event level data about medical care received by sampled persons during the relevant time period. The data collected from medical providers include:

- Dates on which medical encounters during the reference period occurred.
- Data on the medical content of each encounter, including ICD–9 (or ICD–10) and CPT–4 codes.
- Data on the charges associated with each encounter, the sources paying for the medical care, including the patient/family, public sources, and private insurance, and amounts paid by each source.

Data collected from pharmacies include:

- Date of prescription fill
- National drug code (NDC) or prescription name, strength and form
- Quantity
- Payments, by source

The MEPS–MPC has the following goal:

- To serve as an imputation source for and to supplement/replace household reported expenditure and source of payment information. This data will supplement, replace and verify information provided by household respondents about the charges, payments, and sources of payment associated with specific health care encounters.

This study is being conducted by AHRQ through its contractors, Westat and RTI International, pursuant to AHRQ's statutory authority to conduct and support research on health care and on systems for the delivery of such care, including activities with respect to the cost and use of health care services and with respect to health statistics and surveys. 42 U.S.C. 299a(a)(3) and (8); 42 U.S.C. 299b–2.

Method of Collection

To achieve the goals of the MEPS–HC the following data collections are implemented:

1. Household Component Core Instrument. The core instrument collects data about persons in sample households. Topical areas asked in each round of interviewing include condition enumeration, health status, health care utilization including prescribed medicines, expense and payment, employment, and health insurance. Other topical areas that are asked only once a year

include access to care, income, assets, satisfaction with health plans and providers, children's health, and adult preventive care. While many of the questions are asked about the entire reporting unit (RU), which is typically a family, only one person normally provides this information. All sections of the current core instrument are available on the AHRQ Web site at *http://meps.ahrq.gov/mepsweb/survey_comp/survey_questionnaires.jsp.*

2. Adult Self-Administered Questionnaire. A brief self-administered questionnaire will be used to collect self-reported (rather than through household proxy) information on health status, health opinions and satisfaction with health care for adults 18 and older (see *http://meps.ahrq.gov/mepsweb/survey_comp/survey.jsp#supplemental*). The satisfaction with health care items are a subset of items from the Consumer Assessment of Healthcare Providers and Systems (CAHPS®). The health status items are from the Short Form 12 Version 2 (SF–12 version 2), which has been widely used as a measure of self-reported health status in the United States, the Kessler Index (K6) of non-specific psychological distress, and the Patient Health Questionnaire (PHQ–2). This questionnaire is unchanged from the previous OMB clearance.

3. Diabetes Care Self-Administered Questionnaire. A brief self-administered paper-and-pencil questionnaire on the quality of diabetes care is administered once a year (during round 3 and 5) to persons identified as having diabetes. Included are questions about the number of times the respondent reported having a hemoglobin A1c blood test, whether the respondent reported having his or her feet checked for sores or irritations, whether the respondent reported having an eye exam in which the pupils were dilated, the last time the respondent had his or her blood cholesterol checked and whether the diabetes has caused kidney or eye problems. Respondents are also asked if their diabetes is being treated with diet, oral medications or insulin. This questionnaire is unchanged from the previous OMB clearance. See *http://meps.ahrq.gov/mepsweb/survey_comp/survey.jsp#supplemental.*

4. Authorization forms for the MEPS–MPC Provider and Pharmacy Survey. As in previous panels of the MEPS, we will ask respondents for authorization to obtain supplemental information from their medical providers (hospitals, physicians, home health agencies and institutions) and pharmacies. See *http://meps.ahrq.gov/mepsweb/survey_comp/survey.jsp#MPC_AF* for the pharmacy and provider authorization forms.

5. MEPS Validation Interview. Each interviewer is required to have at least 15 percent of his/her caseload validated to insure that computer-assisted personal interview (CAPI) questionnaire content was asked appropriately and procedures followed, for example the use of show cards. Validation flags are set programmatically for cases pre-selected by data processing staff before each round of interviewing. Home office and field management may also request that other cases be validated throughout the field period. When an interviewer fails a validation all their work is subject to 100 percent validation. Additionally, any case completed in less than 30 minutes is validated. A validation abstract form containing selected data collected in the CAPI interview is generated and used by the validator to guide the validation interview.

To achieve the goal of the MEPS–MPC the following data collections are implemented:

1. MPC Contact Guide/Screening Call. An initial screening call is placed to determine the type of facility, whether the practice or facility is in scope for the MEPS–MPC, the appropriate MEPS–MPC respondent and some details about the organization and availability of medical records and billing at the practice/facility. All hospitals, physician offices, home health agencies, institutions and pharmacies are screened by telephone. A unique screening instrument is used for each of these seven provider types in the MEPS–MPC, except for the two home care provider types which use the same screening form; see *http://meps.ahrq.gov/mepsweb/survey_comp/survey.jsp#MPC_CG.*

2. Home Care Provider Questionnaire for Health Care Providers. This questionnaire is used to collect data from home health care agencies which provide medical care services to household respondents. Information collected includes type of personnel providing care, hours or visits provided per month, and the charges and payments for services received. See *http://meps.ahrq.gov/mepsweb/survey_comp/survey.jsp#MPC.*

3. Home Care Provider Questionnaire for Non-Health Care Providers. This questionnaire is used to collect information about services provided in the home by non-health care workers to household respondents because of a medical condition; for example, cleaning or yard work, transportation, shopping, or child care. See *http://meps.ahrq.gov/mepsweb/survey_comp/survey.jsp#MPC.*

4. Medical Event Questionnaire for Office-Based Providers. This questionnaire is for office-based physicians, including doctors of medicine (MDs) and osteopathy (DOs), as well as providers practicing under the direction or supervision of an MD or DO (*e.g.,* physician assistants and nurse practitioners working in clinics). Providers of care in private offices as well as HMOs are included. See *http://meps.ahrq.gov/mepsweb/survey_comp/survey.jsp#MPC.*

5. Medical Event Questionnaire for Separately Billing Doctors. This questionnaire collects information from physicians identified by hospitals (during the Hospital Event data collection) as providing care to sampled persons during the course of inpatient, outpatient department or emergency room care, but who bill separately from the hospital. See *http://meps.ahrq.gov/mepsweb/survey_comp/survey.jsp#MPC.*

6. Hospital Event Questionnaire. This questionnaire is used to collect information about hospital events, including inpatient stays, outpatient department, and emergency room visits. Hospital data are collected not only from the billing department, but from medical records and administrative records departments as well. Medical records departments are contacted to determine the names of all the doctors who treated the patient during a stay or visit. In many cases, the hospital administrative office also has to be contacted to determine whether the doctors identified by medical records billed separately from the hospital itself; the doctors that do bill separately from the hospital will be contacted as part of the Medical Event Questionnaire for Separately Billing Doctors. HMOs are included in this provider type. See *http://meps.ahrq.gov/mepsweb/survey_comp/survey.jsp#MPC.*

7. Institution Event Questionnaire. This questionnaire is used to collect information about institution events, including nursing homes, rehabilitation facilities and skilled nursing facilities. Institution data are collected not only from the billing department, but from medical records and administrative records departments as well. Medical records departments are contacted to determine the names of all the doctors who treated the patient during a stay. In many cases, the institution administrative office also has to be contacted to determine whether the doctors identified by medical records billed separately from the institution itself. See *http://meps.ahrq.gov/mepsweb/survey_comp/survey.jsp#MPC*).

8. Pharmacy Data Collection Questionnaire. This questionnaire requests the national drug code (NDC) and when that is not available the prescription name, date prescription was filled, payments by source, prescription strength and form (when the NDC is not available), quantity, and person for whom the prescription was filled. When the NDC is available, we do not ask for prescription name, strength or form because that information is embedded in the NDC; this reduces burden on the respondent. Most pharmacies have the requested information available in electronic format and respond by providing a computer-generated printout of the patient's prescription information. If the computerized form is unavailable, the pharmacy can report their data to a telephone interviewer. Pharmacies are also able to provide a CD–ROM with the requested information if that is preferred. HMOs are included in this provider type. See *http://meps.ahrq.gov/mepsweb/survey_comp/survey.jsp#MPC.*

9. Medical Organizations Survey Questionnaire. This questionnaire will collect essential information on important features of the staffing, organization, policies, and financing for identified usual source of office based care providers. This additional data collection will be a subset of office based care providers already included in the MEPS MPC sample and will be a nationally representative sample of adults' primary location for individuals office based usual sources of care.

Dentists, optometrists, psychologists, podiatrists, chiropractors, and others not providing care under the supervision of a MD or DO are considered out of scope for the MEPS–MPC.

The MEPS is a multi-purpose survey. In addition to collecting data to yield annual estimates for a variety of

measures related to health care use and expenditures, MEPS also provides estimates of measures related to health status, consumer assessment of health care, health insurance coverage, demographic characteristics, employment and access to health care indicators. Estimates can be provided for individuals, families and population subgroups of interest. Data obtained in this study are used to provide, among others, the following national estimates:

- Annual estimates of health care use and expenditures for persons and families
- Annual estimates of sources of payment for health care utilizations, including public programs such as Medicare and Medicaid, private insurance, and out of pocket payments
- Annual estimates of health care use, expenditures and sources of payment of persons and families by type of utilization including inpatient stay, ambulatory care, home health, dental care and prescribed medications
- The number and characteristics of the population eligible for public programs including the use of services and expenditures of the population(s) eligible for benefits under Medicare and Medicaid
- The number, characteristics, and use of services and expenditures of persons and families with various forms of insurance
- Annual estimates of consumer satisfaction with health care, and indicators of health care quality for key conditions
- Annual estimates to track disparities in health care use and access

In addition to national estimates, data collected in this ongoing, longitudinal study are used to study the determinants of the use of services and expenditures, and changes in the access to and the provision of health care in relation to:

- Socio-economic and demographic factors such as employment or income
- The health status and satisfaction with health care of individuals and families
- The health needs and circumstances of specific subpopulation groups such as the elderly and children

To meet the need for national data on health care use, access, cost and quality, MEPS–HC collects information on:

- Access to care and barriers to receiving needed care
- Satisfaction with usual providers
- Health status and limitations in activities
- Medical conditions for which health care was used
- Use, expense and payment (as well as insurance status of person receiving care) for health services

Given the twin problems of the lack of response and response error of some household reported data, information is collected directly from medical providers in the MEPS–MPC to improve the accuracy of expenditure estimates derived from the MEPS–HC. Because of their greater level of precision and detail, we also use MEPS–MPC data as the main source of imputations of missing expenditure data. Thus, the MEPS–MPC is designed to satisfy the following analytical objectives:

- Serve as source data for household reported events with missing expenditure information
- Serve as an imputation source to reduce the level of bias in survey estimates of medical expenditures due to item nonresponse and less complete and less accurate household data
- Serve as the primary data source for expenditure estimates of medical care provided by separately billing doctors in hospitals, emergency rooms, and outpatient departments, Medicaid recipients and expenditure estimates for pharmacies
- Allow for an examination of the level of agreement in reported expenditures from household respondents and medical providers

Data from the MEPS, both the HC and MPC components, are intended for a number of annual reports produced by AHRQ, including the National Healthcare Quality and Disparities Report.

The MEPS MPC MOS data will be used to create a database that will be unique in providing an internally consistent source of information both on individuals' characteristics and health care utilization and expenditures, and on the characteristics of the providers they use. The following areas will be addressed in the MOS as they potentially affect individuals' access to, use of and affordability of health care services:

- Organizational characteristics, *e.g.,* size, specialties covered, practice rules and procedures, patient mix and scope of care provided, membership in an ACO, certification as a primary care medical home
- Use of health information technology
- Policies and practices related to the Affordable Care Act
- Financial arrangements, *e.g.,* reimbursement methods, number and types of insurance contracts, compensation arrangements within the practice

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in the MEPS–HC and the MEPS–MPC. The MEPS–HC Core Interview will be completed by 15,093* (see note below Exhibit 1) ''family level'' respondents, also referred to as RU respondents. Since the MEPS–HC consists of 5 rounds of interviewing covering a full two years of data, the annual average number of responses per respondent is 2.5 responses per year. The MEPS–HC core requires an average time of 92 minutes to administer. The Adult SAQ will be completed once a year by each person in the RU that is 18 years old and older, an estimated 28,254 persons. The Adult SAQ requires an average of 7 minutes to complete. The Diabetes care SAQ will be completed once a year by each person in the RU identified as having diabetes, an estimated 2,345 persons, and takes about 3 minutes to complete. The authorization form for the MEPS–MPC Provider Survey will be completed once for each medical provider seen by any RU member. The 14,489 RUs in the MEPS–HC will complete an average of 5.4 forms, which require about 3 minutes each to complete. The authorization form for the MEPS–MPC Pharmacy Survey will be completed once for each pharmacy for any RU member who has obtained a prescription medication. RUs will complete an average of 3.1 forms, which take about 3 minutes to complete. About one third of all interviewed RUs will complete a validation interview as part of the MEPS–HC quality control, which takes an average of 5 minutes to complete. The total annual burden hours for the MEPS–HC are estimated to be 67,826 hours.

All medical providers and pharmacies included in the MEPS–MPC will receive a screening call and the MEPS–MPC uses 7 different questionnaires; 6 for medical providers and 1 for pharmacies. Each questionnaire is relatively short and requires 2 to 15 minutes to complete. The total annual burden hours for the MEPS–MPC are estimated to be 18,876 hours. The total annual burden for the MEPS–HC and MPC is estimated to be 86,702 hours.

Exhibit 2 shows the estimated annual cost burden associated with the respondents' time to participate in this information collection. The annual cost burden for the MEPS–HC is estimated to be $1,540,328; the annual cost burden for the MEPS–MPC is estimated to be $302,985. The total annual cost burden for the MEPS–HC and MPC is estimated to be $1,843,313.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
MEPS–HC				
MEPS–HC Core Interview	*15,093	2.5	92/60	57,857
Adult SAQ	28,254	1	7/60	3,296
Diabetes care SAQ	2,345	1	3/60	117
Authorization form for the MEPS–MPC Provider Survey	14,489	5.4	3/60	3,912
Authorization form for the MEPS–MPC Pharmacy Survey	14,489	3.1	3/60	2,246
MEPS–HC Validation Interview	4,781	1	5/60	398
Subtotal for the MEPS–HC	79,451	na	na	67,826
MEPS–MPC/MOS				
MPC Contact Guide/Screening Call**	35,222	1	2/60	1,174
Home care for health care providers questionnaire	532	1.49	9/60	119
Home care for non–health care providers questionnaire	25	1	11/60	5
Office-based providers questionnaire	11,785	1.44	10/60	2,828
Separately billing doctors questionnaire	12,693	3.43	13/60	9,433
Hospitals questionnaire	5,077	3.51	9/60	2,673
Institutions (non-hospital) questionnaire	117	2.03	9/60	36
Pharmacies questionnaire	4,993	4.44	3/60	1,108
Medical Organizations Survey questionnaire	6,000	1	15/60	1,500
Subtotal for the MEPS–MPC	76,444	na	na	18,876
Grand Total	155,895	na	na	86,702

*While the expected number of responding units for the annual estimates is 14,489, it is necessary to adjust for survey attrition of initial respondents by a factor of 0.96 (15,093 = 14,489/0.96).

**There are 6 different contact guides; one for office based, separately billing doctor, hospital, institution, and pharmacy provider types, and the two home care provider types use the same contact guide.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate	Total cost burden
MEPS–HC				
MEPS–HC Core Interview	15,093	57,857	*$22.71	$1,313,932
Adult SAQ	28,254	3,296	*22.71	74,852
Diabetes care SAQ	2,345	117	*22.71	2,657
Authorization forms for the MEPS–MPC Provider Survey	14,489	3,912	*22.71	88,842
Authorization form for the MEPS–MPC Pharmacy Survey	14,489	2,246	*22.71	51,007
MEPS–HC Validation Interview	4,781	398	*22.71	9,039
Subtotal for the MEPS–HC	79,451	67,826	na	1,540,328
MEPS–MPC/MOS				
MPC Contact Guide/Screening Call	35,222	1,174	**16.12	18,925
Home care for health care providers questionnaire	532	119	**16.12	1,918
Home care for non–health care providers questionnaire	25	5	**16.12	81
Office–based providers questionnaire	11,785	2,828	**16.12	45,587
Separately billing doctors questionnaire	12,693	9,433	**16.12	152,060
Hospitals questionnaire	5,077	2,673	**16.12	43,089
Institutions (non-hospital) questionnaire	117	36	**16.12	580
Pharmacies questionnaire	4,993	1,108	***14.95	16,565
Medical Organizations Survey questionnaire	6,000	1,500	**16.12	24,180
Subtotal for the MEPS–MPC	76,444	18,876	na	302,985
Grand Total	155,895	86,073	na	1,843,313

*Mean hourly wage for All Occupations (00–0000).

**Mean hourly wage for Medical Secretaries (43–6013).

***Mean hourly wage for Pharmacy Technicians (29–2052).

Occupational Employment Statistics, May 2014 National Occupational Employment and Wage Estimates United States, U.S. Department of Labor, Bureau of Labor Statistics. *http://www.bls.gov/oes/current/oes_nat.htm#b29-0000*.

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Sharon B. Arnold,

Deputy Director.

[FR Doc. 2015–20358 Filed 8–17–15; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''*Pilot Test of the Proposed Hospital Survey on Patient Safety Culture Version 2.0.*'' In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on May 7, 2015 and allowed 60 days for public comment. AHRQ received one comment of substance. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by September 17, 2015.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by email at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Pilot Test of the Proposed Hospital Survey on Patient Safety Culture Version 2.0

Proposed Project

In 2004, AHRQ developed and published a measurement tool to assess the culture of patient safety in hospitals (OMB control no. 0935–0115). The *Hospital Survey on Patient Safety Culture* (HSOPS) is a survey of providers and staff that can be implemented by hospitals to identify strengths and areas for patient safety culture improvement as well as raise awareness about patient safety. When conducted routinely, the survey can be used to examine trends in patient safety culture over time and evaluate the cultural impact of patient safety initiatives and interventions. The data can also be used to make comparisons across hospital units. AHRQ also produced a survey user's guide to assist hospitals in conducting the survey successfully. The guide addresses issues such as which providers and staff should complete the survey, how to select a sample of hospital providers and staff, how to administer the questionnaire, and how to analyze and report on the resulting data.

Since 2004, thousands of hospitals within the U.S. and internationally have implemented the survey. In response to requests for comparative data from other hospitals, AHRQ funded the development of a comparative database on the survey in 2006 (OMB control no. 0935–0162). The database is currently compiled every two years, using the latest data provided by participating hospitals (and retaining submitted data for no more than 2 years). Reports describing the findings from analysis of the database are made available on the AHRQ Web site to assist hospitals in comparing their results. The 2014 database contains data from 405,281 hospital provider and staff respondents within 653 participating hospitals. The 2014 User Comparative Database Report presents results by hospital characteristics (*e.g.,* number of beds, teaching status, geographic location) and respondent characteristics (*e.g.,* position type, work area/unit).

The survey constructed in 2004 remains in use today, more than 10 years after its initial launch. Since the launch of HSOPS, AHRQ has funded development of patient safety culture surveys for other settings. In 2008, surveys were published for outpatient medical offices (OMB control no. 0935–0131) and nursing homes (OMB control no. 0935–0132). In 2012, a survey for community pharmacies (OMB control no. 0935–0183) was released. Surveys for each setting built upon the strengths of HSOPS but improved and updated items where appropriate.

Users of HSOPS have provided feedback over the years suggesting that changes to the instrument would be valuable and welcomed. The comparative database registrants provided feedback about potential changes in 2013, and telephone interviews were conducted with 8 current survey users and vendors to gain an in-depth understanding of their thoughts on the current survey and possible changes. As a result of this feedback, the *Hospital Survey on Patient Safety Culture Version 2.0* (HSOPS 2.0) is being constructed with the following 8 objectives in mind.

(1) Shift to a Just Culture framework for understanding responses to errors. In the original HSOPS, questions around responses to errors were negatively worded to detect a ''culture of blame'' in organizations. For example, respondents evaluated the extent to which errors were held against them and whether it felt as though the person was being written up rather than the problem. In contrast, a Just Culture framework emphasizes learning from mistakes, providing a safe environment for reporting errors, and utilizing a balanced approach to errors that considers both system and individual behavioral reasons as causes for errors. New items will be constructed in HSOPS 2.0 to capture the extent to which positive responses to error consistent with a Just Culture framework are present in an organization. For example, respondents will be asked to evaluate the extent to which the organization tries to understand the factors that lead to patient safety errors.

(2) Reduce the number of negatively worded items. The original HSOPS had negatively worded items. For example, respondents are asked whether there are ''patient safety problems in this unit'' (negatively worded). Using some negatively worded items was intended

to reduce social desirability and acquiescence biases and identify individuals not giving the survey their full attention (*e.g.,* ''straight-lining,'' or providing the same answer for every item, regardless of positive or negative wording). However, many users have indicated that respondents sometimes had difficultly correctly interpreting and responding to the negatively worded items. Therefore, many survey users recommended that the number of negatively worded items should be reduced, but they did not recommend removing all of these items as they felt a mixture of items helps keep respondents engaged.

(3) Add a ''Does not apply/Don't know'' response option. Analysis of the Comparative Database data found that a percentage of respondents selects ''neither agree nor disagree'' on many items when they really should have answered ''Does not apply/Don't know''. While some portion of respondents will always have neutral feelings about a statement, in some cases a respondent will select a neutral response to an item because they do not have experience in that area or the item does not apply to their position. Addition of a ''does not apply/don't know'' response option should reduce neutral responses to an item in cases where the item is not relevant for a respondent, providing more statistical variability in responses. Recognizing these issues, the other AHRQ Surveys on Patient Safety Culture all have a fifth ''Does not apply/Don't know'' response option.

(4) Reword unclear or difficult-to-translate items. HSOPS was originally designed for use in U.S. hospitals, but it has since been translated into languages other than English. Some HSOPS items use idiomatic expressions that do not translate well, such as ''things fall between the cracks'' and ''the person is being written up.'' Other items have words that are complex or may mean different things to different people, such as ''sacrifice'' and ''overlook.'' HSOPS 2.0 uses more universal phrases which can be accurately translated and have more consistent meaning across respondents, some of whom are non-clinical staff. A related change across many items is use of the word ''we'' rather than ''staff.'' It may be unclear to respondents whether providers such as physicians, residents, and interns qualify as ''staff,'' while ''we'' invites a more inclusive view of those in the hospital or unit.

(5) Reword items to be more applicable to physicians and non-clinical staff. Users have indicated that the wording of some of the items makes it awkward for physicians to answer. For example, the section that asks about ''Your Supervisor/Manager'' does not apply well to physicians who report to a clinical leader but not to a manager per se. In addition, some items were difficult for non-clinical staff to answer. For example, the item ''We have patient safety problems in this unit'' may not be relevant for staff, who do not have direct interaction with patients (*e.g.,* IT staff).

(6) Align the HSOPS survey with AHRQ patient safety culture surveys for other settings. The development of patient safety culture surveys for other settings provided opportunities to test new items and refinements of original HSOPS items. Many of these items have performed well for other settings and are relevant to the hospital setting. In addition, standardizing items across the patient safety culture surveys would allow cross-setting comparisons that are not currently possible.

(7) Reduce survey length. To increase response rates and reduce the survey administration burden for hospitals, the revised survey is intended to be shorter than the original instrument. Some of the original items have relatively low variability and therefore contribute little to discrimination between positive and negative assessment of patient safety culture. However, the need for careful testing of alternative questions means that the initial draft of the revised or 2.0 survey is slightly longer than the original. Through cognitive interviewing, pilot testing, and expert review, we will identify items that can be deleted, resulting in a shorter final instrument.

(8) *Investigate supplemental items/composites.* Develop a set of supplemental items for the HSOPS 2.0 survey pertaining to Health Information Technology (Health IT).

Further details about the specific changes by composite and at the item level can be found on the AHRQ Web site at: *http://www.ahrq.gov/professionals/quality-patient-safety/patientsafetyculture/hospital/update/index.html.*

The draft 2.0 version of the instrument has undergone preliminary cognitive testing with 9 hospital physicians and staff members as well as review by a Technical Expert Panel (TEP).

This research has the following goals:

(1) Test cognitively with individual respondents the items in a) the draft HSOPS 2.0 survey and b) HSOPS 2.0 supplemental item set assessing Health IT Patient Safety. Cognitive testing will be conducted in English and Spanish.

(2) Conduct data collection as follows:

a. A combined pilot test and bridge study for the draft HSOPS 2.0 in 40 hospitals and modify the questionnaire as necessary. The pilot test component will entail administering the draft 2.0 version to determine which items to retain. The bridge study component will entail administering the original HSOPS in addition to the draft HSOPS 2.0 version to provide guidance to hospitals in understanding changes in their scores resulting from the new instrument versus changes resulting from true changes in culture.

b. The pilot testing of the supplemental item set will be conducted with the same hospitals and respondents as the pilot test for the draft HSOPS 2.0. These supplemental items will be added to the draft HSOPS 2.0 survey for pilot testing.

(3) Engage a TEP in review of pilot results and finalize the questionnaire and supplemental item set.

(4) Make the final HSOPS 2.0 survey and the supplemental items publicly available.

This work is being conducted by AHRQ through its contractor, Westat, pursuant to AHRQ's statutory authority to conduct and support research on health care and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of health care services and with respect to quality measurement and improvement. 42 U.S.C. 299a(a)(1) and (2).

Method of Collection

Cognitive interviews—The purpose of these interviews is to understand the cognitive processes respondents engage in when answering each item on the survey, which will aid in refining the survey instrument. These interviews will be conducted with a mix of hospital personnel, including physicians, nurses, and other types of staff (from dietitians to housekeepers).

Draft HSOPS 2.0—Cognitive interviews have already been conducted with 9 respondents to inform development of the current draft HSOPS 2.0. Up to three additional rounds of interviews will be conducted by telephone with a total of 27 respondents (nine respondents each round). The instrument will be translated into Spanish and another round of cognitive interviews will be conducted with nine Spanish-speaking respondents for a total of up to 36 respondents across all four rounds. A cognitive interview guide will be used for all rounds.

Supplemental Items—Up to three rounds of interviews will be conducted by telephone for a total of 27 respondents (nine respondents each round). The supplemental items will be

translated into Spanish and another round of cognitive interviews will be conducted with nine Spanish-speaking respondents for a total of up to 36 respondents across all four rounds. A cognitive interview guide will be used for all rounds.

(1) Feedback obtained from the first round of interviews for the draft HSOPS 2.0 and the supplemental items will be used to refine the items. The results of Round 1 testing, along with the proposed revisions, will be reviewed with a TEP prior to commencing with Rounds 2 and/or 3 testing. In total, up to 72 cognitive interviews will be conducted to refine the draft HSOPS 2.0 and supplemental items for pilot testing.

(2) Pilot test and bridge study—There will be one data collection effort which will provide data for the pilot test and the bridge study. The pilot test of the draft HSOPS 2.0 and supplemental items will allow the assessment of the psychometric properties of the items and composites. We will assess the variability, reliability, factor structure and construct validity of the draft HSOPS 2.0 and supplemental items and composites, allowing for their further refinement. The draft HSOPS 2.0 survey and supplemental items will be pilot tested with hospital personnel in approximately 40 hospitals to facilitate multilevel analysis of the data. Approximately 500 providers and staff will be sampled from each hospital, with 250 receiving HSOPS 2.0 with supplemental items for the pilot test and 250 receiving the original HSOPS for the bridge study comparisons. A hospital point of contact will be recruited in each hospital to publicize the survey and assemble a list of sampled providers and staff. Providers and staff will receive notification of the survey and reminders via email and the web-based survey will be fielded entirely online.

The goal of the bridge study will be to provide users with guidance on how their new results will compare with results from the original HSOPS survey. Although users have requested that the HSOPS survey be revised, they are also concerned about their ability to trend results with data from prior years. Fielding a bridge study is not unprecedented. For example, a similar bridge study was conducted during the 1994 redesign of the Census Bureau's Current Population Survey (CPS). In the CPS bridge study, an additional 12,000 households were added to the survey's monthly rotation schedule between July 1992 and December 1993. The added households received the redesigned version of the instrument. Thus, the CPS fielded both the revised and the original versions of the instrument simultaneously. One of the most important results of the CPS bridge study was the development of metrics that allowed estimates of change that were due to the changes in the instrument. These metrics were used to adjust the estimates produced by the revised CPS instrument. As a result of the study, key labor force metrics such as the unemployment rate could be trended accurately after the instrument's redesign.

We propose to conduct a similarly constructed bridge study in which sampled providers and staff take either the draft HSOPS 2.0 or original versions of HSOPS. As noted above, a split ballot design will be used in which half of sampled providers and staff in each hospital receive the original HSOPS (N=250) and the other half receive the draft HSOPS 2.0 (N=250). This bridge study is designed to produce metrics of change that are attributable to the changed survey instrument. The number of hospitals and sampled providers and staff for this data collection effort was calculated to ensure the statistical power needed to detect relatively small differences in scores (3 percentage points).

(3) TEP feedback—A TEP has been assembled to provide input to guide patient safety culture survey product development and has been convened to discuss the proposed changes to the HSOPS survey and supplemental items. Upon completion of the pilot test, results will be reviewed with the TEP and the survey will be finalized. This TEP activity does not impose a burden on the public and is therefore not included in the burden estimates in Exhibits 1 and 2.

(4) Dissemination activities—The final HSOPS 2.0 instrument and supplemental items will be made publicly available through the AHRQ Web site. A report from the bridge study will also be made public as a resource to hospitals making the transition to the new survey. This dissemination activity does not impose a burden on the public and is therefore not included in the burden estimates in Exhibits 1 and 2.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the participants' time to take part in this research. Cognitive interviews for the draft HSOPS 2.0 will be conducted with 36 individuals and will take about one hour and 30 minutes to complete. Cognitive interviews for the supplemental items will be conducted with 36 individuals and take about one hour to complete. We will recruit 40 hospitals for the pilot test and bridge study, sampling approximately 500 staff members in each (250 taking the original survey and 250 taking the HSOPS 2.0 and supplemental item set). Because we require such a large sample within each hospital, we will target only hospitals with 49 or more beds. For hospitals with fewer than 500 providers and staff, we will conduct a census in the hospital (assuming on average 375 providers and staff in these hospitals this will yield a total of 18,375 sample members assuming all 40 hospitals participate. Assuming a response rate of 50 percent, this will yield a total of 9,188 completed questionnaires. The total annualized burden is estimated to be 2,387 hours.

Exhibit 2 shows the estimated annualized cost burden associated with the participants' time to take part in this research. The total cost burden is estimated to be $83,533.26.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name/activity	Number of respondents	Hours per response	Total burden hours
Cognitive interviews—HSOPS 2.0	36	1.5	54
Cognitive interviews—Supplemental Items	36	1.0	36
Pilot test and bridge study	9,188	0.25	2,297
Total	9,260	na	2,387

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name/activity	Total burden hours	Average hourly wage rate *	Total cost burden
Cognitive interviews (HSOPS 2.0 and supplemental items)	90	[a] $35.38	$3,184.20
Pilot test and bridge study	2,297	[b] 34.98	80,349.06
Total	2,387	na	83,533.26

[a] Based on the weighted average hourly wage in hospitals for one physician (29–1060; $101.53), one registered nurse (29–1141; $30.22), one general and operations manager (11–1021; $52.64), and six clinical lab techs (29–2010; $22.34) whose hourly wage is meant to represent wages for other hospital employees who may participate in cognitive interviews

[b] Based on the weighted average hourly wage in hospitals for 1,981 registered nurses, 209 clinical lab techs, 176 physicians and surgeons, and 21 general and operations managers

* National Industry-Specific Occupational Employment and Wage Estimates, May 2013, from the Bureau of Labor Statistics (available at *http://www.bls.gov/oes/current/naics4_621100.htm* [for general medical and surgical hospitals, NAICS 622100]).

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Sharon B. Arnold,

Deputy Director.

[FR Doc. 2015–20359 Filed 8–17–15; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–0920]

Select Updates for Non-Clinical Engineering Tests and Recommended Labeling for Intravascular Stents and Associated Delivery Systems; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Select Updates for Non-Clinical Engineering Tests and Recommended Labeling for Intravascular Stents and Associated Delivery Systems.'' FDA has developed this guidance to inform the coronary and peripheral stent industry about selected updates to FDA's thinking regarding certain non-clinical testing for these devices. While FDA is considering more substantial updates to the ''Non-Clinical Engineering Tests and Recommended Labeling for Intravascular Stents and Associated Delivery Systems'' guidance (*http://www.fda.gov/medicaldevices/deviceregulationandguidance/guidancedocuments/ucm071863.htm*), we are issuing this update on select sections in order to notify the industry in a timely manner of our revised recommendations.

DATES: Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time.

ADDRESSES: An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Select Updates for Non-Clinical Engineering Tests and Recommended Labeling for Intravascular Stents and Associated Delivery Systems'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

Submit electronic comments on the guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Katharine Chowdhury, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 66, Rm. 1222, Silver Spring, MD 20993–0002, 301–796–6344, or Erica Takai, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 62, Rm. 3226, Silver Spring, MD 20993–0002, 301–796–6353.

SUPPLEMENTARY INFORMATION:

I. Background

FDA held a public workshop entitled ''Cardiovascular Metallic Implants: Corrosion, Surface Characterization, and Nickel Leaching'' on March 8 and 9, 2012, that provided information on current practices for performing these tests (see *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/ucm287535.htm*). A group of participants from industry, test facilities, and academia provided comments on practices for corrosion testing and nickel ion release testing. Based on the discussion at the workshop, this guidance updates a key aspect of sample conditioning for pitting corrosion testing that is less burdensome, and includes additional information on when galvanic corrosion testing may be omitted with justification, based on information gained from the workshop. This guidance provides updates only for the following topics:

- Pitting corrosion potential
- Galvanic corrosion
- Surface characterization
- Nickel ion release

This guidance provides cross-references and updates to the related

sections of the existing ''Non-Clinical Engineering Tests and Recommended Labeling for Intravascular Stents and Associated Delivery Systems'' guidance.

In the **Federal Register** on August 30, 2013 (78 FR 53773), FDA announced the availability of the draft guidance document. Interested persons were invited to comment by September 30, 2013. Four sets of comments were received and, in general, were supportive of the guidance. There were multiple comments regarding the need for clarification of acceptance criteria and the desire for a flow chart to visualize the overall testing paradigm described in the guidance update. In response to these comments, FDA revised the guidance document to include more specific information on acceptance criteria for pitting corrosion and surface oxide properties, as well as a flow chart. General concerns were noted that the guidance modifications might be interpreted to be more burdensome. However, the addition of the flowchart is intended to clarify when testing beyond pitting corrosion testing should be considered, and based on prior experience, it is anticipated that few stents will need further assessment. In addition, there were several comments regarding the lack of utility of post-fatigue pitting corrosion assessment. In response to these comments, as well as discussions at the March 2012 workshop, FDA has removed the suggestion to consider post-fatigue pitting corrosion testing when damage to samples is noted due to fatigue testing. There was also a comment that the 60-day suggested duration for nickel release may be unnecessarily long and burdensome, and in response, FDA has reduced the minimum duration to 30 days if the release rate falls below a predetermined level based on toxicological risk assessment.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on certain non-clinical testing for coronary and peripheral stents. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov.* Persons unable to download an electronic copy of ''Select Updates for Non-Clinical Engineering Tests and Recommended Labeling for Intravascular Stents and Associated Delivery Systems '' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1826 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 814 have been approved under OMB control number 0910–0231.

V. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Dated: August 12, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–20308 Filed 8–17–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–0640]

Uncomplicated Gonorrhea: Developing Drugs for Treatment; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a guidance for industry entitled ''Uncomplicated Gonorrhea: Developing Drugs for Treatment.'' The purpose of this guidance is to assist sponsors in the clinical development of drugs for the treatment of uncomplicated gonorrhea. This guidance finalizes the draft guidance of the same name issued on June 19, 2014.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Maria Allende or Joseph Toerner, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6244, Silver Spring, MD 20993–0002, 301–796–1400.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Uncomplicated Gonorrhea: Developing Drugs for Treatment.'' The purpose of this guidance is to assist sponsors in the development of drugs for the treatment of uncomplicated gonorrhea.

This guidance describes approaches for trial designs for the evaluation of new drugs for the treatment of uncomplicated gonorrhea. The guidance focuses on the noninferiority trial design and describes an efficacy endpoint for which there is a well-defined treatment effect. The guidance also provides the justification for the noninferiority margin. After careful consideration of comments received in response to the draft guidance issued on June 19, 2014 (79 FR 35172), we added a brief discussion of the potential for pregnant women to be included in specific populations for drug development. In addition, this guidance

reflects recent developments in scientific information that pertain to drugs being developed for the treatment of uncomplicated gonorrhea.

Issuance of this guidance fulfills a portion of the requirements of Title VIII, section 804, of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144), which requires FDA to review and, as appropriate, revise not fewer than three guidance documents per year for the conduct of clinical trials with respect to antibacterial and antifungal drugs.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on developing drugs for the treatment of uncomplicated gonorrhea. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR parts 312 and 314 have been approved under OMB control numbers 0910–0014 and 0910–0001, respectively.

III. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday and will be posted to the docket at *http://www.regulations.gov.*

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceCompliance/RegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: August 12, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–20306 Filed 8–17–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–2918]

Pilot Program for Medical Device Reporting on Malfunctions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is soliciting nominations for participation in a pilot program for the submission of medical device reports for malfunctions of class I devices and certain class II devices in summary format on a quarterly basis. Under the Medical Device Reporting on Malfunctions pilot program, FDA intends to work with manufacturers to identify candidates for the pilot program and intends to continue to accept nominations until candidates for the pilot program have been selected.

DATES: FDA will begin accepting nominations for participation in the voluntary pilot program on September 1, 2015, and intends to continue to accept nominations until candidates for the pilot program have been selected. See section II for instructions on how to participate in the voluntary pilot program.

FOR FURTHER INFORMATION CONTACT: William C. Maloney, Center for Devices and Radiological Health, 10903 New Hampshire Ave., Bldg. 66, Rm. 3236, Silver Spring, MD 20993–0002, *227pilot@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Food and Drug Administration Amendments Act of 2007 (FDAAA) (Pub. L. 110–85), amended section 519(a) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360i(a)), relating to the reporting of device malfunctions to FDA under part 803 (21 CFR part 803). Specifically, FDAAA amended the FD&C Act to require that medical device reports of malfunctions for class I devices and those class II devices that are not permanently implantable, life supporting, or life sustaining—with the exception of any type of class I or II device which FDA has, by notice, published in the **Federal Register** or by letter to the person who is the manufacturer or importer of the device, indicated should be subject to part 803 in order to protect the public health—be submitted in accordance with the criteria established by FDA (section 519(a)(1)(B)(ii) of the FD&C Act).[1] The criteria must require the reports to be in summary form and made on a quarterly basis (section 519(a)(1)(B)(ii) of the FD&C Act).

FDA is considering the development of malfunction reporting criteria for devices subject to section 519(a)(1)(B)(ii) of the FD&C Act. In the interim, FDA clarified that all manufacturers of class I devices and those class II devices that are not permanently implantable, life supporting, or life sustaining, must continue to report in full compliance with part 803 (76 FR 12743 at 12744, March 8, 2011).

The malfunction reporting requirements for class III devices and those class II devices that are permanently implantable, life supporting, or life sustaining were not altered by FDAAA. Under the amended section 519(a) of the FD&C Act, device manufacturers are to continue to submit malfunction reports in accordance with part 803 for all class III devices and for those class II devices that are permanently implantable, life supporting, or life sustaining, unless FDA grants an exemption or variance from, or an alternative to, a requirement under such regulations under § 803.19 (section 519(a)(1)(B)(i) of the FD&C Act).

In addition, under section 519(a) of the FD&C Act, as amended by FDAAA, there is no change to the obligation for an importer to submit malfunction reports to the manufacturer in accordance with part 803 for devices that it imports into the United States (section 519(a)(1)(B)(iii) of the FD&C Act).

FDA intends to use the information learned and experiences gained from the pilot program to develop the malfunction reporting criteria for devices subject to section 519(a)(1)(B)(ii) of the FD&C Act.

II. Pilot Program for Medical Device Reporting (MDR) on Malfunctions

FDA has developed this pilot program for manufacturers interested in submitting malfunction reports for certain devices in a summary format on a quarterly basis. This notice provides:

[1] In light of section 1003(d) of the FD&C Act (21 U.S.C. 393(d)) and the Secretary of Health and Human Services' (the Secretary's) delegation to the Commissioner of Food and Drugs, statutory references to ''the Secretary'' have been changed to ''FDA'' or the ''Agency'' in this document.

(1) The guiding principles underlying the pilot program, (2) the conditions for participation in the pilot program, (3) a description of the pilot program, (4) the eligibility criteria for the pilot program, (5) the procedures that FDA intends to follow in the pilot program, (6) the manufacturer notification process, (7) FDA's review process for the summary reports, (8) the duration of the pilot program, and (9) FDA's evaluation process for the pilot program.

A. Guiding Principles

The following basic principles underlie the Medical Device Reporting on Malfunctions pilot program described in this notice. FDA intends for these principles to create a common understanding between the manufacturer and FDA about the goals and parameters of this pilot program.

1. FDA is exploring a possible approach to summary reporting of device malfunctions on a quarterly basis under the pilot program (as illustrated in the case examples in this notice in section II.C. Description of the Program) that would allow FDA to collect sufficient detail to effectively monitor the devices subject to section 519(a)(1)(B)(ii) of the FD&C Act and protect the public health.

2. The data received in this pilot should contain details sufficient to understand the device-related malfunctions. A narrative text should be provided to include a summary of the malfunction events, the results of the manufacturer's investigation of the reported malfunctions, including the type of any remedial action taken or an explanation of why remedial action was not taken, and any additional information that would be helpful to understand how the manufacturer addressed the malfunctions summarized in the report.

3. As the summary information collected under this pilot represents a subset of the detailed information collected under § 803.52, FDA intends to use the existing electronic Medical Device Reporting (eMDR) infrastructure for the summary reports.

4. All summary MDR reports [2] will appear in the Manufacturer and User Facility Device Experience (MAUDE) database, which is publically available.

B. Conditions

1. Under § 803.19, manufacturers who are accepted into the program will be granted an exemption or variance from, or alternative to, the reporting requirements under §§ 803.50(a) and 803.52 for those malfunction events associated with the devices selected for the pilot. Other reportable events involving the devices selected for the pilot must be reported to FDA within the mandatory 30-calendar day timeframe on Form FDA 3500A, as required by §§ 803.50(a) and 803.52, or within the 5-work day timeframe as required by § 803.53. Additional information and instructions will be provided to manufacturers accepted into the pilot.

2. A candidate is not precluded from withdrawing from the pilot program at any time and returning to the individual reporting requirements of §§ 803.50(a) and 803.52.

3. Due to FDA resource issues, FDA intends to limit the pilot program to no more than nine (9) candidates.

4. At its discretion, FDA may withdraw a manufacturer from the pilot program, for reasons including, but not limited to, any violations of the FD&C Act, failure to follow the instructions of the pilot program, or if FDA obtains information after the manufacturer is accepted to the pilot program that the manufacturer is not an appropriate candidate for the program as described in this notice in section II.D. Appropriate Candidates. Withdrawal from the pilot program will result in a return to the individual reporting requirements of §§ 803.50(a) and 803.52.

5. At its discretion, FDA may modify specific details regarding the pilot if needed. Any such changes will be communicated directly to the candidates of the pilot program.

C. Description of the Program

Candidates of the pilot program will submit Form FDA 3500A reports in electronic reporting format on a quarterly basis. For purposes of the pilot, ''quarterly basis'' is defined as a three (3) month period. Each submission should represent a summary of malfunction events received for a unique device problem code or set of codes within the quarterly timeframe, and for a particular device model number and/or catalog number. Device malfunctions that are summarized in one report should not be duplicated in any other submissions within the same quarterly timeframe.

Summary reports should include the following information collected on Form FDA 3500A in electronic format:

SECTION B.5: *Describe Event or Problem*—The device event narrative should include a description of the nature of the events (being as specific as possible); and if available, a range of patient age and weight, and a breakdown of patient gender. The first sentence of the device event narrative should include the following sentence:

''This report summarizes <NOE> XXX </NOE> malfunction events'' where XXX is replaced by the number of malfunction events being summarized.

SECTION D.2 and D.2.b: *Common Device Name and Procode*—Enter the common name of the device and the product code.

SECTION D.3: *Manufacturer Name, City and State*—Enter the manufacturer name, city and state where the manufacturer is located.

SECTION D.4: *Device Identification*—Enter the model or catalog number for the device being summarized in the MDR report.

SECTION G.1: *Contact Office (and Manufacturing Site for Devices)*—Enter the name and address of the manufacturer reporting site [contact office], including contact name for the report submitted. Enter the name and address of the manufacturing site for the device, if different from the contact office.

SECTION G.2: *Phone Number*—Enter the phone number for the contact office.

SECTION H.1: *Type of Reportable Event*—Check ''Malfunction'' in this box.

SECTION H.6: *Event Problem and Evaluation Codes*—Enter the device problem code(s), including any codes received from a user facility or importer report provided in Section F.10 of Form FDA 3500A. Enter ''9999'' as the first device problem code to identify the report as a summary malfunction report. Enter the evaluation code(s) for the categories of method, results, and conclusions. Enter a conclusion code(s) even if the device was not evaluated.

SECTION H.10: *Additional Manufacturer Narrative*—Provide a summary of the results of your investigation of the reported malfunctions, including the type of any remedial action taken or an explanation of why remedial action was not taken, and any additional information that would be helpful to understand how you addressed the malfunction events summarized in the report. Also enter a breakdown of the malfunction events summarized in the report, including the number of devices that were returned to you; the number of devices that were labeled for single use (if any); and the number of devices that were reprocessed and re-used (if any).

Note: All reportable adverse events which result in a serious injury or death; and/or necessitate remedial action to prevent an unreasonable risk of substantial harm to the public health, are excluded from this pilot program. In addition, for reference here is the

[2] Any information in the report that is protected from public disclosure under the Freedom of Information Act (FOIA) will be redacted prior to the release of the report.

link to the on-line version of the Form FDA 3500A: *http://www.fda.gov/downloads/AboutFDA/ReportsManualsForms/Forms/UCM048334.pdf.*

Case Examples: The following examples are meant to illustrate the format for how malfunction reports submitted under this pilot will be captured. All of these examples are for class I devices and those class II devices that are not permanently implantable, life supporting, or life sustaining. These examples do not address interpretation of these reportable events.

Case Scenario #1: Multiple malfunction reports for the same device problem. A manufacturer receives 50 similar reports within the quarterly timeframe indicating that model XYZ pump experienced an air detected set alarm, which interrupted delivery. The alarms may have been a false alarm. These events were received from various sources. Of the 50 adverse events, 46 did not involve patients, and 4 involved patients with no reported injuries or deaths. None of these events necessitate remedial action to prevent an unreasonable risk of substantial harm to the public health. The XYZ pumps were recently retrofitted with a new user interface software model V.2.04.12.

Report for Case #1: A single summary MDR report is to be submitted to FDA through eMDR:

- B.5: This report summarizes <NOE> 50 </NOE> malfunction events. A review of the events indicated that model XYZ pump experienced an air detected set alarm, which interrupted delivery. The alarms may have been a false alarm. These reports were received from various sources. Of the 50 events, 46 did not involve patients, and 4 involved patients with no patient consequences. The four patients ranged from 25–32 years of age and 130–250 lbs. Of the reported patients, one was male and three were female. The XYZ pumps were recently retrofitted with a new user interface software model V.2.04.12.
- D.2: Infusion Pump
- D.2.b: FRN
- D.3: ABC Company, 123 Baker Street, Anywhere, MD, USA
- D.4: Model XYZ
- G.1: Mr. X, ABC company, 123 Baker Street, Anywhere, MD, USA
- G.2: 301–555–0001
- H.1: Malfunction
- H.6: Device Codes: 9999 (Summary Malfunction); 1008 (Air Leak)
- H.6: Manufacturer Method Codes: 10 (Actual Device Evaluated); 38 (Visual Inspection)
- H.6: Manufacturer Results Code: 549 (Air pump assembly)
- H.6: Manufacturer Evaluation Conclusion Codes: 52 (Device was out of calibration)
- H.10: For 40 of the 50 reported events, the devices were returned to ABC, and their operating condition was confirmed by service. The cause of the malfunction was determined to be a faulty pump head module. To correct the condition, the pump head modules were replaced.

Case Scenario #2: Multiple malfunction reports that have two device problems: A manufacturer receives 100 malfunction reports within the quarterly timeframe that include two types of device malfunctions that are related to a specific model (XYZ, Version 2) of a powered AC bed: (1) 75 events involve a broken weld near where the motor attaches; and (2) 55 events involve a screw that attaches the bed rail to the mounting bracket on the bed, which snapped. Some of the events involve both types of device malfunctions. None of the events involve patients. None of the events necessitate remedial action to prevent an unreasonable risk of substantial harm to the public health.

Reports for Case #2: Under this pilot, a unique device problem code or set of codes for a particular device model number and/or catalog number that are summarized in one report should not be duplicated in any other submissions within the same quarterly timeframe. As a result, there are three categories of reports for this scenario—(1) 45 events that involve broken welds only; (2) 25 events that involve broken screws only; and (3) 30 events that involve both broken welds and broken screws. Therefore, three summary reports will need to be submitted to FDA through eMDR.

Report #1:

- B.5: This report summarizes <NOE> 45 </NOE> malfunction events. A review of the events indicated that model XYZ experienced broken welds near where the motor attaches to the powered AC beds. No patients were involved.
- D.2: AC Powered Beds
- D.2.b: FNL
- D.3: ABC company, 123 Baker Street, Anywhere, MD, USA
- D.4: Model XYZ
- G.1: Mr. X, ABC Company, 123 Baker Street, Anywhere, MD, USA
- G.2: 301–555–0001
- H.1: Malfunction
- H.6: Device Codes: 9999 (Summary Malfunction); 1069 (Break); 3195 (Weld)
- H.6: Manufacturer Method Codes: 10 (Actual Device Evaluated); 38 (Visual Inspection)
- H.6: Manufacturer Results Code: 170 (Manufacturing process problem)
- H.6: Manufacturer Evaluation Conclusion Codes: 12 (Design deficiency)
- H.10: To correct the condition, the beds were taken out of service.

Report #2:

- B.5: This report summarizes <NOE> 25 </NOE> malfunction events. A review of the events indicated that a screw that attaches the bed rail to the mounting bracket on the bed is snapping on model XYZ. No patients were involved.
- D.2: AC Powered Beds
- D.2.b: FNL
- D.3: ABC company, 123 Baker Street, Anywhere, MD, USA
- D.4: Model XYZ
- G.1: Mr. X, ABC Company, 123 Baker Street, Anywhere, MD, USA
- G.2: 301–555–0001
- H.1: Malfunction
- H.6: Device Codes: 9999 (Summary Malfunction); 1069 (Break); 568 (Screw)
- H.6: Manufacturer Method Codes: 10 (Actual Device Evaluated); 38 (Visual Inspection)
- H.6: Manufacturer Results Code: 170 (Manufacturing process problem)
- H.6: Manufacturer Evaluation Conclusion Codes: 12 (Design deficiency)
- H.10: To correct the condition, the beds were taken out of service temporarily. A technician was dispatched to replace the screw. Load testing was applied to verify bed rail performance.

Report #3:

- B.5: This report summarizes <NOE> 30 </NOE> malfunction events. A review of the events indicated that a screw that attaches the bed rail to the mounting bracket on the AC powered bed failed causing the bed rail to detach and collide with the beam near where the motor attaches. The force of impact caused a broken weld to form near the motor attachment on the AC powered bed. No patients were involved.
- D.2: AC Powered Beds
- D.2.b: FNL
- D.3: ABC Company, 123 Baker Street, Anywhere, MD, USA
- D.4: Model XYZ
- G.1: Mr. X., ABC Company, 123 Baker Street, Anywhere, MD, USA
- G.2: 301–555–0001
- H.1: Malfunction
- H.6: Device Codes: 9999 (Summary Malfunction); 1069 (Break); 3195 (Screw); 568 (Weld)
- H.6: Manufacturer Method Codes: 10 (Actual Device Evaluated); 38 (Visual Inspection)
- H.6: Manufacturer Results Code: 170 (Manufacturing process problem)

• H.6: Manufacturer Evaluation Conclusion Codes: 12 (Design deficiency)

• H.10: To correct the condition, the beds were taken out of service. Technicians have examined the beds and have opened up a Corrective and Preventive Action (CAPA) to address the design issue.

D. Appropriate Candidates

Appropriate candidates for the pilot program are manufacturers who:

1. Are currently submitting reports to FDA using the paper Form FDA 3500A or the electronic MDR (eMDR) format.

2. Manufacture class I devices and/or those class II devices that are not permanently implantable, life supporting, or life sustaining.

3. Currently use or are willing to use eMDR to submit summary malfunction reports to the FDA during the pilot period.

4. Are in compliance with the Medical Device Reporting regulation in 21 CFR part 803.

E. Procedures

1. Nomination

A manufacturer of class I devices and those class II devices that are not permanently implantable, life supporting, or life sustaining may nominate themselves for participation in the pilot program by submitting a nomination to *227pilot@fda.hhs.gov*. FDA intends to acknowledge receipt of nominations via return email. The following information will assist FDA in processing and responding to nominations:

• Name of manufacturer

• Registration number

• Contact name, address, phone number, and email address

• Model or catalog number for the device(s) that you are requesting to include in the pilot, and

• Product classification code for the device(s) that you are requesting to include in the pilot. You may access the Product Classification Code database at *http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfPCD/classification.cfm*.

2. FDA Consideration

Acceptance of nominations will start 2 weeks following the publication date of this **Federal Register** notice. Because only a limited number of candidates are needed, FDA will use its discretion in choosing candidates based on the eligibility criteria in this **Federal Register** notice in section II.D. Appropriate Candidates, the needs of the pilot to include a diversity of manufacturers with regard to device type (including in vitro diagnostic devices), and expected number of malfunction events. FDA may contact the manufacturer to request supplemental information if this information is needed in order to complete our review of the request. The manufacturer must provide the supplemental information within 15 days of FDA's request; otherwise, the Agency will consider the nomination withdrawn.

F. Manufacturer Notification

FDA intends to notify manufacturers who are selected for this pilot program within 45 days from receiving their nomination or any supplemental information requested by FDA. Once FDA has selected the candidates for this pilot, FDA will notify subsequent applicants by email that the nomination period has closed.

G. FDA Review

All reports received under the pilot program will be reviewed and processed in the same manner as individual medical device reports that are submitted under part 803. A version of the report releasable under FOIA will be accessible through the public MAUDE database.

H. Duration of the Pilot

FDA intends for the pilot program to run for 2 calendar quarters for each candidate and will continue until the 2 calendar quarters have been completed for all candidates. At its discretion, FDA may terminate the pilot program before the close of this period, or FDA may extend the pilot program beyond the 2 calendar quarters. The decision to terminate or extend the pilot will be announced in the **Federal Register**.

I. Evaluation

FDA intends to evaluate all information and feedback received from the candidates and to use the information and experiences gained from the pilot program to develop criteria for summary reporting on a quarterly basis for devices subject to section 519(a)(1)(B)(ii) of the FD&C Act.

III. Paper Reduction Act of 1995

This notice refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 803 have been approved under OMB control number 0910–0437; the collections of information in Form FDA 3500A have been approved under OMB control number 0910–0291.

Dated: August 12, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–20309 Filed 8–17–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–0903]

Providing Submissions in Electronic Format—Postmarketing Safety Reports for Vaccines; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a document entitled ''Providing Submissions in Electronic Format—Postmarketing Safety Reports for Vaccines; Guidance for Industry.'' The guidance document provides information and recommendations pertaining to the electronic submission of postmarketing safety reports involving vaccine products marketed for human use with approved biologics license applications (BLAs), including individual case safety reports (ICSRs) and attachments to ICSRs (ICSR attachments), into the Vaccine Adverse Event Reporting System (VAERS). VAERS is a national vaccine safety surveillance program that is co-sponsored by the Centers for Disease Control and Prevention (CDC) and FDA. FDA published in the **Federal Register** a final rule requiring that certain postmarketing safety reports for human drug and biological products, including vaccines, be submitted to FDA in an electronic format that the Agency can process, review, and archive. The guidance is intended to help applicants required to submit postmarketing safety reports involving vaccine products to comply with the final rule. The guidance announced in this notice finalizes the draft guidance of the same title, dated July 2014, and supersedes the document entitled ''Guidance for Industry: How to Complete the Vaccine Adverse Event Report System Form (VAERS–1)'' dated September 1998.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Paul E. Levine, Jr., Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled ''Providing Submissions in Electronic Format—Postmarketing Safety Reports for Vaccines; Guidance for Industry.'' The guidance document provides information and recommendations pertaining to the electronic submission of postmarketing safety reports involving vaccine products marketed for human use with approved BLAs, including ICSRs and ICSR attachments, into VAERS. VAERS is a national vaccine safety surveillance program established in response to the National Childhood Vaccine Injury Act of 1986, which requires health professionals and vaccine manufacturers to report specific adverse events that occur after the administration of routinely recommended vaccines. VAERS is co-sponsored by CDC and FDA. The guidance is applicable to vaccine products marketed for human use with approved BLAs for which CBER has regulatory responsibility. The guidance does not apply to any other biological product. Postmarketing ICSRs and ICSR attachments for biological products, which are not addressed by the guidance, are processed into the FDA Adverse Event Reporting System database.

In the **Federal Register** of June 10, 2014 (79 FR 33072), FDA published a final rule requiring that certain postmarketing safety reports for human drug and biological products, including vaccines, be submitted to FDA in an electronic format that the Agency can process, review, and archive. The guidance is intended to help those applicants required to submit postmarketing safety reports involving vaccine products to comply with the final rule.

In the **Federal Register** of July 18, 2014 (79 FR 42022), FDA announced the availability of the draft guidance of the same title dated July 2014. FDA received a few comments on the draft guidance and those comments were considered as the guidance was finalized. The guidance includes changes to clarify the reporting requirements and technical process for submitting reports to VAERS. In addition, editorial changes were made to improve clarity. The guidance announced in this notice finalizes the draft guidance dated July 2014 and supersedes the document entitled ''Guidance for Industry: How to Complete the Vaccine Adverse Event Report System Form (VAERS–1)'' dated September 1998.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on Providing Submissions in Electronic Format—Postmarketing Safety Reports for Vaccines. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 310 and part 314 have been approved under OMB control number 0910–0230. The collections of information in 21 CFR 310.305(e)(2), 314.80(g)(2), 329.100(c)(2), and 600.80(h)(2) (Form FDA 3500A), have been approved under OMB control number 0910–0770. The collection of information in 21 CFR part 600 is approved under OMB control number 0910–0308. The collection of information in Form FDA 3500A is approved under OMB control number 0910–0291.

III. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

IV. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: August 12, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–20312 Filed 8–17–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–2853]

Electronic Study Data Submission; Data Standards; Support for Study Data Tabulation Model Implementation Guide Version 3.2

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Center for Biologics Evaluation and Research (CBER) and the Center for Drug Evaluation and Research (CDER) are announcing support for the 3.2 version (see section II. Exceptions) of Clinical Data Interchange Standards Consortium (CDISC) Study Data Tabulation Model Implementation Guide (SDTM IG 3.2), an update to the FDA Data Standards Catalog (Catalog), and availability of validation rules for the 3.2 version. SDTM IG 3.2 has been available from CDISC since December 2013. FDA is encouraging sponsors and applicants to use SDTM IG 3.2 (see section II. Exceptions) in investigational study data provided in regulatory submissions to CBER and to CDER.

FOR FURTHER INFORMATION CONTACT: Ron Fitzmartin, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1192, Silver Spring,

MD 20993–002, 301–796–5333, email: *ronald.fitzmartin@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On December 17, 2014, FDA published a final guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—Standardized Study Data'' (eStudy Data) posted on FDA's Study Data Standards Resources Web page at *http://www.fda.gov/forindustry/datastandards/studydatastandards/default.htm*. The eStudy Data guidance implements the electronic submission requirements of section 745A(a) of the FD&C Act (21 U.S.C. 379k–1) for study data contained in new drug applications (NDAs), abbreviated new drug applications (ANDAs), biologics license applications (BLAs), and investigational new drug applications (INDs) to CBER or CDER by specifying the format for electronic submissions. The initial timetable for the implementation of electronic submission requirements for study data is December 17, 2016 (24 months after issuance of final guidance for NDAs, BLAs, ANDAs, and 36 months for INDs). The eStudy Data guidance states that a **Federal Register** notice will specify the transition date for all version updates (with the month and day for the transition date corresponding to March 15).

The transition date for support (see section II. Exceptions) of the 3.2 version of CDISC STDM IG is March 15, 2017. Although SDTM IG version 3.2 is supported as of this **Federal Register** notice and sponsors or applicants are encouraged to begin using it, the new version will only be required in submissions for studies that start after March 15, 2018. The Catalog will list March 15, 2018, as the ''date requirement begins.'' When multiple versions of an FDA-supported standard are listed in the Catalog, sponsors or applicants can select a version to use.

II. Exceptions

The following SDTM IG 3.2 domains have not completed testing and acceptance and are not supported at this time: Death Details and Exposure as Collected. The therapeutic area (TA) standards (*http://www.cdisc.org/*) that are included in SDTM IG 3.2 have not completed testing and acceptance and are not supported at this time. The specific domain and the TA standard are listed in the table that follows:

SDTM IG 3.2 Domain	TA User guide
1. Healthcare Encounters	Cardiovascular Studies, 1.0; Polycystic Kidney Disease, 1.0; Asthma, 1.0.
2. Microscopic Findings	Tuberculosis, 1.0; Parkinson's, 1.0.
3. Morphology	Cardiovascular Studies, 1.0; Parkinson's, 1.0; Polycystic Kidney Disease, 1.0; Alzheimer's, 1.0; Multiple Sclerosis, 1.0.
4. Procedures	Cardiovascular Studies, 1.0; Polycystic Kidney Disease, 1.0; Alzheimer's, 1.0.
5. Reproductive System	Polycystic Kidney Disease, 1.0.
6. Disease Response	Tuberculosis, 1.0.
7. Skin Response	Asthma, 1.0.

Sponsors and applicants with questions on how to implement the FDA-supported study data standards should contact and work with FDA technical staff. For questions, contact CDER at *cder-edata@fda.hhs.gov* or CBER at *cber.cdisc@fda.hhs.gov*.

III. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

IV. Electronic Access

Persons with access to the Internet may obtain the proposed recommendations at either *http://www.fda.gov/forindustry/datastandards/studydatastandards/default.htm* or *http://www.regulations.gov*.

Dated: August 12, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–20316 Filed 8–17–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–0990–New–60D]

Agency Information Collection Activities; Proposed Collection; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, announces plans to submit a new Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, OS seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on the ICR must be received on or before October 19, 2015.

ADDRESSES: Submit your comments to *Information.CollectionClearance@hhs.gov* or by calling (202) 690–6162.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the document identifier HHS–OS–0990–New–60D.

Information Collection Request Title: Evaluation of the Office on Women's Health Coalition for a Healthier Community Initiative

Abstract: This collection is to provide data for the national evaluation of the U.S. Department of Health and Human Services (HHS), Office on Women's Health (OWH) Coalition for a Healthier Community (CHC) Initiative. The initiative supports 10 communities with grants to support coalitions in implementing gender-based public health systems approaches, evidence-based health interventions, and outreach and education activities to reduce barriers to and enhance facilitators of improvements in women and girls' health. Each of the grantees has implemented an IRB-approved local evaluation; however, OWH is seeking to

collect core data across grantees to examine the extent to which the Government's investment has resulted in achieving OWH-related *Healthy People 2020* priorities and yields lessons learned upon which to plan future initiatives related to its mission.

Likely Respondents: The proposed collection includes plans for interviews with key staff (project directors, project coordinators, local evaluators), coalition members (including chairs and co-chairs), and community leaders connected to the coalitions. These respondents will also complete online surveys about their perceptions of the changes in their community as a result of coalition activities. Program participants and other community members exposed to the coalitions' activities through social media will also complete online surveys. Project directors and local evaluators also annually provide information to OWH on their coalition's functioning, the status of the cost-effectiveness analysis for their coalition's interventions, and the coalition's plans for sustainability. The following table summarizes the ''Total Estimated Annualized Burden—Hours'' by form and type of respondent.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs)	Total burden hours
1—Key Persons Discussion Guide for Telephone Interviews	90	2	1	180
2—Key Persons, Coalition Members, and Community Leaders Online Survey	200	1	20/60	67
3—Coalition Participants and Other Community Members Online Survey	510	1	20/60	170
4—Grantee Annual Report on Coalition Functioning, Cost-Effectiveness, and Sustainability Planning	10	2	2	40
Total				457

OS 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.

Terry S. Clark,

Assistant Information Collection Clearance Officer.

[FR Doc. 2015–20357 Filed 8–17–15; 8:45 am]

BILLING CODE 4150–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the AIDS Research Advisory Committee, NIAID.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: AIDS Research Advisory Committee, NIAID AIDS Vaccine Research Subcommittee, NIAID.

Date: September 22, 2015.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: Presentations by invited speakers to discuss correlates of AIDS vaccine protection studies in nonhuman primates. In addition, there will be presentations and discussion on vaccine-specific HLA–E and class II-restricted CD8+ cells and their role in nonhuman primate protection observed with AIDS vaccines based on CMV vectors.

Place: National Institutes of Health, Conference Room 1D13, 5601 Fishers Lane, Rockville, MD 20892.

Contact Person: James A. Bradac, Ph.D., Executive Secretary, AVRS, Division of AIDS, Room 9B60, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9829, Rockville, MD 20892–9829, 301–435–3754, *jbradac@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 13, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–20330 Filed 8–17–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Cancer Advisory Board.

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.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Advisory Board.

Date: September 16, 2015.

Open: 1:00 p.m. to 2:00 p.m.

Agenda: Director's report and business of the Board.

Closed: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room TE406, Rockville, MD 20850, (Virtual Meeting).

Contact Person: Paulette S. Gray, Ph.D., Executive Secretary, National Cancer Institute, National Institutes of Health, 9609 Medical Center Drive, Room 7W–444, Bethesda, MD 20892, (240) 276–6340, *grayp@dea.nci.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://deainfo.nci.nih.gov/advisory/ncab/ncab.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 13, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–20328 Filed 8–17–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; Center for Engineered Cartilage (2016/01).

Date: October 1, 2015.

Time: 9:00 a.m. to 9:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, Suite 920, 6707 Democracy Boulevard, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: John K. Hayes, Ph.D., Scientific Review Officer, 6707 Democracy Boulevard, Suite 959, Bethesda, MD 20892, 301–451–3398, *hayesj@mail.nih.gov.*

Dated: August 13, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–20329 Filed 8–17–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2015–0673]

Commercial Fishing Safety Advisory Committee

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Commercial Fishing Safety Advisory Committee will meet in Seattle, Washington to discuss various issues relating to safety in the commercial fishing industry. This meeting will be open to the public.

DATES: The Committee will meet on Tuesday, September 15 and Wednesday, September 16, 2015, from 8 a.m. to 5:30 p.m. The meeting may close early if all business is finished.

ADDRESSES: The Committee will meet at the United States District Court House located at 700 Stewart Street, Seattle, Washington, Room 19205. *http://www.wawd.uscourts.gov/visitors/seattle-courthouse*

If you are planning to attend the meeting, you will be required to pass through a security checkpoint. You will be required to show valid government identification. Please arrive at least 30 minutes before the planned start of the meeting in order to pass through security.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section, as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the Committee as listed in the ''Agenda'' section below. Written comments must be submitted no later than September 4, 2015 if you want Committee members to be able to review your comments before the meeting. Comments must be identified by docket number USCG–2015–0673, and submitted by one of the following methods:

- *Federal Electronic Rulemaking Portal: http://www.regulations.gov* (preferred method to avoid delays in processing).
- *Mail:* Docket Management Facility (M–30), United States Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, South East, Washington, District of Columbia 20590–0001.
- *Facsimile:* (202) 493–2251
- *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. The telephone number is 202–366–9329.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and docket number for this action. Comments received will be posted without alteration at *www.regulations.gov,* including any personal information provided. You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Docket: For access to the docket to read documents or comments related to this notice, go to *http://www.regulations.gov,* enter the docket number in the ''SEARCH'' box, press Enter and then click on the item you wish to view.

Public oral comment periods will be held during the meeting after each presentation and at the end of each day. Speakers are requested to limit their comments to 3 minutes. Please note that the public oral comment periods may end before the prescribed ending time following the last call for comments. Contact Jack Kemerer as indicated below to register as a speaker.

FOR FURTHER INFORMATION CONTACT: Jack Kemerer, Alternate Designated Federal Officer of Commercial Fishing Safety Advisory Committee, Commandant (CG–CVC–3), United States Coast Guard Headquarters, 2703 Martin Luther King Junior Avenue, South East, Mail Stop 7501, Washington, DC 20593–7501; telephone 202–372–1249, facsimile 202–372–8376, electronic mail: *jack.a.kemerer@uscg.mil.* If you have any questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket

Operations, telephone 202–493–0402 or 1–800–647–5527.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, Title 5 United States Code, Appendix.

The Commercial Fishing Safety Advisory Committee is authorized by Title 46 United States Code Section 4508. The Committee's purpose is to provide advice and recommendations to the United States Coast Guard and the Department of Homeland Security on matters relating to the safety of commercial fishing industry vessels.

A copy of available meeting documentation should be posted to the docket, as noted above, and at *http://fishsafe.info/* by August 31, 2015. Post-meeting documentation will be posted to the Web site within 30 days after the meeting, or as soon as possible. Alternatively, you may contact Jack Kemerer as noted in the **FOR FURTHER INFORMATION CONTACT** section above.

Agenda

The Commercial Fishing Safety Advisory Committee will meet to review, discuss and formulate recommendations on topics contained in the agenda:

DAY 1

The meeting will include administrative matters, reports, presentations, discussions, and Subcommittee/working group sessions as follows:

(1) Swearing-in of new members, election of Chair and Vice-Chair, and completion of Department of Homeland Security Form 420 by Special Government Employee members.

(2) Status of Commercial Fishing Vessel Safety Rulemaking projects resulting from requirements set forth in the Coast Guard Authorization Act of 2010 and the Coast Guard and Maritime Transportation Act of 2012.

(3) Coast Guard District Commercial Fishing Vessel Safety Coordinator reports on activities and initiatives.

(4) Industry Representative updates on safety and survival equipment, and classification of fishing vessels.

(5) Presentation and discussion on casualties by regions and fisheries and update on safety and risk reduction-related projects by the National Institute for Occupational Safety and Health.

(6) Presentation and discussion on tonnage and documentation issues.

(7) Subcommittee/working group sessions, as time allows, on (a) standards for alternative safety compliance program(s) development, (b) definitions and safety equipment requirements that should be considered in future rulemaking projects, and (c) requirements of the International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995.

(8) Public comment period.

(9) Adjournment of meeting.

There will be a comment period for Commercial Fishing Safety Advisory Committee members and a comment period for the public after each presentation and discussion. The Committee will review the information presented on any issues, deliberate on any recommendations presented in Subcommittee reports, and formulate recommendations for the Department's consideration.

DAY 2

The meeting will primarily be dedicated to continuing Subcommittee/working group sessions, but will also include:

(1) Reports and recommendations from Subcommittees/working groups to the full committee for discussion, deliberation, and adoption for presentation to the Coast Guard as determined by committee voting. The public will have opportunity to comment on reports and discussions prior to the committee taking action on such reports or recommendations.

(2) Other safety recommendations and safety program strategies from the Committee.

(3) Public comment period.

(4) Future plans and goals for the Committee.

(5) Adjournment of meeting.

Dated: August 12, 2015.

V.B. Gifford,

Captain, U.S. Coast Guard, Director of Inspections and Compliance.

[FR Doc. 2015–20378 Filed 8–17–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

DEPARTMENT OF TRANSPORTATION

DEPARTMENT OF DEFENSE

U.S. Army Corps of Engineers

[DOT–OST–2015–0105]

Nationwide Differential Global Positioning System (NDGPS)

AGENCY: DHS—Coast Guard, DOT—Office of the Assistant Secretary for Research and Technology (OST–R), and DOD—U.S. Army Corps of Engineers, Office of Engineering and Construction

ACTION: Notice; request for public comments.

SUMMARY: The Nationwide Differential Global Positioning System (NDGPS) service augments GPS by providing increased accuracy and integrity using land-based reference stations to transmit correction messages over radiobeacon frequencies. The service was implemented through agreements between multiple Federal agencies including the United States Coast Guard (USCG), Department of Transportation (DOT), and United States Army Corps of Engineers (USACE), as well as several states and scientific organizations, all cooperating to provide the combined national DGPS utility. However, a number of factors have contributed to declining use of NDGPS and, based on an assessment by the Department of Homeland Security (DHS), DOT, and USACE, DHS, DOT, and USACE are proposing to shutdown and decommission 62 DGPS sites, which will leave 22 operational sites available to users in coastal areas. This notice seeks public comments on the shutdown and decommissioning of a total of 62 DGPS sites. Termination of the NDGPS broadcast at these sites is planned to occur on January 15, 2016.

DATES: Comments and related material must reach the Docket Management Facility on or before November 16, 2015.

ADDRESSES: You may submit comments identified by docket number DOT–OST–2015–0105 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, contact CAPT Scott Smith, Coast Guard, telephone 202–372–1545 or email *scott.j.smith2@uscg.mil;* or James Arnold, OST–R, NDGPS Program Manager, telephone 202–366–8422 or

email *NDGPS@dot.gov.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation

You may submit comments and related material regarding this proposed action. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting comments: If you submit a comment, please include the docket number for this notice (DOT–OST–2015–0105) and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and use ''DOT–OST–2015–0105'' as your search term. Locate this notice in the results and click the corresponding ''Comment Now'' box to submit your comment. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period.

Viewing the comments: To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov* and use ''DOT–OST–2015–0105'' as your search term. Use the filters on the left side of the page to highlight ''Public Submissions'' or other document types. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act system of records notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Background and Purpose

The Coast Guard (USCG) began development of the Maritime Differential Global Positioning System (MDGPS) in the late 1980s. The GPS Standard Positioning Service (SPS) lacked sufficient accuracy and timely integrity monitoring, and soon later, was unable to meet requirements for coastal and Harbor Entrance and Approach (HEA) phases of navigation found in the International Association of Marine Aids to Navigation and Lighthouse Authorities (IALA) R–121 and International Maritime Organization (IMO) A.953(23) recommendations, and to support the buoy positioning mission. The differential technique used by DGPS employs the installation of navigation equipment at a precisely known location. The equipment receives the GPS signal and compares the position solution from the received signal to its known location. The result of this comparison is then generated in the form of a correction message and sent to local users via radiobeacon broadcast to improve the accuracy and integrity of GPS-derived positions. In March of 1999, the MDGPS service was certified to meet the performance standards required for HEA navigation with its 49 geographically dispersed sites providing coverage to a number of ports and waterways in the contiguous United States, Alaska, Hawaii, and Puerto Rico. MDGPS provided improved horizontal positioning accuracy of better than 10 meters, integrity (signal accuracy and continuity of delivery checking) alarms for GPS, and MDGPS out-of-tolerance conditions within 10 seconds of detection.

In 1997, the Department of Transportation and Related Agencies Appropriations Act of 1998 (Pub. L. 105–66, section 346 (111 Stat. 1449)) authorized the implementation of the inland component of the system. As a result, 29 additional inland sites were added to the network. These sites, along with seven sites provided by the U.S. Army Corps of Engineers, became known as Nationwide DGPS (NDGPS). The USCG was designated as lead for implementation, operation, and maintenance of the service. DOT is the NDGPS sponsor and chairs the multi-agency NDGPS Policy and Implementation Team (PIT) which directs the overall management of the NDGPS system. In cooperation with DOT, DHS, and USACE, many states and scientific organizations are also beneficiaries of the DGPS system, such as the National Weather Service's Forecast System Laboratory for short-term precipitation forecasts, and the University NAVSTAR Consortium for plate tectonic monitoring.

However, a number of factors have contributed to the declining use of NDGPS. Contributing factors include: (1) USCG changes in policy to allow aids to navigation (ATON) to be positioned with a GPS receiver using Receiver Autonomous Integrity Monitoring (RAIM), which assesses the integrity of a GPS signal within the receiver; (2) increased use of Wide Area Augmentation System (WAAS) in commercial maritime applications, which uses ground-based reference stations and satellite communications to improve accuracy; (3) limited availability of consumer-grade NDGPS receivers; (4) no NDGPS mandatory carriage requirement on any vessel within U.S. territorial waters; (5) the May 1, 2000 Presidential Directive discontinuing GPS Selective Availability *http://clinton4.nara.gov/WH/EOP/OSTP/html/0053_2.html;* (6) continuing GPS modernization; and (7) the DOT Federal Railroad Administration's determination [1] that NDGPS is not a requirement for the successful implementation of Positive Train Control (PTC), which provides the railway system the capability to positively enforce movement authorities along railroad systems.

In April 2013, DHS and DOT published a notice in the **Federal Register** [2] announcing that DHS and DOT were in the process of analyzing the current and future user needs and requirements for NDGPS, and requesting public comment on:

(1) The commenter's usage of NDGPS for positioning, navigation, and timing;

(2) The impact on NDGPS users if NDGPS were discontinued;

(3) If NDGPS were discontinued, the possible alternatives for meeting users' positioning, navigation, and timing requirements; and

(4) Potential alternative uses for the existing NDGPS infrastructure.

The response to the 2013 notice was limited, but the responses received were well informed on the NDGPS system, its

[1] Letter from Federal Railroad Administration to USCG dated January 29, 2013 with subject ''Elimination of the Requirement for the NDGPS to support PTC mandated by the RSIA of 2008.''

[2] 78 FR 22554 (Apr. 16, 2013). The Notice was published under docket numbers, USCG–2013–0054 and RITA–2013–0001.

use, and current and potential applications. While a limited number of responders found the broadcast of corrections to be beneficial, no respondents reported the discontinuance of DGPS broadcast to be detrimental or harmful. Ship pilots in particular noted that DGPS can be critical in confined waterways for precise shiphandling maneuvers.

Several commenters noted that NDGPS is part of the Continuously Operating Reference Stations (CORS) [3] network, which is used with GPS data to improve the precision of positioning, has value while others stated they had alternative networks available. The USCG cooperates with National Oceanic and Atmospheric Administration's (NOAA) National Geodetic Survey (NGS) to supplement their network of CORS reference stations with NDGPS sites. Today, DGPS sites account for approximately 5% of the CORS network, which is comprised of more than 1,900 geodetic-grade GPS receivers. CORS is widely used by Federal, state, and non-government entities throughout the United States to provide data for 3-dimensional positioning for use in land surveys, Geographic Information Systems (GIS), Land Information Systems (LIS), and environmental management. Additionally, raw GPS data is provided to NOAA's National Weather Service from all DGPS sites for weather analysis and prediction.

A few respondents noted the broadcast signals provide non-line-of-sight benefits. Respondents suggested alternatives to NDGPS as currently implemented, such as using existing NDGPS stations to rebroadcast WAAS corrections, adding other data to the broadcast, integrating the broadcast with positioning technologies, or simply streaming data from the reference stations.

After considering the comments and based on an assessment by DHS, DOT, and USACE, we propose to shutdown and decommission 62 sites, which is planned to occur on January 15, 2016, which will leave 22 operational sites available to users in those waterway where pilots generally operate, *i.e.,* where marine traffic is most frequent and the need for precise marine navigation is greatest. However, it is possible for the reference stations to be transitioned to other Federal, state, and/or local agencies. Questions about potential transition of specific reference stations should be directed to the individual(s) referenced in the **FOR FURTHER INFORMATION CONTACT** section above.

The specific sites to be disestablished are:

Maritime Sites:

- Appleton, WA
- Biorka, AK
- Bobo, MS
- Brunswick, ME
- Cape Hinchinbrook, AK
- Cheboygan, MI
- Cold Bay, AK
- Driver, VA
- Eglin, FL
- Gustavus, AK
- Isabela, PR
- Key West, FL
- Kodiak, AK
- Kokole Point, HI
- Level Island, AK
- Lompoc, CA
- Mequon, MI
- New Bern, NC
- Penobscot, ME
- Pigeon Point, CA
- Robinson Pt, WA
- Saginaw, MI
- Sandy Hook, NJ
- Sturgeon Bay, WI
- Upper Keweenaw, MI
- Wisconsin Point, WI
- Youngstown, NY

Inland Sites:

- Albuquerque, NM
- Austin, NV
- Bakersfield, CA
- Billings, MT
- Chico, CA
- Clark, SD
- Dandridge, TN
- Essex, CA
- Flagstaff, AZ
- Greensboro, NC
- Hackleburg, AL
- Hagerstown, MD
- Hartsville, TN
- Hawk Run, PA
- Hudson Falls, NY
- Klamath Falls, OR
- Macon, GA
- Medora, ND
- Myton, UT
- Pine River, MN
- Polson, MT
- Pueblo, CO
- Savannah, GA
- Seneca, OR
- Spokane, WA
- St. Marys, WV
- Summerfield, TX
- Topeka, KS
- Whitney, NE

Inland Sites operated by the U.S. Army Corps of Engineers:

- Louisville, KY
- Millers Ferry, AL
- Rock Island, IA
- Sallisaw, OK
- St. Louis, MO
- St. Paul (Alma), MN

For more information on the NDGPS, visit the USCG's Web site at *http://www.navcen.uscg.gov/?pageName=dgpsMain.* Additional information on GPS, NDGPS, and other GPS augmentation systems is available in the 2014 Federal Radionavigation Plan, published by the Department of Defense, DHS, and DOT, which is also available at the USCG's Web site at *http://www.navcen.uscg.gov/?pageName=pubsMain.*

Request for Comments

This notice seeks public comments on the shutdown and decommissioning of a total of 62 DGPS sites, which would leave 22 operational sites available to users in coastal areas on January 15, 2016.

Graphics showing the predicted coverage before and after the proposed sites are decommissioned, and a list of the sites, is available at the USCG's NDGPS General Information Web site at: *http://www.navcen.uscg.gov/?pageName=dgpsMain.*

Authority

This notice is issued under the authority of 5 U.S.C. 552(a), 14 U.S.C. 81, and 49 U.S.C. 301 (Pub. L. 105–66, section 346).

Issued in Washington, DC, on August 10, 2015.

Gary Rasicot,

Director of Marine Transportation Systems, U.S. Coast Guard.

Gregory D. Winfree,

Assistant Secretary for Research and Technology, U.S. Department of Transportation.

Robert A. Bank,

Chief, Civil Works Branch of Engineering and Construction, U.S. Army Corps of Engineers.

[FR Doc. 2015–20401 Filed 8–17–15; 8:45 am]

BILLING CODE 4910–9X–P

[3] CORS support surveying, mapping, and related disciplines that have accuracy requirements which require the use of a relative positioning technique. CORS automatically collect and record the GPS data at known locations in support of these activities.

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0138]

Agency Information Collection Activities: Biometric Identity

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

ACTION: 60-Day Notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Biometric Identity. CBP is proposing that this information collection be extended with a change to the burden hours but no change to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before October 19, 2015 to be assured of consideration.

ADDRESSES: Written comments may be mailed to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Biometric Identity.

OMB Number: 1651–0138.

Abstract: In order to enhance national security, the Department of Homeland Security developed a biometric based entry and exit system capable of improving the information resources available to immigration and border management decision-makers. These biometrics include: Digital fingerprint scans, photographs, facial images and iris images, or other biometric identifiers. Biometrics are collected from those aliens specified in 8 CFR 215.8 and 8 CFR 235.1(f). Non-exempt, non-U.S. citizens will have their facial and iris images captured upon entry to and exit from the United States. The information collected is used to provide assurance of identity and determine admissibility of those seeking entry into the United States.

The federal statutes that mandate DHS to create a biometric entry and exit system include: Section 2(a) of the Immigration and Naturalization Service Data Management Improvement Act of 2000 (DMIA), Public Law 106–215, 114 Stat. 337 (2000); Section 205 of the Visa Waiver Permanent Program Act of 2000, Public Law 106–396, 114 Stat. 1637, 1641 (2000); Section 414 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Public Law 107–56, 115 Stat. 272, 353 (2001); Section 302 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Border Security Act), Public Law 107–173, 116 Stat. 543, 552, (2002); Section 7208 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Public Law 108–458, 118 Stat. 3638, 3817 (2004); and Section 711 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110–52, 121 Stat. 266 (2007).

Current Actions: This submission is being made to extend the expiration date with a change to the burden hours based on most recent estimates for the annual number of responses. There are no changes to the information being collected.

Type of Review: Extension (with change).

Affected Public: Individuals.

Estimated Number of Respondents: 113,200,000.

Estimated Time per Respondent: .0097 hours.

Estimated Total Annual Burden Hours: 1,098,040.

Dated: August 12, 2015.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2015–20400 Filed 8–17–15; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–MB–2015–N159; FF09M21200–156– FXMB1231099BPP0]

Proposed Information Collection; Control and Management of Resident Canada Geese

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on December 31, 2015. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: To ensure that we are able to consider your comments on this IC, we must receive them by October 19, 2015.

ADDRESSES: Send your comments on the IC to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or *hope_grey@fws.gov* (email). Please include ''1018–0133'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey at *hope_grey@fws.gov* (email) or 703–358–2482 (telephone).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Migratory Bird Treaty Act prohibits the take, possession, import, export, transport, sale, purchase, or bartering of migratory birds or their parts except as permitted under the terms of a valid permit or as permitted by regulations. In 2006, we issued regulations establishing two depredation orders and three control orders that allow State and tribal wildlife agencies, private landowners, and airports to conduct resident Canada goose population management, including the take of birds. We monitor the data collected for activities under these orders and may rescind an order if monitoring indicates that activities are

inconsistent with conservation of Canada geese.

Control order for airports. 50 CFR 21.49 allows managers at commercial, public, and private airports and military airfields and their employees or agents to implement management of resident Canada geese to resolve or prevent threats to public safety. An airport must be part of the National Plan of Integrated Airport Systems and have received Federal grant-in-aid assistance or be a military airfield under the jurisdiction, custody, or control of the Secretary of a military department. Each facility exercising the privileges of the order must submit an annual report with the date, numbers, and locations of birds, nests, and eggs taken.

Depredation order for nests and eggs. 50 CFR 21.50 allows private landowners and managers of public lands to destroy resident Canada goose nests and eggs on property under their jurisdiction, provided they register annually on our Web site at *https://epermits.fws.gov/eRCGR.* Registrants must provide basic information, such as name, address, phone number, and email, and identify where the control work will occur and who will conduct it. Registrants must return to the Web site to report the number of nests with eggs they destroyed.

Depredation order for agricultural facilities. 50 CFR 21.51 allows States and tribes, via their wildlife agencies, to implement programs to allow landowners, operators, and tenants actively engaged in commercial agriculture to conduct damage management control when geese are committing depredations or to resolve or prevent other injury to agricultural interests. State and tribal wildlife agencies in the Atlantic, Central, and Mississippi Flyway portions of 41 States may implement the provisions of the order. Each implementing agricultural producer must maintain a log of the date and number of birds taken under this authorization. Each State and tribe exercising the privileges of the order must submit an annual report of the numbers of birds, nests, and eggs taken, and the county or counties where take occurred.

Public health control order. 50 CFR 21.52 authorizes States and tribes of the lower 48 States to conduct (via the State or tribal wildlife agency) resident Canada goose control and management activities when the geese pose a direct threat to human health. States and tribes operating under this order must submit an annual report summarizing activities, including the numbers of birds taken and the county where take occurred.

Population control. 50 CFR 21.61 establishes a managed take program to reduce and stabilize resident Canada goose populations when traditional and otherwise authorized management measures are not successful or feasible. A State or tribal wildlife agency in the Atlantic, Mississippi, or Central Flyway may request approval for this population control program. If approved, the State or tribe may use hunters to harvest resident Canada geese during the month of August. Requests for approval must include a discussion of the State's or tribe's efforts to address its injurious situations using other methods, or a discussion of the reasons why the methods are not feasible. If the Service Director approves a request, the State or tribe must (1) keep annual records of activities carried out under the authority of the program, and (2) provide an annual summary, including number of individuals participating in the program and the number of resident Canada geese shot. Additionally, participating States and tribes must monitor the spring breeding population by providing an annual estimate of the breeding population and distribution of resident Canada geese in their State.

Regulations at 50 CFR 21.49, 21.50, 21.51, and 21.52 require that persons or entities operating under the depredation and control orders must immediately report the take of any species protected under the Endangered Species Act (ESA). This information ensures that the incidental take limits authorized under Section 7 of the ESA are not exceeded.

II. Data

OMB Control Number: 1018–0133.

Title: Control and Management of Resident Canada Geese, 50 CFR 20.21, 21.49, 21.50, 21.51, 21.52, and 21.61.

Service Form Number: None.

Type of Request: Extension of a currently approved collection.

Description of Respondents: State fish and wildlife agencies, tribes, and local governments; airports; landowners; and farms.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Annually.

Estimated Annual Nonhour Burden Cost: None.

Activity	Number of respondents	Number of responses	Completion time per response	Total annual burden hours *
21.49—Airport Control Order—Annual Report	50	50	1.5 hours	76
21.50—Nest and Egg Depredation Order—Initial Registration	1,000	1,000	30 minutes	500
21.50—Nest and Egg Depredation Order—Renew Registration	3,000	3,000	15 minutes	751
21.50—Nest and Egg Depredation Order—Annual Report	4,000	4,000	15 minutes	1,000
21.51—Agricultural Depredation Order—Recordkeeping	600	600	30 minutes	300
21.51—Agricultural Depredation Order—Annual Report	20	20	8 hours	160
21.52—Public Health Control Order—Annual Report	20	20	1 hour	20
21.49, 21.50, 21.51, and 21.52—Report Take of Endangered Species.	2	2	15 minutes	1
21.61—Population Control Approval Request—Recordkeeping and Annual Report.	8	8	24 hours	192
21.61—Population Control Approval Request—Population Estimates.	8	8	160 hours	1,280
Totals	8,708	8,708		4,280

* Rounded.

III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- 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.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: August 13, 2015.

Tina A. Campbell,

Chief, Division of Policy, Performance, and Management Programs, U.S. Fish and Wildlife Service.

[FR Doc. 2015–20335 Filed 8–17–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–NWRS–2015–0036; BAC–4311–K9–S3]

Silvio O. Conte National Fish and Wildlife Refuge; Draft Comprehensive Conservation Plan and Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft comprehensive conservation plan (CCP) and environmental impact statement (EIS) for Silvio O. Conte National Fish and Wildlife Refuge (Conte NFWR) for public review and comment. In this draft CCP/EIS, we describe how we propose to manage Conte NFWR over the next 15 years.

DATES: To ensure consideration, we must receive your written comments by November 16, 2015. We will hold informal public information meetings during the comment period to provide information and answer questions on the draft plan. We will also hold four public hearings during the comment period to take oral comments. In addition, we will use special mailings, newspaper articles, internet postings, and other media announcements to inform people of opportunities to provide comments.

ADDRESSES: Send your comments or requests for more information by any one of the following methods:

• Electronically via the Federal eRulemaking Portal at *www.regulations.gov.* In the ''Search'' box, commenters will enter the docket number (FWS–R5–NWRS–2015–0036) for this project. Comments can be submitted by clicking on ''Comment Now!'' Attachments can be made to the electronic comment form.

• By hard copy via U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R5–NWRS–2015–0036; U.S. Fish and Wildlife Service; MS BPHC; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

• Via oral public testimony at one of the four public hearings that will be scheduled.

All comments will be posted to *http://www.regulations.gov* and will be available for public viewing. This generally means that any personal information you provide us will be posted with the comment.

You will find the draft CCP/EIS, as well as information about the planning process and a summary of the CCP, on the planning Web site at *http://www.fws.gov/refuge/Silvio_O_Conte/what_we_do/conservation.html.* To view comments on the CCP/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**.

FOR FURTHER INFORMATION CONTACT: Nancy McGarigal, Planning Team Leader, phone: 413–253–8562; Email: *nancy_mcgarigal@fws.gov.* Please include ''Conte Refuge Draft CCP/EIS'' in the subject line of the message.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for Conte NFWR, which we began by publishing a notice of intent in the **Federal Register** (71 FR 62006) on October 20, 2006. For more information about the initial process and the history of this refuge, please see that notice. In addition, EPA is publishing a notice announcing the availability of the draft CCP/EIS, as required under Section 309 of the Clean Air Act (42 U.S.C. 7401 *et seq.*). The publication of EPA's notice of availability is the official start of the minimum requirement for a 45-day public comment period. We have chosen to distribute this draft CCP/EIS for a 90-day public comment period.

EPA's Role in the EIS Process

The EPA is charged under Section 309 of the Clean Air Act to review all Federal agencies' 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 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**. 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

The National Wildlife Refuge System Administration Act of 1966, (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee), requires us to develop a CCP for each national wildlife refuge. The purpose of a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System (NWRS), consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Each unit of the NWRS was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the NWRS mission, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives that will ensure the best possible approach to wildlife, plant, and habitat conservation, while providing for wildlife-dependent recreation

opportunities that are compatible with each refuge's establishing purposes and the mission of the NWRS.

Additional Information

The draft CCP/EIS for Conte NFWR, which includes detailed information about the planning process, refuge, issues, and management alternatives considered and proposed, may be found at *http://www.fws.gov/refuge/Silvio_O_Conte/what_we_do/conservation.html.* There are four alternative refuge management options considered in the draft plan. The Service's preferred alternative is alternative C.

The alternatives analyzed in detail include:

• Alternative A—Current Management: This alternative represents continuing current management and serves as a baseline for comparing the other alternatives. Under this alternative, we would continue our current habitat and visitor services management activities on existing refuge lands. We would also continue to work with our existing partners throughout the Connecticut River Watershed (watershed) to support our conservation, education, and recreation programs. We would continue to actively manage forest habitats on the Nulhegan Basin Division (Vermont) to benefit forest-dependent species of conservation concern, and manage grasslands and shrublands habitats on our Pondicherry (New Hampshire) and Fort River (Massachusetts) Divisions for species dependent on those habitats. We would maintain our hunting and fishing programs on refuge lands, which generally are managed consistent with respective State regulations. We would also continue to acquire lands from willing sellers under our existing approved land acquisition authority of approximately 98,000 acres. Our focus would continue to be on acquiring lands that were identified in the refuge's 1995 Master Plan and its accompanying EIS.

• Alternative B—Consolidated Stewardship: This alternative would strategically focus our work with partners, and our staffing, funding, and other resource commitments across the watershed, in 14 defined geographic areas called Conservation Partnership Areas (CPAs). CPAs are large areas, defined by sub-watersheds, with concentrations of high-value habitat for fish and wildlife. Within CPAs, we have identified a total of 18 areas we call Conservation Focus Areas (CFAs). These are areas with particularly high value to Federal trust resources and represent where we would focus our future refuge land acquisition. Under alternative B, we would not seek to expand the refuge beyond our current acreage authority. Instead, we propose to focus acquisition in CFAs rather than in the smaller, scattered areas proposed in the refuge's 1995 Master Plan and EIS. Under alternative B, we would expand our current wildlife habitat and visitor services management activities to other refuge divisions, and support those same opportunities within CPAs on other ownerships across the watershed.

• Alternative C—Enhanced Conservation Connections and Partnerships (Service's Preferred Alternative): Similar to alternative B, we would prioritize our work with partners in CPAs, and focus future refuge acquisitions in CFAs. However, under alternative C, we would seek to expand the refuge's approved acquisition authority in the watershed up to approximately 197,000 acres. The expanded network of 17 CPAs and 22 CFAs would allow for greater flexibility and opportunity for us to work with partners to achieve common conservation goals. We would be a more significant contributor to a well-connected conserved lands network in the watershed. Under alternative C, we would be able to increase our benefits to species of conservation concern by managing more acres of habitat with better distribution across the watershed. Expanding the refuge land base would also enhance our ability to address, and adapt our management to, climate change. We would be able to provide more public access for compatible recreational opportunities such as hunting, fishing, wildlife observation, and photography. We would also expand our education and interpretive programs with an emphasis on engaging urban communities.

• Alternative D—Conservation Connections Emphasizing Natural Processes: Similar to alternative C, we would prioritize our work both on and off refuge lands in the same 17 CPAs, and would focus refuge acquisition in the same 22 CFAs. However, under alternative D, we would further expand individual CFAs and seek additional acquisition authority of up to approximately 236,000 acres. The increased acres would further enhance the refuge's capability to establish connections in the watershed's conserved lands network, and would strengthen our ability to adapt refuge lands to climate change. A major difference between alternatives C and D is that alternative D proposes to limit active habitat management. We would only intervene in natural processes when a federally listed species is in jeopardy, or a major wildfire or pest outbreak occurs and restoration is a critical need. Under alternative D, we would be able to provide more public access due to the increased land base, but our visitor services programs would emphasize a reduced human footprint, with a focus on backcountry opportunities and fewer developed areas.

Public Involvement

We will give the public an opportunity to ask questions and obtain more information about the draft plan at our informal public meetings. We will take oral testimony at the formal public hearings. You can obtain the schedule for meetings and the hearings, and find the address for submitting your comments, from the address or Web site listed in this notice (see **ADDRESSES**). You may also submit written comments anytime during the comment period.

Public Availability of Comments

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

Dated: June 3, 2015.

Wendi Weber,

Regional Director, Northeast Region.

[FR Doc. 2015–20184 Filed 8–17–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–ES–2015–N158; FGES111309WLLF0 156]

Proposed Information Collection; Wolf-Livestock Demonstration Project Grant Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on December

31, 2015. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: To ensure that we are able to consider your comments on this IC, we must receive them by October 19, 2015.

ADDRESSES: Send your comments on the IC to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or *hope_grey@fws.gov* (email). Please include ''1018–0154'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey at *hope_grey@fws.gov* (email) or 703–358–2482 (telephone).

SUPPLEMENTARY INFORMATION:

I. Abstract

Subtitle C of Title VI of the Omnibus Public Land Management Act of 2009 (Act; Pub. L. 111–11) authorizes the Secretary of the Interior and the Secretary of Agriculture to develop a Wolf-Livestock Demonstration Project Grant Program (WLDPGP) to:

- Assist livestock producers in undertaking proactive, nonlethal activities to reduce the risk of livestock loss due to predation by wolves; and
- Compensate livestock producers for livestock losses due to such predation.

The Act directs that the program be established as a grant program to provide funding to States and tribes, that the Federal cost-share not exceed 50 percent, and that funds be expended equally between the two purposes. The Act included an authorization of appropriations up to $1 million each fiscal year for 5 years. The U.S. Fish and Wildlife Service Endangered Species Program will allocate the funding as competitively awarded grants to States and tribes with a prior history of wolf depredation. States with delisted wolf populations are eligible for funding, provided that they meet the eligibility criteria contained in Public Law 111–11.

The following additional criteria apply to all WLDPGP grants and must be satisfied for a project to receive WLDPGP funding:

- A proposal cannot include U.S. Fish and Wildlife Service full-time equivalent (FTE) costs.
- A proposal cannot seek funding for projects that serve to satisfy regulatory requirements of the Endangered Species Act (ESA), including complying with a biological opinion under section 7 or fulfilling commitments of a habitat conservation plan (HCP) under section 10, or for projects that serve to satisfy other Federal regulatory requirements (*e.g.,* mitigation for Federal permits).
- State administrative costs must be assumed by the State or included in the proposal in accordance with Federal requirements.

We will publish notices of funding availability on the Grants.gov Web site at *http://www.grants.gov,* as well as in the Catalog of Federal Domestic Assistance at *http://cfda.gov.* To compete for grant funds, eligible States and tribes must submit an application that describes in substantial detail project locations, project resources, future benefits, and other characteristics that meet the Wolf-Livestock Demonstration Project Grant Program purposes as listed above. In accordance with the Act, States and tribes that receive a grant must:

- Maintain files of all claims received under programs funded by the grant, including supporting documentation; and
- Submit an annual report that includes a summary of claims and expenditures under the program during the year and a description of any action taken on the claims.

Materials that describe the program and assist applicants in formulating project proposals will be available on our Web site at *www.fws.gov/grants.* Persons who do not have access to the Internet may obtain instructional materials by mail.

II. Data

OMB Control Number: 1018–0154.

Title: Wolf-Livestock Demonstration Project Grant Program.

Service Form Number: None.

Type of Request: Extension of a currently approved collection.

Description of Respondents: States and Indian tribes.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Estimated Number of Annual Respondents: 10.

Frequency of Collection: On occasion.

Estimated Annual Nonhour Burden Cost: None.

Activity	Number of responses	Completion time per response	Total annual burden hours
Applications	10	8 hours	80
Reports and Recordkeeping	10	14 hours	140
Totals	20	.....	220

III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- 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.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: August 13, 2015.

Tina A. Campbell,

Chief, Division of Policy, Performance, and Management Programs, U.S. Fish and Wildlife Service.

[FR Doc. 2015–20334 Filed 8–17–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF INTERIOR

National Park Service

[NPS–WASO–EQD–SSB–19077; PPAKGAARC6, PPMPRLE1Z.LS0000 (155)]

Proposed Information Collection: Community Harvest Assessments for Alaskan National Parks and Preserves

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) concerning community harvest assessments for Alaskan National Parks and Preserves. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other federal agencies to take this opportunity to comment on this IC. A federal agency not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: To ensure that your comments on this IC are considered, we must receive them on or before October 19, 2015.

ADDRESSES: Direct all written comments on this IC to Phadrea Ponds, Information Collection Coordinator, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525 (mail); or *phadrea_ponds@nps.gov* (email). Please reference Information Collection 1024–0262 in the subject line.

FOR FURTHER INFORMATION CONTACT: Marcy Okada, National Park Service, 4175 Geist Road, Fairbanks, Alaska, 99709; *marcy_okada@nps.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Abstract

Under the provisions of the Alaska National Interest Lands Conservation Act (ANILCA), subsistence harvests by local rural residents are considered to be the priority consumptive use of park resources. Community harvest assessments will support the NPS management priorities at GAAR, WRST, YUCH, WEAR, and ANIA that address consumptive use of park resources by NPS-qualified subsistence users. The information will be used by the NPS, the Federal Subsistence Board, the State of Alaska, and local/regional advisory councils in making recommendations and making decisions regarding the management of fish, wildlife, and plants in the region (*e.g.,* seasons, harvest limits, and which communities have customarily and traditionally used various resources). The survey will document subsistence activities over the past year (January through December) for each sampled household. The head of household will be asked to respond for each household.

II. Data

OMB Number: 1024–062.

Title: Community Harvest Assessments for Alaskan National Parks and Preserves.

Type of Request: Reinstatement.

Affected Public: General public and individual households.

Respondent Obligation: Voluntary.

Frequency of Collection: One-time.

Estimated Number of Annual Responses: 1,793.

Annual Burden Hours: 1,195 hours. We estimate the public reporting burden to be 40 minutes per completed survey response.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have not identified any ''non-hour cost'' burdens associated with this collection of information.

III. Request for Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- 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.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: August 12, 2015.

Madonna L. Baucum,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2015–20404 Filed 8–17–15; 8:45 am]

BILLING CODE 4310–EH–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–464 and 731–TA–1160 (Review)]

Prestressed Concrete Steel Wire Strand From China; Scheduling of Expedited Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty and countervailing duty orders on prestressed concrete steel wire strand from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: *Effective Date:* August 4, 2015.

FOR FURTHER INFORMATION CONTACT: Joanna Lo (202–205–1888), 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 August 4, 2015, the Commission determined that the domestic interested party group response to its notice of institution (80 FR 24976, May 1, 2015) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews 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 these reviews and rules

[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.

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 reviews will be placed in the nonpublic record on September 2, 2015, and made available to persons on the Administrative Protective Order service list for these reviews. 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 reviews and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the reviews may file written comments with the Secretary on what determination the Commission should reach in the reviews. Comments are due on or before September 8, 2015 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by September 8, 2015. However, should the Department of Commerce extend the time limit for its completion of the final results of its reviews, 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: These reviews are 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.

Issued: August 12, 2015.

By order of the Commission.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–20301 Filed 8–17–15; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–15–026]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 20, 2015 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Vote in Inv. No. 731–TA–130 (Fourth Review) (Chloropicrin from China). The Commission is currently scheduled to complete and file its determination and views of the Commission on August 31, 2015.
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Dated: August 13, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–20503 Filed 8–14–15; 04:15 pm]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1047 (Second Review)]

Ironing Tables 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 ironing tables from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: *Effective Date:* August 4, 2015.

FOR FURTHER INFORMATION CONTACT: Carolyn Carlson (202–205–3002), 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 August 4, 2015, the Commission determined that the domestic interested party group response to its notice of institution (80 FR 24968, May 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] 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 was placed in the nonpublic record on July 23, 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.

[2] The Commission has found the responses submitted by Insteel Wire Products Company, Sumiden Wire Products Corporation, and WMC Steel, LLC to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

[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.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before September 2, 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 September 2, 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.

Issued: August 12, 2015.

By order of the Commission.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–20318 Filed 8–17–15; 8:45 am]

BILLING CODE 7020–02–P

[2] The Commission has found the response submitted by Home Products International to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–545–547 and 731–TA–1291–1297 (Preliminary)]

Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701–TA–545–547 and 731–TA–1291–1297 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of certain hot-rolled steel flat products (''hot-rolled steel'') from Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom, provided for in subheadings 7208.10.15, 7208.10.30, 7208.10.60, 7208.25.30, 7208.25.60, 7208.26.00, 7208.27.00, 7208.36.00, 7208.37.00, 7208.38.00, 7208.39.00, 7208.40.60, 7208.53.00, 7208.54.00, 7208.90.00, 7210.70.30, 7210.90.90, 7211.14.00, 7211.19.15, 7211.19.20, 7211.19.30, 7211.19.45, 7211.19.60, 7211.19.75, 7211.90.00, 7212.40.10, 7212.40.50, 7212.50.00, 7225.11.00, 7225.19.00, 7225.30.30, 7225.30.70, 7225.40.70, 7225.99.00, 7226.11.10, 7226.11.90, 7226.19.10, 7226.19.90, 7226.91.50, 7226.91.70, 7226.91.80, and 7226.99.01 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less-than-fair-value and alleged to be subsidized by the governments of Brazil, Korea, and the United Kingdom. Unless the Department of Commerce extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by September 25, 2015. The Commission's views must be transmitted to Commerce within five business days thereafter, or by October 2, 2015.

DATES: *Effective Date:* August 11, 2015.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–3193) and Justin Enck (205–3363), 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 these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to petitions filed on August 11, 2015, by AK Steel Corporation (West Chester, Ohio), ArcelorMittal USA LLC (Chicago, Illinois), Nucor Corporation (Charlotte, North Carolina), SSAB Enterprises, LLC (Lisle, Illinois), Steel Dynamics, Inc. (Fort Wayne, Indiana), and United States Steel Corporation (Pittsburgh, Pennsylvania).

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's

rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on September 1, 2015, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the conference should be emailed to *William.bishop@usitc.gov* and *Sharon.bellamy@usitc.gov* (DO NOT FILE ON EDIS) on or before August 28, 2015. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before September 4, 2015, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please consult the Commission's rules, as amended, 76 FR 61937 (October 6, 2011) and the Commission's Handbook on Filing Procedures, 76 FR 62092 (October 6, 2011), available on 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 investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: August 12, 2015.

By order of the Commission.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–20266 Filed 8–17–15; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Victor B. Williams, M.D.; Decision and Order

On January 21, 2015, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Victor B. Williams, M.D. (Respondent), of Little Rock, Arkansas. GX 1. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration BW6686464, and the denial of any pending application to renew or modify his registration, on the ground that he lacks authority to handle controlled substances in Arkansas, the State in which he is registered with DEA. Show Cause Order, at 1 (*citing* 21 U.S.C. 823(f) & 824(a) (3)). *Id.*

Specifically, the Show Cause Order alleged that on April 10, 2014, the Arkansas State Medical Board issued to Respondent an ''Order and Notice of Hearing,'' which revoked his medical license. *Id.* The Order then alleged that as a result of the revocation, Respondent is without authority to handle controlled substances in Arkansas, the State in which he is registered, and therefore, his registration is subject to revocation.[1] *Id.* at 1 (citations omitted).

As evidenced by the signed return receipt card, on January 27, 2015, the Show Cause Order was served on Respondent. GX 3. On February 3, 2015, Respondent, through his counsel, sent a letter acknowledging receipt of the Show Cause Order to the Office of Administrative Law Judges. GX 4. However, Respondent's counsel did not request a hearing on the allegations. *See id.* Thereafter, on February 19, 2015, the Government submitted a Request for Final Agency Action seeking a final order revoking Respondent's registration. *See* Government Request for Final Agency Action, at 5 (citing 21 CFR 1301.43(e)).

On June 2, 2015, the Government represented to this office that Respondent's registration had expired on May 31, 2015 because he did not submit a renewal application at least 45 days before his registration's expiration date, as required by the Agency's regulation which is applicable to a registrant who has been served with an Order to Show Cause. *See* 21 CFR 1301.36(i). Moreover, according to the registration records of the Agency (of which I take official notice, 5 U.S.C. 556(e)), Respondent has not submitted a renewal application, whether timely or not, and his registration has been retired by the Agency. Accordingly, I find that Respondent's registration expired on May 31, 2015 and that there is no application pending before the Agency.

It is well settled that ''[i]f a registrant has not submitted a timely renewal application prior to the expiration date, then the registration expires and there is nothing to revoke.'' *Ronald J. Riegel,* 63 FR 67132, 67133 (1998); *see also William W. Nucklos,* 73 FR 34330 (2008). Furthermore, because Respondent did not file a renewal application, there is no application to act upon. *See Nucklos,* 73 FR at 34330. Accordingly, because there is neither a registration, nor an application, to act upon, I hold that this case is now moot.

Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a), as well as 28 CFR 0.100(b), I order that the Order to Show Cause issued to Victor B. Williams, M.D., be, and it hereby is, dismissed.

Dated: August 10, 2015.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2015–20351 Filed 8–17–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

John R. Kregenow, D.D.S.; Decision and Order

On October 29, 2014, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to John R. Kregenow, D.D.S. (Registrant), of Milwaukee, Wisconsin. GX 1, at 1. The Show Cause Order proposed the revocation of Registrant's DEA Certificate of Registration AK8212348, and the denial of any pending applications for renewal

[1] The Show Cause Order also notified Respondent of his right to request a hearing on the allegations or to submit a written statement in lieu of a hearing, the procedure for electing either option, and the consequence of failing to elect either option. *Id.* at 2 (citing 21 CFR 1301.43).

or modification of the registration, on the ground that he lacks authority to handle controlled substances in Wisconsin, the State in which he is registered with DEA. *Id.* (citing 21 U.S.C. 823(f) & 824(a)(3)).

The Show Cause Order specifically alleged that on September 3, 2014, the Wisconsin Dentistry Examining Board (hereinafter, the Board) issued an Order of Summary Suspension, suspending Registrant's dental license and that the Order ''is still in effect.'' *Id.* The Show Cause Order thus asserted that ''DEA must revoke [Registrant's] registration based upon [his] lack of authority to handle controlled substances in the State of Wisconsin.'' [1] *Id.* at 1–2 (citing 21 U.S.C. 802(21), 823(f) and 824(a) (3)).

On November 6, 2014, a Diversion Investigator (DI) attempted to serve the Show Cause Order on Registrant by travelling to his residence but no one was home. GX 6, at 2. (Declaration of Diversion Investigator). The DI then left at Registrant's residence an envelope which contained a copy of the Show Cause Order, a Voluntary Surrender Form, and written ''instructions describing [Registrant's] options regarding his . . . registration.'' *Id.*

The next day, the DI mailed a copy of the Show Cause Order by certified mail, return receipt requested, addressed to Registrant at his residence. *Id.* The same day, the DI also emailed an electronic copy of the Order to the two previous email addresses associated with his registration.[2] *Id.*

On December 8, 2014, the DI received a return receipt card for the mailing which was signed by Registrant. *Id.* The card was dated December 3, 2014. *Id., see also* GX 5, at 2. Based on the signed return receipt card, I find that the Government accomplished service on December 3, 2014.

Based on the Government's representation that since the date of service, neither Registrant, nor any person purporting to represent him, ''has requested a hearing or otherwise corresponded with DEA'' regarding the Show Cause Order, and finding that more than 30 days have now passed since the date of service, I find that Registrant has waived his right to either request a hearing on the allegations of the Show Cause Order or to submit a written statement in lieu of a hearing. *See* 21 CFR 1301.43*(c) &* (d). I therefore issue this Decision and Final Order based on the record submitted by the Government. *See* 21 CFR 1301.43(e). I make the following findings.

[1] The Show Cause Order also notified Registrant of his right to request a hearing on the allegations or to submit a written statement in lieu of a hearing, the procedure for electing either option, and the consequence for failing to elect either option. *Id.* at 2 (citing 21 CFR 1301.43).

Findings of Fact

Registrant is the holder of DEA Certificate of Registration AK8212348, pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner, at the registered address of 6015 West Forest Home Ave., Unit 1, Old Grove Shopping Center, Milwaukee, Wisconsin. GX 2. His registration does not expire until December 31, 2015. *Id.*

On September 3, 2014, the Board summarily suspended Registrant's dental license, finding ''probable cause to believe [he] violated the provisions of Wis. Stat. Ch. 447'' and that ''the public health, safety or welfare imperatively requires emergency action.'' GX 3, at 10–11. While Registrant was entitled to a hearing to challenge the summary suspension, *id.* at 11, on March 11, 2015, Registrant waived his right to a hearing on the allegations and consented to the entry by the Board of a Final Decision and Order revoking his medical license. Stipulation, at 1, *In re John R. Kregenow, D.D.S* . (Wis. Dent. Exam'ng. Bd. 2015).

On May 6, 2015, the Board issued its Final Decision and Order, revoking Registrant's license to practice dentistry.[3] Final Decision and Order, at 2, *In re Kregenow.* The Board found that Registrant had engaged in unprofessional conduct, which included, *inter alia,* ''[a]dministering, dispensing, prescribing, supplying or obtaining controlled substances . . . other than in the course of legitimate practice, or as otherwise prohibited by law.'' Wis. Admin. Code § DE 5.02(6) (cited in Final Decision and Order, at 2). The Board further found that Registrant had ''elected to retire from the practice of dentistry'' and revoked his license to ''ensure protection of the public, rehabilitation of Respondent and general deterrence.'' *Id.*

Based on the Board's order, I find that Registrant no longer possesses authority to dispense controlled substances in Wisconsin, the State in which he is registered under the Controlled Substances Act.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823, ''upon a finding that the registrant . . . has had his State license . . . suspended [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' Moreover, the Agency has long held that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See James L. Hooper,* 76 FR 71371 (2011), *pet. for rev. denied, Hooper* v. *Holder,* 481 Fed. App'x. 826 (4th Cir. 2012).

This rule derives from the text of two provisions of the CSA. First, Congress defined ''[t]he term 'practitioner' [to] mean[ ] a . . . dentist . . . or other person licensed, registered or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the Act, DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the State in which he engages in professional practice. *See, e.g., Sharad C. Patel,* 80 FR 28693, 28695 (2015); *Calvin Ramsey,* 76 FR 20034, 20036 (2011); *Sheran Arden Yeates, M.D.,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci,* 58 FR 51104, 51105 (1993); *Bobby Watts,* 53 FR 11919, 11920 (1988).

Thus, because Registrant no longer possesses lawful authority to practice dentistry in the Wisconsin, *see* Wis. Stat. §§ 447.03(1) & 961.01(a), the State where he is currently registered, I will order that Registrant's DEA registration be revoked.

Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a) and 28 CFR 0.100(b) I order that DEA Certificate of Registration AK8212348 issued to John R. Kregenow, D.D.S., be, and it hereby is, revoked. I further order that any

[3] This Order was obtained through an online search of the Board of Dentistry's Web site. Under the Administrative Procedure Act (APA), an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' U.S. Dept. of Justice, *Attorney General's Manual on the Administrative Procedure Act* 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979); *see also* 5 U.S.C. 556(e); 21 CFR 1316.59(e).

application of John R. Kregenow, D.D.S., to renew or modify this registration, be, and it hereby is, denied. This Order is effective immediately.[4]

Dated: August 10, 2015.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2015–20352 Filed 8–17–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Ronald A. Green, M.D.; Decision and Order

On February 6, 2015, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Ronald A. Green, M.D. (Registrant), of Houston, Texas. GX 1. The Show Cause Order proposed the revocation of Registrant's DEA Certificate of Registration FG1729699, pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner, as well as the denial of any pending applications to renew or modify his registration, on the ground that he does not ''have authority to handle controlled substances in'' Texas, ''the State in which [he is] registered with the DEA.'' *Id.*

The Show Cause Order specifically alleged that on December 10, 2014, the Disciplinary Panel of the Texas Medical Board (TMB) issued an Order of Temporary Suspension, which suspended his medical license the same day. *Id.* The Show Cause Order further alleged that as a consequence of the Board's order, Registrant is currently without authority to handle controlled substances in Texas, the State in which he holds his DEA registration.[1] *Id.*

On February 11, 2015, a DEA Diversion Investigator (DI) initially attempted to personally serve Registrant by travelling to his registered location. GX 4, at 1. However, the DI found that his practice was closed and was told by employees of a bank located across the hall that no one had seen Registrant recently. *Id.* Thereafter, the DI obtained the address of Registrant's residence from the Texas Department of Public Safety and on February 17, went to his residence. *Id.* at 2. The DI rang the doorbell and knocked on the door several times but received no response. *Id.* The DI then slid a copy of the Show Cause Order under the front door. *Id.*

Three months later (on May 20, 2015), the Office of Administrative Law Judges received a fax from Registrant which included a document entitled ''Response to First Amended Complaint and Motion to Dismiss,'' which he apparently filed in the proceeding brought against him by the Texas Medical Board. Registrant did not, however, request a hearing on the Show Cause Order. *See* 21 CFR 1301.43(a) & (d). Moreover, to the extent Registrant submitted this document as his statement of position, *see id.* § 1301.43(c), his filing does not contain any explanation for why good cause exists to excuse its untimeliness. *Id.* §§ 1301.43(d), 1316.47(b).

In the meantime, on April 7, 2015, the Government submitted a Request for Final Agency Action along with the investigative record, which it subsequently supplemented by providing a copy of Registrant's filing with the Office of Administrative Law Judges. In its Request, the Government asserts that Registrant has waived his right to a hearing. Request for Final Agency Action, at 4.

Based on my review of the record, I find that Registrant was properly served with the Show Cause Order. I further find that Registrant has waived his right to a hearing, as well as his right to submit a statement of position on the allegations of the Show Cause Order. *Id.* § 1301.44(d). I make the following findings.

Findings

Registrant is the holder of DEA Certificate of Registration FG1729699, pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner, at the registered address of: Paradigm Center for Integrative Medicine, 7505 Fannin, Suite 120, Houston, TX 77054. GX 2. This registration is due to expire on September 30, 2015. *Id.*

On December 10, 2014, a Disciplinary Panel of the TMB issued an Order of Temporary Suspension, which suspended Registrant's medical license, based upon its finding that Registrant's ''continuation in the practice of medicine would constitute a continuing threat to public welfare.'' GX 3, at 3, 5.[2] According to the TMB's Web site, the Order remains in effect as of this date. *See http://reg.tmb.state.tx.us/OnLineVerif/Phys_ReportVerif_new.asp.* Accordingly, I find that Registrant is currently without authority under the laws of the State of Texas to dispense controlled substances.

Discussion

The Controlled Substances Act (CSA) grants the Attorney General authority to revoke a registration ''upon a finding that the registrant . . . has had his State license or registration suspended [or] revoked . . . and is no longer authorized by State law to engage in the . . . distribution [or] dispensing of controlled substances.'' 21 U.S.C. 824(a)(3). Based on the CSA's provisions which define the term ''practitioner'' and set forth the requirement for obtaining a registration as such, DEA has long held that a practitioner must be currently authorized to handle controlled substances in the ''jurisdiction in which he practices'' in order to maintain a DEA registration. *See* 21 U.S.C. 802(21)(''The term 'practitioner' means a physician . . . or other person licensed, registered or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice.''); *see also id.* § 823(f) (''The Attorney General shall register practitioners . . . to dispense . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'').

As these provisions make plain, possessing authority under state law to dispense controlled substances is an essential condition for holding a DEA registration. *See David W. Wang,* 72 FR 54297, 54298 (2007); *Sheran Arden Yeates,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci,* 58 FR 51104, 51105 (1993); *Bobby Watts,* 53 FR 11919, 11920 (1988). And based on these provisions, the Agency has also ''held that revocation is warranted even where a practitioner's state authority has been summarily suspended and the State has yet to provide the practitioner with a hearing to challenge the State's action at which he . . . may ultimately prevail.''

[4] For the same reasons that the Wisconsin Board summarily suspended Registrant's dental license, I conclude that the public interest requires that this Order be effective immediately. *See* 21 CFR 1316.67.

[1] The Show Cause Order also informed Registrant of his right to request a hearing on the allegations or to submit a written statement of position on the matters alleged in the Order while waiving his right to a hearing, the procedure for electing either option, and the consequence of failing to elect either option. GX 1, at 1–2 (citing 21 CFR 1301.43).

[2] The TMB's Order contains numerous conclusions of law based on Registrant's violations of the Texas Medical Practice Act, including that he prescribed, administered, or dispensed controlled substance for non-therapeutic purposes and ''in a manner inconsistent'' with the Controlled Substances Act and Texas law, that he failed to comply with the Board's regulations regarding the operation of pain management clinics, that he failed to adhere to guidelines and requirements for the treatment of pain, and that he wrote prescriptions for known abusers of narcotics. GX 3, at 3–5.

Kamal Tiwari, 76 FR 71604, 71606 (2011) (citing cases).

Here, the evidence shows that Registrant's medical license has been suspended by the Texas Medical Board. I therefore hold that Registrant no longer holds authority under the laws of Texas, the State in which he is registered, to dispense controlled substances and that therefore, he is not entitled to maintain his DEA registration. *See* 21 U.S.C. 802(21), 823(f), 824(a)(3). Accordingly, I will order that his registration be revoked.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration FG1729699 issued to Ronald A. Green, M.D., be, and it hereby is, revoked. I further order that any application of Ronald A. Green, M.D., to renew or modify his registration, be, and it hereby is, denied. This Order is effective immediately.[3]

Dated: August 10, 2015.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2015–20349 Filed 8–17–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Cody Laboratories, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.34(a) on or before September 17, 2015. Such persons may also file a written request for a hearing on the application pursuant to 21 CFR 1301.43 on or before September 17, 2015.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA **Federal Register** Representative/ODXL, 8701 Morrissette Drive, Springfield, Virginia 22152. Request for hearings should be sent to: Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152. Comments and request for hearing on applications to import narcotic raw material are not appropriate. 72 FR 3417 (January 25, 2007).

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (''Deputy Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on May 8, 2015, Cody Laboratories, Inc., 601 Yellowstone Avenue, Steve Hartman, Vice President of Compliance, Cody, Wyoming 82414–9321 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Schedule
Phenylacetone (8501)	II
Poppy Straw Concentrate (9670)	II
Tapentadol (9780)	II

The company plans to import narcotic raw materials for manufacturing and further distribution to its customers. The company is registered with the DEA as a manufacturer of several controlled substances that are manufactured from poppy straw concentrate.

The company plans to import an intermediate form of tapentadol (9780), to bulk manufacturer tapentadol for distribution to its customers.

Dated: August 10, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–20278 Filed 8–17–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 14–24]

Nicholas Nardacci, M.D.; Decision and Order

On July 15, 2014, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Nicholas J. Nardacci, M.D. (Respondent), of Albuquerque, New Mexico. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration AN9444592, on the ground that he lacks authority to handle controlled substances in New Mexico, the State in which he is registered with DEA. Show Cause Order, at 1 (citing 21 U.S.C. 823(f) & 824(a)(3)).

The Show Cause Order specifically alleged that on August 20, 2013, the New Mexico Medical Board (the Board) issued a Decision and Order suspending Respondent's medical license, based on its finding that since 2010, Respondent had prescribed medical marijuana for numerous persons by certifying to the New Mexico Department of Health that he was each person's medical provider, without first establishing that he was the primary caregiver for any of those persons or otherwise first establishing a physician-patient relationship as required under NMSA §§ 26–2B–1 *et seq*. *Id.* at 1. Based on the State's suspension of his medical license, the Order alleged that Respondent was without authority to handle controlled substances in New Mexico, the State in which he is registered with DEA, and thus, he is not entitled to maintain his registration. *Id.* (citing 21 U.S.C. 801(21), 823(f) and 824(a)(3)).[1]

On or about August 4, 2014, the Show Cause Order was served on Respondent, and on September 2, 2014, Respondent filed a letter with the Office of Administrative Law Judges. GX 4. Therein, Respondent acknowledged that he had been served with the Show Cause Order and requested additional time in which to respond to the Order so that he could retain a lawyer; however, he did not request a hearing. *Id.* Respondent also asserted that on August 12, 2014, the Board had issued a Return to Work Order and therefore, his state medical license was now active. *Id.* The matter was then assigned

[3] Based on the findings of fact and conclusions of law which led the TMB to concluded that Registrant's ''continuation in the practice of medicine would constitute a continuing threat to public welfare,'' GX 3, at 3; I conclude that the public interest requires that this Order be effective immediately. *See* 21 CFR 1316.67.

[1] The Show Cause Order also notified Respondent of his right to request a hearing on the allegations, or to submit a written statement in lieu of a hearing, the procedure for electing either option, and the consequence for failing to elect either option. Show Cause Order, at 2 (citing 21 CFR 1301.43).

to an Administrative Law Judge, who ordered the Government to respond to Respondent's statement that ''he currently has an active license.'' GX 5, at 1.

In the meantime, on September 3, 2014, the New Mexico Medical Board notified a DEA Diversion Investigator in the Albuquerque District Office that the Board's August 12, 2014 Order did not place any formal restrictions on Respondent's authority to prescribe controlled substances, explaining that his prescribing was not at issue in the Board's case. GX 3. Thereafter, on September 9, 2014, the Government filed a motion for Termination of Proceedings, stating that the allegations of the Show Cause Order were now moot and that ''these developments apparently obviate the need for any further proceedings.'' GX 5, at 2.

Noting that Respondent had not requested a hearing, the ALJ concluded that ''the only jurisdictional authority'' she possessed was to determine whether to grant Respondent's request for ''a reasonable extension of the time allowed for response to an Order to Show Cause.'' Order Denying Respondent's Motion For Extension of Time, at 2 (quoting 21 CFR 1316.47). The ALJ thus concluded that she did not have jurisdiction to rule on the Government's motion. *Id.* The ALJ then denied Respondent's motion, ''with the understanding that the Government will take the necessary steps to properly dismiss the'' Show Cause Order. *Id.*

On February 3, 2015, the Government submitted a ''Request [f]or Dismissal [o]f Order [t]o Show Cause.'' Therein, the Government states that although Respondent was without state authority to handle controlled substances on July 15, 2014, when the Show Cause Order was issued, the New Mexico Medical Board has since lifted the suspension of his medical license and Respondent currently has no restrictions on his state authority to handle controlled substances.[2] *Id.* at 2. Because the Show Cause Order sought revocation of Respondent's registration solely on the basis of his lack of state authority to handle controlled substances, and that ground for revocation no longer exists, the Government requests that I dismiss the Order. *Id.* at 2.

Based on my review of the Board's Order, as well as the Board's September 3, 2014 letter to the Diversion Investigator, I find that Respondent is currently authorized to dispense controlled substances in New Mexico, the State in which he is registered with this Agency. Because Respondent's loss of state authority was the sole basis for the Show Cause Order and this ground no longer exists, I conclude that this case is now moot and will order that the Show Cause Order be dismissed.

Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a), as well as 28 CFR 0.100(b), I order that the Order to Show Cause issued to Nicholas J. Nardacci, M.D., be, and it hereby is, dismissed. This Order is effective immediately.

Dated: August 10, 2015.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2015–20350 Filed 8–17–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 15–19]

Jeffrey S. Holverson, M.D.; Decision and Order

On March 27, 2015, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Jeffrey S. Holverson, M.D. (Respondent), of Salt Lake City, Utah. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, pursuant to which he is authorized to dispense controlled substances as a practitioner, solely on the ground that he does ''not have authority to handle controlled substances in . . . Utah, the [S]tate in which [he is] registered with the DEA.'' Show Cause Order, at 1.

As the factual basis for the proposed action, the Show Cause Order alleged that on January 8, 2015, Respondent ''entered into a 'Non-Disciplinary Limitation Stipulation and Order' '' with the Utah Division of Occupational and Professional Licensing, pursuant to which he agreed to the suspension of his authority to dispense controlled substances. *Id.* The Order further alleged that ''[t]his suspension remains in effect'' and that ''[c]onsequently . . . DEA must revoke [his] registration.'' *Id.* (citing 21 U.S.C. 802(21), 823(f), and 824(a)(3)).

Following service of the Show Cause Order, Respondent requested a hearing on the allegations. Order Granting the Govt's Mot. for Summ. Disp. (hereinafter, ALJ Order), at 2. Thereafter, the Government moved for summary disposition on the ground that by virtue of the Non-Disciplinary Limitation Stipulation and Order, which Respondent entered into on January 8, 2015, he ''does not have authority to . . . dispense controlled substances'' under Utah law, and that notwithstanding that the ''suspension may or may not continue'' past the 180-day period set forth in the State's Order, ''DEA final orders are clear and unequivocal that [Respondent's] registration should be revoked.'' Gov't Mot. for Summ. Disp., at 5. While in his hearing request, Respondent had objected to the proposed revocation of his registration, he did not respond to the Government's motion. ALJ Order, at 2–3. The ALJ, finding it undisputed that ''the limitation on [Respondent's] ability to prescribe controlled substances will remain in effect until at least July 7, 2015,'' and noting that ''there is no guarantee that his authority . . . will be restored after 180 days,'' granted the Government's motion and recommended that Respondent's registration be revoked and that any pending applications to renew or modify his registration be denied. *Id.* at 4–6.

Neither party filed exceptions to the ALJ's Order. Thereafter, on June 9, 2015, the ALJ forwarded the record to my Office for Final Agency Action. However, upon review of the record, it was noted that the Non-Disciplinary Limitation Stipulation was due to expire on or about July 7, 2015. Accordingly, on July 27, 2015, I directed the parties to address whether the order remained in effect and if the order no longer was in effect, ''to address whether Respondent currently possesses authority to dispense controlled substances under the laws of the State of Utah.'' Order of the Administrator, at 1 (July 27, 2015).

On August 5, 2015, the Government filed its Response to my Order. Therein, the Government states that ''[t]he time of the Suspension Order has now expired, and DEA has been informed by [the Division of Professional Licensing] that at this time the Suspension order has not been extended.'' Gov't Response, at 2. The Government thus acknowledges that ''at this time Respondent is allowed to dispense controlled substances under the laws of the State of Utah.'' *Id.* The Government thus requests that the Show Cause Order be dismissed. *Id.*

Because the Show Cause Order was based solely on Respondent's lack of authority under state law to dispense controlled substances and that factual predicate no longer exists, I grant the Government's request and will dismiss the Show Cause Order.

[2] The Government submitted a copy of the Board's Order with its Request for Dismissal. *See* GX 2.

Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a), as well as 28 CFR 0.100(b), I order that the Order to Show Cause issued to Jeffrey S. Holverson, M.D., be, and it hereby is, dismissed. This Order is effective immediately.

Dated: August 10, 2015.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2015–20346 Filed 8–17–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Devra Hamilton, N.P.; Decision and Order

On November 24, 2014, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Devra Hamilton, N.P. (hereinafter, Respondent), of Las Vegas, Nevada. GX 1. The Show Cause Order proposed the revocation of Respondent's Certificate of Registration MH2194176, on the ground that she does not currently possess authority to handle controlled substances in Nevada, the State in which she is registered with the Agency. *Id.* at 1–2 (citing 21 U.S.C. 824(a)(3)).

The Show Cause Order specifically alleged that on January 16, 2014, the Nevada State Board of Nursing suspended Respondent's license as an Advance Practitioner of Nursing (APN), after she admitted that the Board had ''sufficient evidence to prove that [she] prescribed large amounts of unit doses of controlled substances between January 1, 2012 and December 31, 2012, that [she] failed to adequately assess patients prior to prescribing controlled substances, and that [she] documented inaccurate and contradictory information in medical records.'' *Id.* at 1 (citations omitted). The Show Cause Order further alleged that in March 2014, the Nevada State Board of Pharmacy revoked her license to prescribe controlled substances based on the Nursing Board's suspension of her APN license. *Id.* The Order thus alleged that Respondent is ''currently without authority to handle controlled substances'' in the State in which she is registered, and that her registration is therefore subject to revocation.[1] *Id.* at 2.

As evidenced by the signed return receipt card, on December 1, 2014, Respondent was served with the Show Cause Order. GX 2. On January 6, 2015, Respondent filed a letter (dated Jan. 2, 2015) which presented her position on the issues involved in the Nursing Board's proceeding. GX 3. Respondent did not, however, dispute that DEA ''must revoke'' her registration. *Id.* Nor did she request a hearing on the allegations of the Show Cause Order. *Id.*

As explained above, under 21 CFR 1301.43(c), ''[a]ny person entitled to a hearing . . . may, within the period permitted for filing a request for a hearing or a notice of appearance, file with the Administrator a waiver of an opportunity for a hearing . . . together with a written statement regarding such person's position on the matters of fact and law involved in such hearing.'' However, DEA regulations require that the written statement be filed ''within 30 days after the date of receipt of the'' Show Cause Order, 21 CFR 1301.43(a), and specify that documents ''shall be dated and deemed filed upon receipt by the Hearing Clerk.'' *Id.* § 1316.45. Thus, I find that Respondent's letter was untimely and do not consider it. I further find that Respondent has waived her right to a hearing.

Thereafter, on January 28, 2015, the Government submitted a Request for Final Agency Action with accompanying documentation, including the Nursing Board's Order suspending her APN license and a printout from the Nevada State Board of Pharmacy showing the status of her state controlled substance license. I make the following findings of fact.

Findings

Pursuant to 5 U.S.C. 556(e), I take official notice of Respondent's registration record with the Agency. According to that record, Respondent is currently registered as a mid-level practitioner, with authority to dispense controlled substances in schedules II through V, at the address of 9010 W. Cheyenne, Las Vegas, NV 89129. Respondent's registration does not expire under October 31, 2016.

On January 8, 2014, Respondent entered into an ''Agreement for Probation and Suspension of [her] Advanced Practitioner of Nursing Certificate''; on January 16, 2014, the Board approved the agreement. Therein, Respondent denied the allegations raised by the Board, but admitted that ''the Board ha[d] sufficient evidence to prove that she prescribed large amounts of unit doses of controlled substances between January 1, 2012 and December 31, 2012, that she failed to adequately assess patients prior to prescribing controlled substances, and that she documented inaccurate and contradictory information in medical records.'' GX 4, at 1. Respondent further agreed to the Board's issuance of a decision and order which suspended her Advanced Practitioner of Nursing Certificate ''for a minimum of one year.'' *Id.* at 3. According to the online records of the Board, Respondent's Advanced Practitioner of Nursing Certificate either expired on January 16, 2014 or remains suspended as of this date. So too, her Board of Pharmacy license remains suspended as of this date.

Discussion

The Controlled Substances Act (CSA) grants the Attorney General authority to revoke a registration ''upon a finding that the registrant . . . has had [her] State license or registration suspended [or] revoked . . . and is no longer authorized by State law to engage in the . . . distribution [or] dispensing of controlled substances.'' 21 U.S.C. 824(a)(3). Moreover, DEA has long held that a practitioner must be currently authorized to handle controlled substances in the ''jurisdiction in which [she] practices'' in order to maintain a DEA registration. *See* 21 U.S.C. 802(21) (''the term 'practitioner' means a physician . . . or other person licensed, registered or otherwise permitted, by . . . the jurisdiction in which [she] practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice.''); *see also id.* § 823(f) (''The Attorney General shall register practitioners . . . to dispense . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which [she] practices.''). As these provisions make plain, possessing authority under state law to dispense controlled substances is an essential condition for holding a DEA registration. *See David W. Wang,* 72 FR 54297, 54298 (2007); *Sheran Arden Yeates,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci,* 58 FR 51104, 51105 (1993); *Bobby Watts,* 53 FR 11919, 11920 (1988).

Here, the evidence shows that both Respondent's Advance Practitioner of Nursing Certificate and her state Controlled Substance License have been suspended by the Nevada State Board of Nursing and the Nevada State Board of Pharmacy respectively. I therefore hold that Respondent no longer possesses authority under Nevada law to dispense controlled substances and that she is

[1] The Show Cause Order also notified Respondent of her right to request a hearing on the allegations or to submit a written statement in lieu of a hearing, the procedure for electing either option, and the consequence of failing to elect either option. *Id.* at 2 (citing 21 CFR 1301.43).

therefore not entitled to maintain her DEA registration. *See* 21 U.S.C. 802(21), 823(f), and 824(a)(3). Accordingly, I will order that her registration be revoked.

Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration MH2194176 issued to Devra A. Hamilton, A.P.N., be, and it hereby is, revoked. I further order that any pending application of Devra A. Hamilton, A.P.N., to renew or modify her registration, be, and it hereby is, denied. This Order is effective September 17, 2015.

Dated: August 10, 2015.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2015–20348 Filed 8–17–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: IRIX Manufacturing, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.33(a) on or before October 19, 2015.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA **Federal Register** Representative/ODXL, 8701 Morrissette Drive, Springfield, Virginia 22152. Request for hearings should be sent to: Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (''Deputy Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on March 30, 2015, IRIX Manufacturing, Inc., 309 Delaware Street, Building 1106, Greenville, South Carolina 29605 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled Substance	Schedule
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I

The company plans to manufacture the above-listed controlled substances as Active Pharmaceutical Ingredient (API) for clinical trials.

Dated: August 10, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–20285 Filed 8–17–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Arthur H. Bell, D.O.; Decision and Order

On July 15, 2014, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Arthur H. Bell, D.O. (Respondent), of Covington, Kentucky. GX 1, at 1. The Show Cause Order proposed the denial of Respondent's application for a DEA Certificate of Registration as a practitioner on multiple grounds, including that he had materially falsified his application for a registration, as well as that he had committed acts which render his registration inconsistent with the public interest. *Id.* at 1–2 (citing 21 U.S.C. 823(f) and 824(a)(1)).

As for the material falsification allegation, the Show Cause Order alleged that on November 9, 2011, Respondent had voluntarily surrendered his previous DEA Registration. *Id.* The Order then alleged that on March 14, 2013, Respondent applied for a new DEA registration, but materially falsified the application when he ''answered 'no' to question which asked, '[h]as the Respondent ever surrendered (for cause) or had a federal controlled substance registration revoked, suspended, restricted or denied, or is any such action pending?''' *Id.*

As for the allegations that Respondent had committed acts which render his registration inconsistent with the public interest, the Show Cause Order alleged that Respondent violated federal law by issuing controlled substance prescriptions when he ''no longer possessed a DEA registration.'' *Id.* at 2 (citing 21 CFR 1306.03(a)). More specifically, the Order alleged that on May 5, 2012, Respondent had issued a prescription for 60 tablets of Lyrica 75 mg, a schedule V controlled substance, and on September 12, 2012, Respondent had issued a prescription for Zutripro 120 ml, a schedule III controlled substance. *Id.*

The Show Cause Order also alleged that from July 11, 2011 through November 4, 2011, Respondent ''dispensed controlled substances on behalf of Care Plus Medical Group (CPMG), a purported pain management clinic formerly located in Creve Coeur, Missouri, [which] was owned by Scott Whitney.'' *Id.* The Order alleged that prior to beginning his employment with CPMG, Respondent arranged with Whitney to order schedule II controlled substances under his previous registration and that ''[t]o that end, . . . Whitney sent 20 DEA 222 forms to [Respondent's] residence, and asked that [he] pre-sign them so that controlled substances could be ordered on behalf of CPMG.'' *Id.* The Order then alleged that Respondent ''pre-signed the forms, dated them . . . and mailed them to . . . Whitney . . . [who] then used one . . . to place orders for oxycodone 30 mg and oxycodone 10/325 mg.'' *Id.* The Order alleged that this violated federal law because it ''authoriz[ed] . . . Whitney to place an order for controlled substances under [Respondent's] previous . . . registration without executing a power of attorney for . . . Whitney.'' *Id.* (citing 21 CFR 1303.05(a)).

Next, the Show Cause Order alleged that on October 28, 2013, Respondent falsified his application for his Ohio medical license, when he failed to disclose that he had previously surrendered his DEA registration. *Id.* at 1–2. The Order further alleged that this ''conduct evidences a lack of candor to Ohio licensing authorities.'' *Id.* (citing 21 U.S.C. 823(f)(5)).

Finally, the Show Cause Order notified Respondent of his right to request a hearing on the allegations or to submit a written statement in lieu of a hearing, the procedure for electing either option, and the consequence of failing to elect either option. *Id.* at 2–3 (citing 21 CFR 1301.43). The Government also included with the Order a sample Request for Hearing form. *Id.* at 4.

The Government represents that on July 21, 2014, the Show Cause Order was served on Respondent by certified mail, and there is no dispute that service occurred, as on August 8, 2014, the Hearing Clerk, Office of Administrative Law Judges, received a letter from Respondent. Request for Final Agency Action, at 3; *see also* GX 10. In the letter, Respondent responded to each of the Government's allegations. GX 10, at 1–2. Respondent did not, however, request a hearing.

Based on Respondent's letter, I find that he had waived his right to a hearing on the allegations. 21 CFR 1301.43(c). However, pursuant to 21 CFR 1301.43(c), I deem Respondent's letter to be his ''written statement [of] position on the matters of fact and law involved'' in the proceeding.

Thereafter, on December 12, 2014, the Government submitted its Request for Final Agency Action along with the Investigative Record. Having reviewed the Government's evidence as well as Respondent's Statement of Position, I make the following findings of fact.

Findings

Respondent's Registration and Licensing Status

Respondent previously held DEA Certificate of Registration BB6473538, pursuant to which he was authorized to dispense controlled substances in schedules II–V as a practitioner, at Care Plus Medical Group (CPMG) in Creve Coeur, Missouri. GX 3. According to a DEA Diversion Investigator (DI), following an investigation into CPMG by DEA, Respondent voluntarily surrendered his registration on November 9, 2011, and on the form manifesting the surrender, Respondent acknowledged that he was surrendering his registration ''[i]n view of my alleged failure to comply with the Federal requirements pertaining to controlled substances.'' GX 5, at 1; GX 11, at 3. The next day, Respondent's registration was retired by the Agency. GX 2, at 2.

On January 12, 2012, Respondent applied for a new registration. GX 12, at 2. However, on March 5, 2012, following an interview with DEA Investigators regarding his activities at CPMG, Respondent withdrew this application. *Id.* at 2–3.

On March 14, 2013, Respondent submitted a new application, seeking authority to dispense controlled substances in schedules II through V, at the registered location of Hometown Urgent Care, 4387 Winston Ave, Covington, KY. GX 7, at 1. It is this application which is at issue in this proceeding.

On the application, Respondent was required to answer four questions, including number two, which asked: ''Has the Respondent ever surrendered (for cause) or had a federal controlled substance registration revoked, suspended, restricted or denied, or is any such action pending?'' *Id.* at 2. Respondent answered ''N'' for no. *Id.*

Respondent also holds valid medical licenses in Ohio and Kentucky. These licenses expire on July 1, 2017 and February 29, 2016, respectively.[1]

The Investigation of Respondent

According to a DI, Respondent was previously employed at CPMG from July 11, 2011 through November 4, 2011. GX 11, at 3 (Declaration of Diversion Investigator). CPMG was owned by Scott Whitney, and Respondent was the clinic's sole physician. *Id.* at 2.

In August 2011, another DI received an anonymous tip alleging that CPMG was diverting controlled substances. *Id.* The tipster alleged that individuals could walk into the clinic without an appointment, could consult with a doctor in exchange for $250 in cash, that CPMG did not accept insurance, and that CPMG ''had an in-house pharmacy.'' *Id.* Subsequently, the DI determined that Mr. Whitney ''had prior ownership interests in other pain clinics in the State of Florida'' that had ''dispensed oxycodone'' but had ''since closed.'' *Id.*

On November 9, 2011, the DI interviewed Respondent. *Id.* at 3. Respondent told the DI that at some point prior to starting at CPMG, Whitney had requested that Respondent pre-sign DEA–222 Forms, which are required to order schedule II drugs such as oxycodone, *see* 21 U.S.C. 828(a), ''as a way to start the business.'' *Id.* Whitney mailed approximately twenty DEA–222 forms to Respondent, who signed them and mailed them back to Whitney. *Id.*

According to the DI, Whitney used at least one of the pre-signed order forms to place orders for 2,000 du of oxycodone 30 mg and 1,000 oxycodone 10/325 mg from State Pharmaceuticals, Inc. on June 29, 2011. *Id., see also* GX 4. The DI also found that Respondent ''authorized [] Whitney to place an order for controlled substances under his DEA . . . registration without executing a power of attorney for him,'' a violation of 21 CFR 1305.05(a). *Id.*

After the conclusion of the interview, the DI asked Respondent if he would voluntarily surrender his DEA registration. *Id.* at 3. Respondent agreed to do so, and executed a Voluntary Surrender Form. *Id.; see also* GX 5.

On January 11, 2013, Respondent submitted an application for renewal of his Ohio medical license. GX 6, at 1. The application included a question which asked: ''Have you surrendered, consented to limitation of, or to suspension, reprimand or probation concerning, a license to practice any healthcare profession or state or federal privileges to prescribe controlled substances in any jurisdiction other than Ohio?'' *Id.* at 3. Respondent answered ''NO.'' *Id.*

As noted above, on March 14, 2013, Respondent applied for a new registration. Thereafter, on May 22, 2013, a DI queried the Ohio Automated Rx Reporting System (OARRS), using Respondent's previously surrendered DEA registration (BB6473538). GX 12, at 3. The OARRS report showed that Respondent had issued two controlled substance prescriptions after he surrendered his registration: 1) on May 5, 2012, for 60 tablets of Lyrica 75 mg (a schedule V controlled substance) on May 5, 2012; and 2) on September 12, 2012, for Zutripro 120 ml (a schedule III cough syrup containing hydrocodone). *Id.* at 3–4.

The DI then obtained copies of both prescriptions. *Id.* at 4. The first prescription, which is dated May 5, 2012, was for 60 capsules of Lyrica 75 mg, and was printed on a prescription form for Urgent Care of Fairfield, including its street address. GX 8. The prescription includes a handwritten signature of ''Art Bell DO'' above ''Art Bell DO,'' which is printed below the signature line. *Id.* However, no DEA number appears on the prescription. *Id.*

The second prescription, which is dated September 12, 2012, was for ''Bromfed DM 2mg-30mg-10mg/5ml Syrup,'' a non-controlled drug, and was also on a printed form bearing the name of Urgent Care of Fairfield and its address. GX 9. However, the drug name is lined-out and the word ''Zutripro'' is handwritten above it. *Id.* Zutipro is a schedule III controlled substance which contains hydrocodone. As with the previous prescription, the signature line contains a handwritten signature of ''Art Bell DO,'' with ''Art Bell DO'' printed below the signature line. *Id.* Also written on the prescription is the notation: ''per Katie Allen.'' Again, no DEA number appears on the prescription.[2] *Id.* According to the DI, on the dates that each prescription was issued, Respondent was working at

[1] The Government provided copies of online license searches which show that Respondent is licensed as an osteopathic physician in Ohio and Kentucky.

[2] GX 8 and GX 9 also include copies of the dispensing labels for each prescription.

Urgent Care of Fairfield in Hamilton, Ohio. GX 12, at 4.

Respondent's Statement of Position

In his response to the Order to Show Cause, Respondent stated that he re-applied for a DEA registration on March 14, 2013, ''not as a physician seeking authorization to handle controlled substances in Schedules II through V at a proposed registered address of 4387 Winston Avenue, Covington, Kentucky [] but to satisfy insurance company requirements.'' GX 10, at 1 (emphasis in original). He asserted that ''many medical facilities require that their physicians have a DEA registration, and that ''I hardly ever wrote for any controlled substances prior to my employment with Care Plus Medical Group.'' *Id.*

Regarding the allegation that he materially falsified his DEA application when he provided a ''no'' answer to question two, Respondent asserted that he provided the answer because ''I voluntarily surrendered my registration.'' *Id.* (emphasis in original.) He then maintained that ''the DEA agent advised me to do so stating that it most likely would be returned to me within 2–4 weeks. Since I voluntarily surrendered the registration and no one mentioned (for cause), I answered the question ''no.'' *Id.* (emphasis in original). Respondent added that he ''misunderstood and was completely unaware that by voluntarily surrendering one's DEA registration equals voluntarily surrendering (for cause).'' *Id.* (emphasis in original). He further stated that ''semantics may have played a part in the confusion of this situation. Please know that the thought never crossed my mind to commit a fraudulent act. I apologize for the confusion.'' *Id.*[3]

As for the two prescriptions, Respondent denied having issued them. More specifically, he stated: ''As for the two prescriptions that I allegedly wrote for Lyrica 75 mg and Zutripro 120ml. I know nothing about this.'' *Id.* He then questioned whether there ''was a possibility that a substitute was given by the nurse without my approval because insurance would not cover the non-narcotic prescription that I had originally written?'' *Id.* He then added that ''I suppose anything is possible in this circumstance, but rest assured, that I have not written any prescriptions for controlled substances since the surrendering of my DEA registration on November 9, 2011.'' *Id.*

Respondent did admit that he pre-signed 20 DEA–222 forms and that he sent the forms to Whitney and failed to execute a power of attorney authorizing Whitney to order the drugs. However, he then contended that the allegation[4] that he ''arranged with Mr. Whitney to order Schedule II controlled substances under [his] previous DEA registration'' was not a correct statement, because ''Mr. Whitney arranged this with me—I did not know how to order controlled substances.'' *Id.* Continuing, Respondent wrote: ''[a]gain, that action was pure naiveté and ignorance of the law on my part'' and ''saying I'm sorry does not even begin to express my remorse . . . [n]or does it alleviate the feelings of stupidity for my actions because of the poor judgment that I used on that day.'' *Id.*

Respondent concluded his letter by stating that he ''did not knowingly tell lies, nor . . . intentionally try to deceive anyone.'' *Id.* He expressed the hope that his letter ''conveys [his] remorse'' and stated that he ''would also like to be able to retire in a few years with my good name intact and above reproach.'' *Id.*

Discussion

Section 303(f) of the Controlled Substances Act provides that an application for a practitioner's registration may be denied upon a determination ''that the issuance of such registration would be inconsistent with the public interest.'' 21 U.S.C. 823(f). In making the public interest determination, the CSA requires the consideration of the following factors:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The Applicant's experience in dispensing . . . controlled substances.

(3) The Applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety. *Id.*

''These factors are . . . considered in the disjunctive.'' *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003). I ''may rely on any one or a combination of factors, and may give each factor the weight [I] deem[] appropriate in determining whether . . . an application for registration [should be] denied.'' *Id.* Moreover, while I am required to consider each of the factors, I ''need not make explicit findings as to each one.'' *MacKay* v. *DEA,* 664 F.3d 808, 816 (10th Cir. 2011) (quoting *Volkman,* 567 F.3d 215, 222 (6th Cir. 2009) (quoting *Hoxie,* 419 F.3d 477, 482 (6th Cir. 2005))).

''In short, this is not a contest in which score is kept; the Agency is not required to mechanically count up the factors and determine how many favor the Government and how many favor the registrant. Rather, it is an inquiry which focuses on protecting the public interest; what matters is the seriousness of the registrant's misconduct.'' *Jayam Krishna-Iyer,* 74 FR 459, 462 (2009).

Also, pursuant to section 304(a)(1), the Attorney General is authorized to suspend or revoke a registration ''upon a finding that the registrant . . . has materially falsified any application filed pursuant to or required by this subchapter.'' 21 U.S.C. 824(a)(1). It is well established that the various grounds for revocation or suspension of an existing registration that Congress enumerated in section 304(a), 21 U.S.C. 824(a), are also properly considered in deciding whether to grant or deny an application under section 303. *See The Lawsons, Inc.,* 72 FR 74334, 74337 (2007); *Anthony D. Funches,* 64 FR 14267, 14268 (1999); *Alan R. Schankman,* 63 FR 45260 (1998); *Kuen H. Chen,* 58 FR 65401, 65402 (1993).

Thus, the allegation that Respondent materially falsified his application is properly considered in this proceeding. *See Samuel S. Jackson,* 72 FR 23848, 23852 (2007). Moreover, just as materially falsifying an application provides a basis for revoking an existing registration without proof of any other misconduct, *see* 21 U.S.C. 824(a)(1), it also provides an independent and adequate ground for denying an application. *The Lawsons,* 72 FR at 74338; *cf. Bobby Watts, M.D.,* 58 FR 46995 (1993).

The Government has ''[t]he burden of proving that the requirements for . . . registration . . . are not satisfied.'' 21 CFR 1301.44(d). Having considered all of the public interest factors, as well as the separate allegation that Respondent materially falsified his application for a DEA registration, I conclude that the Government has established a *prima facie* case to deny his application. While I have considered Respondent's

[3] As for the false answer he provided on the application for his Ohio license, Applicant stated that ''the renewal of my application for an Ohio license was an oversight'' and that he had re-applied for renewal of his Kentucky and Missouri licenses and stated on both ''that I had voluntarily surrendered my DEA registration.'' GX 10, at 2. He wrote that ''I mistakenly thought I had checked the box that said I had voluntarily surrendered my DEA registration. . . . Therefore, I checked the box asking 'if anything had changed since my last renewal?' 'no'. [sic] I did not intend to deceive anyone. It was an honest mistake for which I apologize.'' *Id.*

[4] This statement appears as an allegation in the Order to Show Cause. *See* GX 1, at 2.

Statement of Position, I do not find his expressions of remorse persuasive and hold that he has not produced sufficient evidence to refute the Government's *prima facie* case. Accordingly, I will order that his application be denied.

Material Falsification

As found above, on March 4, 2013, Respondent applied for a new registration and answered ''N'' or no to the question: ''[h]as the applicant ever surrendered (for cause) or had a federal controlled substance registration revoked, suspended, restricted or denied, or is any such action pending?'' Respondent's answer was false because on November 9, 2011, he voluntarily surrendered his DEA registration following an interview with a DEA Investigator regarding his activities at CPMG, during which he admitted to signing schedule II order forms while failing to execute a power of attorney as required under DEA's regulation. He then provided those forms to CPMG's owner, thereby by allowing the latter to order 2,000 du of oxycodone 30 and 1,000 du of oxycodone 10/325.

This was a violation of DEA regulations and federal law. *See* 21 U.S.C. 842(a)(5) (''It shall be unlawful for any person . . . to refuse or negligently fail to make, keep, or furnish any record, report, notification, declaration, order or order form, statement, invoice, or information required under this subchapter.''); 21 CFR 1305.04(a) (''Only persons who are registered with DEA under section 303 of the Act . . . to handle Schedule I or II controlled substances . . . may obtain and use DEA From 222 . . . for these substances.''); *id.* § 1305.05(a) (''A registrant may authorize one or more individuals . . . to issue orders for Schedule I and II controlled substances on the registrant's behalf by executing a power of attorney for each such individual. . . .'').

Respondent nonetheless asserts that he misunderstood the question. He claims that because he ''voluntarily surrendered'' his registration'' and ''no one mentioned (for cause),'' he did not believe that he had surrendered his registration ''for cause.'' However, the circumstances surrounding the interview during which he surrendered his registration, coupled with the language of the voluntary surrender form on which Respondent acknowledged that he was surrendering his registration ''[i]n view of my alleged failure to comply with the Federal requirements pertaining to controlled substances'' GX 5, at 1, are sufficient to support the conclusion that Respondent surrendered his registration ''for cause.''

I also conclude that Respondent's answer was materially false. As the Supreme Court has explained, ''[t]he most common formulation'' of the concept of materiality ''is that a concealment or misrepresentation is material if it 'has a natural tendency to influence, or was capable of influencing, the decision of' the decisionmaking body to which it was addressed.'' *Kungys* v. *United States,* 485 U.S. 759, 770 (1988) (quoting *Weinstock* v. *United States,* 231 F.2d 699, 701 (D.C. Cir. 1956)) (other citation omitted); see also *United States* v. *Wells,* 519 U.S. 482, 489 (1997) (quoting *Kungys,* 485 U.S. at 770).

''[I]t has never been the test of materiality that the misrepresentation or concealment would *more likely than not* have produced an erroneous decision, or even that it would *more likely than not* have triggered an investigation, but rather, whether the misrepresentation or concealment was predictably capable of affecting, *i.e.,* had a natural tendency to affect, the official decision.'' *Kungys,* 485 U.S. at 771. While the evidence must be ''clear, unequivocal, and convincing,'' the ''ultimate finding of materiality turns on an interpretation of the substantive law.'' *Id.* at 772 (int. quotations and citations omitted).

Notwithstanding that the Agency did not grant his application, Respondent's false answer to question two was clearly ''capable of affecting'' the decision of whether to grant his application because he surrendered his registration in response to allegations that he violated DEA regulations, and under the public interest standard, the Agency is required to consider the Applicant's ''[c]ompliance with applicable State, Federal, or local laws relating to controlled substances.'' 21 U.S.C. 823(f)(4). Accordingly, I conclude that Respondent materially falsified his March 2013 application for registration.

In his statement, Respondent contends that ''semantics may have played a part in the confusion of this situation. Please know that the thought never crossed my mind to commit a fraudulent act. I apologize for the confusion.'' GX 10, at 1.

Respondent's explanation is not persuasive. Here, the evidence also shows that when Respondent applied for his Ohio medical license, the State's application contained the following question: ''Have you surrendered, consented to limitation of, or to suspension, reprimand or probation concerning . . . state or federal privileges to prescribe controlled substances in any jurisdiction other than Ohio?'' GX 6, at 3. Respondent, however, answered ''NO.'' *Id.* Notably, in contrast to the question on the DEA application, the Ohio question did not ask whether he surrendered ''for cause'' and thus presented no issue of—in Respondent's view—semantics. Further, Respondent does not claim that he was confused by the question.[5] *Id.* Yet Respondent still provided a false answer to the Ohio question. Thus, I reject his claim of confusion and conclude that his false answer on the Ohio application is probative of his intent in answering the DEA question and that his intent was fraudulent. *Cf.* Fed. R. Evid. R. 404(b)(2).

This conclusion finds further support in the circumstances surrounding the March 5, 2012 interview, which resulted in his withdrawal of the January 5, 2012 application. While the Government did not submit any evidence as to whether Respondent truthfully answered Question Two on this application, a DEA Investigator provided a sworn statement that on March 5, 2012, he interviewed Respondent regarding his activities at CPMG.[6] *See* GX 12, at 2. According to the DI, ''[a]t the conclusion of the interview, DEA investigators informed [Respondent's] legal counsel that [he] could face criminal charges based on his previous handling of controlled substances on behalf of CPMG.'' *Id.* at 2–3. Thereafter,

[5] Rather, Respondent asserts that his answer on the Ohio medical license application ''was an oversight,'' that he ''mistakenly thought I had checked the box that said I had voluntarily surrendered my DEA registration,'' and that ''I checked the box asking 'if anything had changed since my last renewal?' 'no.' '' GX 10, at 2. However, Respondent filed his Ohio medical license application on January 11, 2013, and according to the Web site of the State Medical Board, ''Doctors of Osteopathic Medicine [DOs] are required to renew their licenses biennially in order to maintain an active certificate to practice.'' *See http://www.med.ohio.gov/RenewalCME/DoctorofOstepathicMedicine(DO).aspx.*

As found above, Respondent surrendered his DEA registration on November 9, 2011, and given that his Ohio license was good for two years, I conclude that his previous Ohio application was filed before he surrendered his DEA registration. Thus, at the time he filed his Ohio medical license application, something ''had changed since [his] last renewal.'' GX 10, at 2. Moreover, the Ohio application clearly instructed: ''Please review all information you have provided. Click on the 'Review' button to change any information given. . . .'' GX 6, at 2. The form also included the following statements: ''I understand that submitting a false, fraudulent, or forged statement or document or omitting a material fact in obtaining licensure may be grounds for disciplinary action against my license'' and ''Under penalty of law, I hereby swear or affirm that the information I have provided in the application is complete and correct, and that I have complied with all criteria for applying on line.'' *Id.* at 6.

[6] Agency records, of which I take official notice, *see* 21 CFR 1316.59(e), show that Applicant also answered ''No'' to Liability Question Two on his January 2012 application. There is, however, no evidence that his response was specifically addressed by the investigating DI at the time.

Respondent consulted with his attorney and decided to withdraw his application. *Id.* at 3. Given that the March 5, 2012 interview involved the same matters as had been discussed at the time Respondent surrendered his registration and that he had been threatened with criminal prosecution, Respondent cannot credibly argue that, at the time he submitted the March 2013 application, he remained confused as to whether he had previously surrendered the registration ''for cause.''

I therefore conclude that substantial evidence supports findings that Respondent materially falsified his application for March 2013 application for registration when he failed to disclose that he had surrendered his DEA registration ''for cause,'' and that he did so intentionally. *See* GX 10, GX 12 at 2–3. I further conclude that these findings support the denial of Respondent's application.

The Public Interest Analysis

The Government also argues that Respondent's application should be denied on the separate ground that his registration is ''inconsistent with the public interest.'' 21 U.S.C. 823(f). More specifically, the Government argues that factors two (experience in dispensing), four (compliance with applicable laws related to controlled substances) and five (other conduct which may threaten public health and safety), support the denial of his application.[7] Government's Request for Final Agency Action, at 10.

With regard to factors two and four, the Government alleges that Respondent issued two controlled-substance prescriptions after he surrendered his registration. In his written statement, Respondent denies any knowledge of both prescriptions, and posits ''that a substitute was given by a nurse without [his] approval because insurance would not cover the non-narcotic prescription that [he] had originally written?'' GX 10, at 2.

Having reviewed the signatures on the prescriptions with the other documents in the record which indisputably contain Respondent's signature (*i.e.,* his written statement of position, the voluntary surrender form, and the DEA Form 222), I conclude that Respondent signed both prescriptions. *See United States* v. *Clifford,* 704 F.2d 86, 90 n.5 (3d Cir. 1983) (''[A] jury can compare a known handwriting sample with another sample to determine if the handwriting in the latter sample is genuine. The jury can make that comparison without the benefit of expert witnesses.'') (citations omitted); *see also* 28 U.S.C. 1731 (''The admitted or proved handwriting of any person shall be admissible, for purposes of comparison, to determine genuineness of other handwriting attributed to such person.'').

Notwithstanding that Respondent did not include a DEA number on the prescription, I find that Respondent unlawfully issued the May 5, 2012 prescription for Lyrica. *See* 21 U.S.C. 841(a)(1) (''Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally . . . to . . . dispense . . . a controlled substance.''); *id.* § 822(a)(2) (Every person who dispenses . . . shall obtain from the Attorney General a registration issued in accordance with the rules and regulations promulgated by him.''); 21 CFR 1306.03(a)(2) (''A prescription for a controlled substance may be issued only by an individual practitioner who is . . . [e]ither registered or exempted from registration. . . .''); *Cf. id.* § 843(a)(2) (''It shall be unlawful for any person knowing or intentionally . . . to use in the course of the . . . dispensing of a controlled substance . . . a registration number which is fictitious, revoked, suspended, [or] expired. . . .'').

However, I do not find the evidence sufficient to sustain the allegation as to the September 12, 2012 prescription. As the evidence shows, the prescription was originally issued for Bromfed DM (a non-narcotic), but was then changed to Zutripro, a schedule III controlled substance, and bears the handwritten notation ''per Katie Allen.'' The Government offered no further evidence regarding the circumstances surrounding the change in the prescription. It did not explain who Ms. Katie Allen is and where she was working on September 12, 2012. Nor did it offer any evidence that it interviewed the pharmacist who filled the prescription, the patient, or Ms. Allen.

As found above, Respondent also admitted that he pre-signed twenty schedule II order forms and that he mailed them to Whitney, so that Whitney could order controlled substances for his pain clinic and ''start the business,'' which Whitney then used to order oxycodone. Respondent violated federal law and Agency regulations because while he clearly authorized Whitney to order the drugs, he failed to execute a power of attorney for him. *See* 21 U.S.C. 842(a)(5); 21 CFR 1305.04(a); *id.* § 1305.05(a).[8]

Respondent admitted to these violations. GX 10, at 2. However, he then stated that he ''did not know how to order controlled substances'' and that ''that action was pure naiveté and ignorance of the law on my part.'' [9] GX 10, at 2. This is not a particularly persuasive explanation for one who seeks a DEA registration.

I therefore conclude that the evidence with respect to factors two and four supports the conclusion that issuing Respondent a new registration ''would be inconsistent with the public interest.'' 21 U.S.C. 823(f).

[7] I acknowledge that Applicant remains licensed in Kentucky, the State in which he seeks registration, and therefore, he meets the CSA's prerequisite for holding a practitioner's registration in that State. See 21 U.S.C. 823(f) (''The Attorney General shall register practitioners . . . to dispense . . . controlled substances . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.''); *see also id.* § 802(21) (''The term 'practitioner' means a physician . . . or other persons licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices . . . to distribute, dispense, . . . [or] administer . . . a controlled substance.'').

However, the possession of state authority ''is not dispositive of the public interest inquiry.'' *George Mathew,* 75 FR 66138, 66145 (2010), *pet. for rev. denied, Mathew* v. *DEA,* 472 Fed. Appx. 453 (9th Cir. 2012); *see also Patrick W. Stodola,* 74 FR 20727, 20730 n.16 (2009). As the Agency has long held, ''the Controlled Substances Act requires that the Administrator . . . make an independent determination [from that made by state officials] as to whether the granting of controlled substance privileges would be in the public interest.'' *Mortimer Levin,* 57 FR 8680, 8681 (1992). Accordingly, this factor is not dispositive either for, or against, the granting of Respondent's application. *Paul Weir Battershell,* 76 FR 44359, 44366 (2011) (*citing Edmund Chein,* 72 FR 6580, 6590 (2007), *pet. for rev. denied, Chein* v. *DEA,* 533 F.3d 828 (D.C. Cir. 2008)).

As for factor three, there is no evidence that Applicant has been convicted of an offense ''relating to the manufacture, distribution or dispensing of controlled substances.'' 21 U.S.C. 823(f)(3). However, there are a number of reasons why even a person who has engaged in misconduct may never have been convicted of an offense under this factor, let alone prosecuted for one. *Dewey C. MacKay,* 75 FR 49956, 49973 (2010), *pet. for rev. denied MacKay* v. *DEA,* 664 F.3d 808 (10th Cir. 2011). The Agency has therefore held that ''the absence of such a conviction is of considerably less consequence in the public interest inquiry'' and is therefore not dispositive. *Id.*

[8] Of further note, Whitney could not have obtained the order forms without Respondent having provided him with his DEA Registration number, which is pre-printed on the forms when issued by DEA. *See* GX 4; *see also* 21 CFR 1305.04(a). However, the Agency has repeatedly held that a registrant is strictly liable for any misconduct engaged in by a person to whom a registrant entrusts his registration. *See Satinder Dang,* 76 FR 51424, 51429 (2011); *Rosemary Jacinta Lewis,* 72 FR 4035, 4041 (2007). The evidence offered by the Government as to whether Whitney and Respondent were diverting controlled substances at CPMG does not, however, create more than a suspicion.

[9] It is well settled that ''ignorance of the law or a mistake of law is no defense.'' *Cheek* v. *United States,* 498 U.S. 192, 199 (1991). Moreover, the principle ''applies whether the law be a statute or a duly promulgated and published regulation.'' *United States* v. *International Minerals & Chemical Corp.,* 402 U.S. 558, 563 (1971).

Factor Five

The Government further argues that Respondent committed actionable misconduct under factor five when he failed to disclose the surrender of his DEA registration on his application to the Ohio Medical Board. Request for Final Agency Action, at 11. In support of its contention, the Government cites *David A. Hoxie, M.D.,* 69 FR 51477, 51478 (2004), for the proposition that providing false answers on a state professional license application ''demonstrate[s] questionable candor.'' *Id.* (citing *Bernard C. Musselman, M.D.,* 64 FR 55965 (1999)). It also cites *Leonard E. Reeves, III,* 63 FR 44471, 44784 (1998), which ordered a stayed revocation of the physician's DEA registration relying, in part, on a state board's denial of the physician's application for a medical license based on the physician's ''total lack of truthful, accurate and complete answers on his written application for licensure.'' [10]

Undoubtedly, providing a materially false answer to a question on a state medical license application is probative evidence of whether a registrant or applicant demonstrates ''questionable candor.'' However, here, in contrast to *Reeves,* there has been no adjudication by the State of Ohio and Respondent retains a valid osteopathic license in that State. Thus, the question remains as to whether this Agency should be adjudicating this allegation in the first instance, especially where, as here, Respondent is neither registered in Ohio nor seeks registration in that State.

To be sure, *Hoxie* went beyond *Reeves* by holding that the physician's falsifications of his medical license applications were actionable under factor five even in the absence of a state board finding. *Hoxie,* however, preceded the Supreme Court's decision in *Gonzales* v. *Oregon,* 546 U.S. 243 (2006). Therein, the Supreme Court explained that the CSA ''manifests no intent to regulate the practice of medicine generally'' and that ''[t]he structure and operation of the CSA presume and rely upon a functioning medical profession regulated under the States' police powers.'' *Id.* at 270.

While the Government contends that Respondent's false statement on his Ohio medical license application can be considered as a separate act of actionable misconduct under factor five, it offers no explanation as to why it is consistent with *Gonzales,* that DEA, rather than the Ohio Medical Board, should be the first body to adjudicate the issue. Nor does the Government offer any explanation as to why the Ohio Board is incapable of enforcing its own laws. Finally, the Government does not even cite the applicable provision of Ohio law, let alone explain whether there is a materiality requirement under Ohio law, and if so, what the standard is under Ohio law.

While the Government's position would be stronger if Respondent was registered in Ohio—on the theory that the falsification of his state application resulted in the State granting him the osteopathic license necessary to obtain his DEA registration,[11] *see* 21 U.S.C. 823(f)—Respondent is neither registered, nor seeking registration, in Ohio. Thus, in the absence of a state board finding, I decline to follow *Hoxie* and do not consider Respondent's falsification of his Ohio application other than for the limited purpose of evaluating his claim that he was confused by the wording on his DEA application.[12]

Summary of the Government's Prima Facie Case

As found above, Respondent intentionally and materially falsified his March 14, 2013 application for a DEA registration. This finding alone provides an adequate basis to deny his application. 21 U.S.C. 824(a)(1) and 843(a)(4)(A).

The evidence also shows that Respondent violated DEA regulations when he provided schedule II order forms to Mr. Whitney, CPMG's owner, and authorized him to order oxycodone without having executed a power of attorney as required by 21 CFR 1305.05(a). Finally, the evidence also shows that Respondent issued a prescription for Lyrica, a schedule V controlled substance, when he was no longer registered, and thus violated 21 U.S.C. 841(a)(1) and 822(a)(2). I therefore find that the Government's evidence under factors two and four is sufficient to conclude that the Government has met its *prima facie* burden on the issue of whether the issuance of a registration ''would be inconsistent with the public interest.'' 21 U.S.C. 823(f).

Sanction

Where, as here, the Government has established grounds to deny an application, Respondent must then ''present[] sufficient mitigating evidence'' to show why he can be entrusted with a new registration. *Samuel S. Jackson,* 72 FR 23848, 23853 (2007) (quoting *Leo R. Miller,* 53 FR 21931, 21932 (1988)). '''Moreover, because 'past performance is the best predictor of future performance,' *ALRA Labs, Inc.* v. *DEA,* 54 F.3d 450, 452 (7th Cir. 1995), [DEA] has repeatedly held that where [an applicant] has committed acts inconsistent with the public interest, the [applicant] must accept responsibility for [his] actions and demonstrate that [he] will not engage in future misconduct.'' *Jayam Krishna-Iyer,* 74 FR 459, 463 (2009) (citing *Medicine Shoppe,* 73 FR 364, 387 (2008)); *see also Jackson,* 72 FR at 23853; *John H. Kennedy,* 71 FR 35705, 35709 (2006); *Cuong Tron Tran,* 63 FR 64280, 64283 (1998); *Prince George Daniels,* 60 FR 62884, 62887 (1995).[13]

While an applicant must accept responsibility for his misconduct and demonstrate that he will not engage in future misconduct in order to establish that its registration is consistent with the public interest, DEA has repeatedly held that these are not the only factors that are relevant in determining the appropriate sanction. *See, e.g., Joseph Gaudio,* 74 FR 10083, 10094 (2009); *Southwood Pharmaceuticals, Inc.,* 72 FR 36487, 36504 (2007). Obviously, the egregiousness and extent of a registrant's misconduct are significant factors in determining the appropriate sanction. *See Jacobo Dreszer,* 76 FR 19386, 19387–88 (2011) (explaining that a respondent can ''argue that even though the Government has made out a *prima facie* case, his conduct was not so egregious as to warrant revocation''); *Paul H. Volkman,* 73 FR 30630, 30644 (2008); *see also Paul Weir Battershell,* 76 FR 44359, 44369 (2010) (imposing six-month suspension, noting that the evidence was not limited to security and recordkeeping violations found at first inspection and ''manifested a disturbing pattern of indifference on the part of [r]espondent to his obligations as a registrant''); *Gregory D. Owens,* 74 FR 36751, 36757 n.22 (2009). So too, the Agency can consider the need to deter similar acts, both with respect to the

[10] The physician was not, however, registered in the State which found that he had submitted a false application for a second medical license.

[11] It seems unlikely that a physician would falsify his state medical license application but then truthfully disclose a sanction against his federal registration on his DEA application.

[12] Notably, *Hoxie* does not cite *Reeves,* but rather *Musselman,* as authority for the proposition. *See* 69 FR at 51479. While *Musselman* discusses the factual findings of a state board proceeding which was based, in part, on an allegation that the physician had falsified a state license application, the state board did not find the allegation proved, and in discussing factor five, the Agency's decision discusses only the physician's falsification of his DEA application. *See* 64 FR at 55967. Thus, *Musselman* clearly does not support *Hoxie.*

[13] This rule also applies to other grounds that support the denial of an application, such as where the Government has proven that an applicant materially falsified his application. *See Jackson,* 72 FR, at 23853.

respondent in a particular case and the community of registrants. *See Gaudio,* 74 FR at 10095 (quoting *Southwood,* 71 FR at 36503). *Cf. McCarthy* v. *SEC,* 406 F.3d 179, 188–89 (2d Cir. 2005) (upholding SEC's express adoption of ''deterrence, both specific and general, as a component in analyzing the remedial efficacy of sanctions'').

Having reviewed Respondent's Statement of Position, I conclude that he has failed to produce sufficient evidence to show why he should be entrusted with a new registration. His acceptance of responsibility is equivocal at best, as while he appears to acknowledge his wrongdoing with respect to his having provided the Schedule II order forms to Mr. Whitney, his explanation for why he materially falsified his DEA application is clearly disingenuous. So too, is his assertion that he ''did not knowingly tell lies, nor . . . intentionally try to deceive anyone.'' Because Respondent committed intentional misconduct when he materially falsified his application, I find his misconduct to be egregious.[14] Accordingly, his failure to accept responsibility for this misconduct is reason alone to conclude that he cannot be entrusted with a new registration.[15] Moreover, the Agency has a manifest interest in deterring misconduct on the part of others who may contemplate materially falsifying their applications for registration. Accordingly, I conclude that denial of his application is necessary to protect the public interest.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f), as well as 28 CFR 0.100(b), I order that the application of Arthur H. Bell, D.O., for a DEA Certificate of Registration as a practitioner be, and it hereby is, denied. This Order is effective immediately.

Dated: August 10, 2015.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2015–20353 Filed 8–17–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: Alltech Associates, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.33(a) on or before October 19, 2015.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODXL, 8701 Morrissette Drive, Springfield, Virginia 22152. Request for hearings should be sent to: Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (''Deputy Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on April 24, 2015, Alltech Associates, Inc., 2051 Waukegan Road, Deerfield, Illinois 60015 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Schedule
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
4-Methylaminorex (cis isomer) (1590)	I
Gamma Hydroxybutyric Acid (2010)	I
Alpha-ethyltryptamine (7249)	I
Lysergic acid diethylamide (7315)	I
2,5-Dimethoxy-4-(n)-propylthiophenethylamine (2C–T–7) (7348)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
4-Bromo-2,5-dimethoxyamphetamine (7391)	I
4-Bromo-2,5-dimethoxyphenethylamine (7392)	I
4-Methyl-2,5-dimethoxyamphetamine (7395)	I
2,5-Dimethoxyamphetamine (7396)	I
2,5-Dimethoxy-4-ethylamphetamine (7399)	I
3,4-Methylenedioxyamphetamine (7400)	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402)	I
3,4-Methylenedioxy-N-ethylamphetamine (7404)	I
3,4-Methylenedioxymethamphetamine (7405)	I
4-Methoxyamphetamine (7411)	I
5-Methoxy-N-N-dimethyltryptamine (7431)	I
Alpha-methyltryptamine (7432)	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I

[14] Having found that Respondent's material falsification of his application is egregious and that he has not accepted responsibility for the violation, I need not decide whether the other proven violations are sufficiently egregious to support the denial of the application.

[15] As to the violation in authorizing Whitney to order schedule II drugs, Respondent stated that this was the result of ''pure naiveté and ignorance of the law on my part.'' However, Respondent has offered no evidence of remedial actions he has taken to demonstrate that he is now familiar with the laws and regulations applicable to the lawful dispensing of controlled substances.

Controlled substance	Schedule
Psilocyn (7438)	I
5-Methoxy-N,N-diisopropyltryptamine (7439)	I
N-Ethyl-1-phenylcyclohexylamine (7455)	I
1-(1-Phenylcyclohexyl)pyrrolidine (7458)	I
1-[1-(2-Thienyl)cyclohexyl]piperidine (7470)	I
2-(2,5-Dimethoxy-4-ethylphenyl) ethanamine (2C–E) (7509)	I
2-(2,5-Dimethoxyphenyl) ethanamine (2C–H) (7517)	I
2-(4-Iodo-2,5-dimethoxyphenyl) ethanamine (2C–I) (7518)	I
2-(4-Isopropylthio)-2,5-dimethoxyphenyl) ethanamine (2C–T–4) (7532)	I
Dihydromorphine (9145)	I
Heroin (9200)	I
Normorphine (9313)	I
Methamphetamine (1105)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexanecarbonitrile (8603)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Ecgonine (9180)	II
Meperidine intermediate-B (9233)	II
Morphine (9300)	II
Noroxymorphone (9668)	II

The company plans to manufacture high purity drug standards used for analytical applications only in clinical, toxicological, and forensic laboratories and for distribution to its customers.

Dated: August 10, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–20283 Filed 8–17–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[Docket No. 13–29]

Drug Enforcement Administration

Matthew Valentine/Liar Catchers; Order

On April 5, 2013, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Matthew Valentine (hereinafter, Applicant), of Lexington, Kentucky. The Show Cause Order proposed the denial of Applicant's pending application for a DEA Certificate of Registration as a Researcher, which would authorize Applicant to possess and use controlled substances as a canine handler, on the ground that his registration would be inconsistent with the public interest. GX 1, at 1 (citing 21 U.S.C. 823(f)).

On April 29, 2013, Applicant, acting *pro se,* filed a request for a hearing with the DEA Office of Administrative Law Judges. GX 2. After the matter was assigned to an Administrative Law Judge (ALJ), Applicant submitted a letter in which he requested to withdraw his application. GX 3. Therein, Applicant stated that he was ''not in a position to fight this legal battle at this time.'' *Id.* A few weeks later, Applicant requested a stay until May 31, 2013, *see* GX 4, which was granted by the ALJ. *See* GX 5.

Upon presentation of Applicant's withdrawal request to the Office of Diversion Control (OD), the latter advised Government Counsel that it would accept the request only if Applicant agreed not to reapply for three years. Request for Final Agency Action, at 3. Applicant rejected OD's offer. *Id.* Thereafter, OD made a subsequent offer that would have allowed Applicant to withdraw if he agreed not to reapply for two years. *Id.* Applicant also rejected this offer. *Id.*

According to Government Counsel, on May 22, 2012, OD, ''without providing a basis for its decision,'' notified the former that it had rejected Applicant's withdrawal request and ''instructed Chief Counsel to take the matter to hearing.'' *Id.* The next day, Government Counsel notified the ALJ of OD's decision. The ALJ then vacated the stay and set the matter for hearing. GX 7, at 1–2.

On May 29, 2013, Applicant submitted a request to waive his right to a hearing and submitted various documents in support of his application. GX 8. The ALJ then ordered that the proceeding be terminated. GX 9. Thereafter, on October 29, 2013, the Government submitted a Request for Final Agency Action. Req. for Final Agency Action, at 15. Therein, the Government sought the denial of Applicant's application. *Id.* at 1.

Upon review, the then-Administrator denied the Government's request. Order of the Administrator, at 3 (May 2, 2015) (hereinafter, Order). The then-Administrator specifically explained that under a DEA regulation, '''[a]n application may be amended or withdrawn with permission of the Administrator at any time where good cause is shown by the applicant or where the amendment or withdrawal is in the public interest.''' *Id.* at 2 (quoting 21 CFR 1301.16(a)). The then-Administrator also relied on section 555(e) of the Administrative Procedure Act, which provides that:

> Prompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceedings. Except in affirming a prior denial or when the denial is self-explanatory, the notice shall be accompanied by a brief statement of the grounds for denial.

5 U.S.C. 555(e) (quoted in Order, at 2).

Based on the plain language of section 555(e), the then-Administrator held that Applicant's withdrawal request clearly was a ''request of an interested person made in connection with [an] agency proceeding.'' Order, at 2. She further noted that the grounds for denying Applicant's withdrawal request were not ''self-explanatory,'' and were, in fact, ''totally unknown.'' *Id.* Accordingly, the then-Administrator held that the Office of Diversion Control was required to provide Applicant with a '' 'notice,' '' which was '' 'accompanied by a brief statement of the grounds for

denial' '' of his withdrawal request. *Id.* at 3 (quoting 5 U.S.C. 555(e)).

Because the Office of Diversion Control had not complied with section 555(e), the then-Administrator denied the Government's Request for Final Agency Action. *Id.* The then-Administrator returned the record to the Government's Counsel, with the instruction that its Request should not be re-submitted until such time as the Office of Diversion Control complied with 5 U.S.C. 555(e) and explained why Applicant has not demonstrated good cause to withdraw his application, as well as why the withdrawal is not in the public interest. *Id.*

On August 7, 2015, Government Counsel filed a Request for Dismissal of Order to Show Cause. Therein, Government Counsel represents that on July 30, 3015, the Office of Diversion Control had decided to allow Respondent to withdraw his application. The Government therefore requests an Order dismissing the Show Cause Order.

Because the Office of Diversion Control has granted Respondent's withdrawal request, there is no longer an application to act upon and the case is now moot. *See Thomas E. Mitchell,* 76 FR 20032, 20033 (2011). Accordingly, I grant the Government's Request and dismiss the Order to Show Cause.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f), as well as 28 CFR 0.100(b), I order that the Order to Show Cause issued to Matthew Valentine/Liar Catchers be, and it hereby is, dismissed. This Order is effective immediately.

Dated: August 10, 2015.

Chuck Rosenberg,

Acting-Administrator.

[FR Doc. 2015–20344 Filed 8–17–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: Austin Pharma LLC

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.33(a) on or before October 19, 2015.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODXL, 8701 Morrissette Drive, Springfield, Virginia 22152. Request for hearings should be sent to: Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (''Deputy Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on April 23, 2015, Austin Pharma LLC, 811 Paloma Drive, Suite C, Round Rock, Texas 78665–2402 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Schedule
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I

The company plans to manufacture bulk synthetic active pharmaceutical ingredients (APIs) for product development and distribution to its customers. No other activity for this drug code is authorized for this registration.

Dated: August 10, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–20284 Filed 8–17–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0335]

Agency Information Collection Activities; Proposed eCollection eComments Requested; National Motor Vehicle Title Information System (NMVTIS)

AGENCY: Bureau of Justice Assistance, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, will submit the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in 80 FR 32180, on June 5, 2015, allowing for a 60-day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until September 17, 2015.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact C. Casto at 1–202–353–7193, Bureau of Justice Assistance, Office of Justice Programs, U. S. Department of Justice, 810 7th Street NW., Washington, DC, 20531 or by email at *Chris.Casto@usdoj.gov*. You may also contact the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted via email to *OIRA_submissions@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the National Motor Vehicle Title Information System (NMVTIS), including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of currently approved collection.

2. *The Title of the Form/Collection:* National Motor Vehicle Title Information System (NMVTIS)

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. Bureau of Justice Assistance, Office of Justice Programs, United States Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Auto recyclers, junk yards and salvage yards are required to report information into NMVTIS. The Anti-Car Theft Act, defines junk and salvage yards ''as individuals or entities engaged in the business of acquiring or owning junk or salvage automobiles for resale in their entirety or as spare parts or for rebuilding, restoration, or crushing.'' Included in this definition are scrap-vehicle shredders and scrap-metal processors, as well as ''pull- or pick-apart yards,'' salvage pools, salvage auctions, and other types of auctions, businesses, and individuals that handle salvage vehicles (including vehicles declared a ''total loss'').

Abstract: Reporting information on junk and salvage vehicles to the National Motor Vehicle Title Information System (NMVTIS)—supported by the U.S. Department of Justice (DOJ)—is required by federal law. Under federal law, junk and salvage yards must report certain information to NMVTIS on a monthly basis. This legal requirement has been in place since March 2009, following the promulgation of regulations (28 CFR part 25) to implement the junk- and salvage-yard reporting provisions of the Anti-Car Theft Act (codified at 49 U.S.C. 30501–30505). Accordingly, a junk or salvage yard within the United States must, on a monthly basis, provide an inventory to NMVTIS of the junk or salvage automobiles that it obtained (in whole or in part) in the prior month. 28 CFR 25.56(a).

An NMVTIS Reporting Entity includes any individual or entity that meets the federal definition, found in the NMVTIS regulations at 28 CFR 25.52, for a ''junk yard'' or ''salvage yard.'' According to those regulations, a junk yard is defined as ''an individual or entity engaged in the business of acquiring or owning junk automobiles for—(1) Resale in their entirety or as spare parts; or (2) Rebuilding, restoration, or crushing.'' The regulations define a salvage yard as ''an individual or entity engaged in the business of acquiring or owning salvage automobiles for—(1) Resale in their entirety or as spare parts; or (2) Rebuilding, restoration, or crushing.'' These definitions include vehicle remarketers and vehicle recyclers, including scrap vehicle shredders and scrap metal processors as well as ''pull- or pick-apart yards,'' salvage pools, salvage auctions, used automobile dealers, and other types of auctions handling salvage or junk vehicles (including vehicles declared by any insurance company to be a ''total loss'' regardless of any damage assessment). Businesses that operate on behalf of these entities or individual domestic or international salvage vehicle buyers, sometimes known as ''brokers'' may also meet these regulatory definitions of salvage and junk yards. It is important to note that industries not specifically listed in the junk yard or salvage yard definition may still meet one of the definitions and, therefore, be subject to the NMVTIS reporting requirements.

An individual or entity meeting the junk yard or salvage yard definition is subject to the NMVTIS reporting requirements if that individual or entity handles 5 or more junk or salvage motor vehicles per year and is engaged in the business of acquiring or owning a junk automobile or a salvage automobile for—''(1) Resale in their entirety or as spare parts; or (2) Rebuilding, restoration, or crushing.'' Reporting entities can determine whether a vehicle is junk or salvage by referring to the definitions provided in the NMVTIS regulations at 28 CFR 25.52. An NMVTIS Reporting Entity is required to report specific information to NMVTIS within one month of receiving such a vehicle, and failure to report may result in assessment of a civil penalty of $1,000 per violation.

5 *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are currently approximately 8,000 businesses that report on a regular basis into NMVTIS. The estimate for the average amount of time for each business to report varies: 30–60 minutes (estimated). The states and insurance companies already are capturing most of the data needed to be reported, and the reporting consists of electronic, batch uploaded information. So, for those automated companies the reporting time is negligible. For smaller junk and salvage yard operators who would enter the data manually, it is estimated that it will take respondents an average of 30–60 minutes per month to respond.

6 *An estimate of the total public burden (in hours) associated with the collection:* An estimate of the total public burden (in hours) associated with the collection is 48,000 to 96,000 hours

Total Annual Reporting Burden:

8,000 × 30 minutes per month (12 times per year) = 48,000

8,000 × 60 minutes per month (12 times per year) = 96,000

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: August 11, 2015.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2015–20048 Filed 8–17–15; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On Friday, August 14, 2015, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Eastern District of Washington in the lawsuit entitled *United States* v. *Klickitat County Port District No. 1,* Civil Action No. 1:15–CV–03051–RMP.

The United States initiated this civil action on behalf of the United States Environmental Protection Agency against the Klickitat County Port District No. 1 (the ''Port'') pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607, to recover response costs incurred in connection with the release and threatened release of hazardous substances from the Recycled Aluminum Metals Company Aluminum Waste Disposal Site (the ''Site'') located in Klickitat County, Washington.

Between 1979 and 1991 the Port continuously owned the Site during which time now-defunct lessees deposited waste from secondary aluminum smelting operations into an unlined landfill on the Site. In 2010, the United States conducted a removal action to prevent hazardous substances from leaching into the groundwater and threatening human populations. Under the terms of the proposed Consent Decree, the Port will pay $2,000,000 to

reimburse the United States for its past response costs incurred during the removal action. In exchange, the Port will receive a covenant protecting it from further action to recover past response costs as that term is defined in the proposed Consent Decree.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Klickitat County Port District No. 1,* D.J. Ref. No. 90–11–3–10906. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to:

Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $6.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Susan M. Akers,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2015–20307 Filed 8–17–15; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Authorization for Release of Medical Information for Black Lung Benefits

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) revision titled, ''Authorization for Release of Medical Information for Black Lung Benefits,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before September 17, 2015.

ADDRESSES: A copy of this 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 the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201505-1240-002* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OWCP, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov*. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov*.

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov*.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for revisions to the Authorization for Release of Medical Information for Black Lung Benefits information collection, Form CM–936. Regulations 20 CFR 725.405 requires all relevant medical evidence be considered before a decision is made regarding a claimant's eligibility for black lung benefits; consequently, a person who files such a claim may submit medical information to the OWCP, Division of Coal Mine Workers' Compensation to help develop the claim. Form CM–936 gives the claimant's consent for the release of that medical information by any physician, hospital, agency, or other organization to the OWCP. This information collection has been classified as a revision, because of minor changes to CM–936 to provide clearer language so claimants can better understand what information they need to provide. Federal Mine Safety and Health Act of 1977 section 436 authorizes this information collection. *See* 30 U.S.C. 936.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1240–0034. The current approval is scheduled to expire on October 31, 2015; however, the DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 18, 2015 (80 FR 28302).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1240–0034. The OMB 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 submission of responses.

Agency: DOL–OWCP.

Title of Collection: Authorization for Release of Medical Information for Black Lung Benefits.

OMB Control Number: 1240–0034.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 900.

Total Estimated Number of Responses: 900.

Total Estimated Annual Time Burden: 75 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: August 12, 2015.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2015–20314 Filed 8–17–15; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Cadmium in General Industry Standard

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, ''Cadmium in General Industry Standard,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq*. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before September 17, 2015.

ADDRESSES: A copy of this 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 the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201505-1218-007* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov*. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov*.

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov*.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Cadmium in General Industry Standard information collection requirements codified in regulations 29 CFR 1910.1027. The major collection of information requirements of this Standard include: Conducting worker exposure monitoring; notifying workers of their cadmium exposures; implementing a written compliance program; implementing medical surveillance of workers; providing examining physicians with specific information; ensuring workers receive a copy of their medical surveillance results; maintaining workers' exposure monitoring and medical surveillance records for specific periods; and providing access to records to workers who are the subject of the records, the workers' representatives, and other designated parties. Occupational Safety and Health Act sections 2(b)(9), 6, and 8(c) authorize this information collection. *See* 29 U.S.C. 651(b)(9), 655, and 657(c).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1218–0185.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on August 31, 2015. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on June 11, 2015 (80 FR 33293).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1218–0185. The OMB 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 submission of responses.

Agency: DOL–OSHA.

Title of Collection: Cadmium in General Industry Standard.

OMB Control Number: 1218–0185.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 49,734.

Total Estimated Number of Responses: 263,630.

Total Estimated Annual Time Burden: 75,998 hours.

Total Estimated Annual Other Costs Burden: $5,407,985.

Dated: August 12, 2015.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2015–20315 Filed 8–17–15; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Advisory Board on Toxic Substances and Worker Health

ACTION: Extension of deadline for nominations to serve on the advisory board on toxic substances and worker health for part E of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) from August 20, 2015 to September 4, 2015.

SUMMARY: The Secretary of Labor (Secretary) invites interested parties to submit nominations for individuals to serve on the Advisory Board on Toxic Substances and Worker Health for Part E of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).

DATES: Nominations for individuals to serve on the Board must be submitted (postmarked, if sending by mail; submitted electronically; or received, if hand delivered) by September 4, 2015.

ADDRESSES: People interested in being nominated for the Board are encouraged to review the **Federal Register** notice on nominations for membership and submit the requested information by September 4, 2015. Nominations may be submitted, including attachments, by any of the following methods:

- *Electronically:* Send to: *EnergyAdvisoryBoard@dol.gov* (specify in the email subject line, ''Advisory Board on Toxic Substances and Worker Health nomination'').
- *Mail, express delivery, hand delivery, messenger, or courier service:* Submit one copy of the documents listed above to the following address: U.S. Department of Labor, Office of Workers' Compensation Programs, Advisory Board on Toxic Substances and Worker Health, Room S–3522, 200 Constitution Ave. NW., Washington, DC 20210.

Follow-up communications with nominees may occur as necessary through the process.

FOR FURTHER INFORMATION CONTACT: For questions, contact Sam Shellenberger, Office of Workers' Compensation Programs, at *shellenberger.sam@dol.gov,* or Carrie Rhoads, Office of Workers' Compensation Programs, at *rhoads.carrie@dol.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Board on Toxic Substances and Worker Health (the Board) is mandated by Section 3687 of EEOICPA. The Secretary of Labor established the Board under this authority and Executive Order 13699 (June 26, 2015) and in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. 2. Notice of the establishment of the Advisory Board was published in the **Federal Register** on July 21, 2015. Notice of solicitation for nominations to serve on the Advisory Board was also published on July 21, 2015. The deadline for submission of nominations was 30 days from the date of publication, or August 20, 2015. The Secretary now extends the deadline for nomination by an additional 15 days, to September 4, 2015.

Gary A. Steinberg,

Deputy Director, Office of Workers' Compensation Programs.

[FR Doc. 2015–20408 Filed 8–17–15; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2015–052]

Records Management; General Records Schedule (GRS); GRS Transmittal 24

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of new General Records Schedule (GRS) Transmittal 24.

SUMMARY: NARA is issuing a new set of General Records Schedules (GRS) via GRS Transmittal 24. The GRS provides mandatory disposition instructions for administrative records common to several or all Federal agencies. Transmittal 24 announces changes we have made to the GRS since we published Transmittal 23 in September 2014. We are concurrently disseminating Transmittal 24 (the memo and the accompanying records schedules and documents) directly to each agency's records management official and have also posted it on NARA's Web site.

DATES: This transmittal is effective the date it publishes in the **Federal Register**.

ADDRESSES: You can find this transmittal on NARA's Web site at *http://www.archives.gov/records-mgmt/grs/.* You can download the complete current GRS, in PDF format, from NARA's Web site at *http://www.archives.gov/records-mgmt/grs/index.html.*

FOR FURTHER INFORMATION CONTACT: For more information about this notice or to obtain paper copies of the GRS, contact Kimberly Keravuori, External Policy Program Manager, at *regulation_comments@nara.gov,* or by telephone at 301.837.3151.

You may contact NARA's GRS Team (within Records Management Services in the National Records Management Program, Office of the Chief Records Officer) with general questions about the GRS at *GRS_Team@nara.gov.*

Your agency's records officer may contact the NARA appraiser or records analyst with whom your agency normally works for support in carrying out this transmittal and the revised portions of the GRS. We have posted a list of the appraisal and scheduling work group and regional contacts on our Web site at *http://www.archives.gov/records-mgmt/appraisal/index.html.*

SUPPLEMENTARY INFORMATION:

What is GRS Transmittal 24 and how do I use it?

GRS Transmittal 24 is the issuing memo for newly-revised portions of the General Records Schedule (GRS). We are completely rewriting the GRS over the course of a five-year project. We published the master plan for that project in 2013 under records management memo AC 02.2013 (*http://www.archives.gov/records-mgmt/memos/ac02-2013.html*). The plan has since morphed in some details but its major outlines remain solid. Transmittal 23 was the first installment of the new GRS; this Transmittal 24 is the second.

Transmittal 24 contains:

- Ten new schedules (five previously issued in GRS Transmittal 23, plus five new ones for a complete set of all revised portions of the GRS to date);
- ten schedule-specific FAQs and crosswalks from new to old schedules (one for each new schedule);
- old schedules annotated to show which items are still in effect and which are superseded by items in new schedules;

• an old-to-new crosswalk covering the entire old GRS;

• six FAQ documents (general; about the GRS update project; about the impact of the new GRS on agencies; about agency options for deviating from the GRS; about notification to NARA regarding using previously approved agency schedules in lieu of a new GRS; and about flexible dispositions attached to many new GRS items); and

• a checklist for implementing the new GRS, to assist agencies in completing all the actions this transmittal requires.

What changes has NARA made to the GRS with this transmittal?

GRS Transmittal 24 publishes five new schedules:

GRS 2.5 Employee Separation Records (DAA–GRS–2014–0004)

GRS 2.8 Employee Ethics Records (DAA–GRS–2014–0005)

GRS 4.1 Records Management Records (DAA–GRS–2013–0002)

GRS 4.2 Information Access and Protection Records (DAA–GRS–2013–0007; DAA–GRS–2015–0002)

GRS 6.2 Federal Advisory Committee Records (DAA–GRS–2015–0001)

These schedules replace portions of old GRS 1, 2, 14, 16, 18, 20, 21, 23, 24, 25, 26, and 27.

The most obvious changes are in format:

Schedule Numbers

Old GRS: Simple succession: 1, 2, 3, etc. New GRS: Decimal: 1.1, 1.2, 1.3, etc.

Item Numbers

Old GRS: Alpha-numeric hierarchy, for instance 1a1, 1a2, 2a1a, 2a2b.

New GRS: Three digits, for instance 010, 020, 030. Closely related items sharing some description in common are numbered in immediate succession, such as 030, 031, 032, etc.

Layout

Old GRS: Narrative paragraphs. Read ''down'' to go from records description to disposition.

New GRS: Table. Read ''across'' to go from records description to records disposition.

Subject index

Old GRS: Index, last updated in 2008, is not thorough, and mainly useful to paper format.

New GRS: No index. Citations to new GRS items are not included in the current index, which will be phased out over time. Search for key words in pdf file instead.

Because we are phasing in the entire change from old to new GRS gradually over five years, the GRS during this interim period will necessarily include both old and new formats. New schedules (decimal numbers, table format) come first in the new transmittal, followed by the old schedules (''straight'' numbers, narrative format) annotated to show which items are still current and which have been superseded by new schedules. With GRS Transmittal 24, we have superseded 37 percent of the old GRS by new schedules.

Which GRS items does GRS Transmittal 24 supersede?

New GRS items supersede many old GRS items. A few old items, however, have outlived their usefulness and cannot be cross-walked to new items. Therefore, we rescinded these items by GRS Transmittal 23. The FAQs for the new schedules to which rescinded items are most closely related provide explanations of why we rescinded the items.

GRS	Items	Title	FAQ in which discussed
2	9a	Record of employee leave, such as SF 1150, prepared upon transfer or separation	2.5
14	11b	FOIA requests files: Official file copy of requested records	4.2
14	12b	FOIA appeals files: Official file copy of requested records	4.2
14	21b	Privacy Act requests files: Official file copy of requested records	4.2
14	31b	Mandatory review for declassification requests files: Official file copy of requested records	4.2
14	32b	Mandatory review for declassification appeals files: Official file copy of requested records	4.2
16	4a	Records holdings files held by offices that prepare reports on agency-wide records holdings.	4.1
16	4b	Records holdings files held by other offices	4.1
18	25b	Classified Information Nondisclosure Agreements maintained in OPFs	4.2
26	2b2	FACA web site design, management, and technical operation records	6.2
26	3	Committee Records Not Maintained by the Sponsor or Secretariat	6.2

The old-to-new crosswalk shows rescinded items in context of their schedules.

How do I cite new GRS items?

When you send records to a Federal Records Center for storage, you should cite the records' legal authority—the ''DAA'' number—in the ''Disposition Authority'' column of the table. For informal purposes, please include schedule and item number. For example, ''DAA–GRS–2013–0001–0004 (GRS 4.3, item 020).''

Do I have to take any action to implement these GRS changes?

NARA regulations (36 CFR 1226.12(a)) require agencies to disseminate GRS changes within six months of receipt.

Per 36 CFR 1227.12(a)(1), you must follow GRS dispositions that state they must be followed without exception.

Per 36 CFR 1227.12(a)(3), if you have an existing schedule that differs from a new GRS item that does *not* require being followed without exception, and you wish to continue using your agency-specific authority rather than the GRS authority, you must notify NARA within 120 days of the date of this transmittal.

If you do not have an already existing agency-specific authority but wish to apply a retention period that differs from that specified in the GRS, you must create a records schedule in the Electronic Records Archives and submit it to NARA for approval.

Dated: August 12, 2015.

David S. Ferriero,

Archivist of the United States.

[FR Doc. 2015–20363 Filed 8–17–15; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic

Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 17, 2015. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Division of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Li Ling Hamady, ACA Permit Officer, at the above address or *ACApermits@nsf.gov* or (703) 292–7149.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2016–005

1. *Applicant* Allyson Hindle, Massachusetts General Hospital, 55 Fruit Street, Thier 505, Boston MA 02114.

Activity for Which Permit Is Requested

Take, Import into the USA. The applicant plans to study the tissue specific dive response of Weddell seals, looking at nitric oxide regulation. The study's broad objective is to better understand the natural adaptations that allow Weddell seals to control their cardiovascular system and tolerate extreme hypoxia during dives. Up to 38 Weddell seals would be temporary restrained for sample collection and morphological measurement. In addition, the applicant plans to salvage parts of dead animals encountered. Collected samples will be imported to the USA for lab analyses.

Location

Delbridge Islands, Turks Head, Turtle Rock, Hutton Cliffs, Erebus Glacier Tongue, and in and around McMurdo Sound.

Dates

September 30, 2015–April 30, 2016

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2015–20305 Filed 8–17–15; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 17, 2015. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Division of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Li Ling Hamady, ACA Permit Officer, at the above address or *ACApermits@nsf.gov* or (703) 292–7149.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2016–006

1. *Applicant* Angela L. Sremba, Hatfield Marine Science Center, Oregon State University, 2030 SE. Marine Science Drive, Newport, OR 97365.

Activity for Which Permit Is Requested

Take, Import into USA. The applicant intends to collect bone samples from Antarctic blue whale remains at abandoned whaling stations and bays in the South Shetland Islands and sites along the Antarctic Peninsula, while based aboard a commercial tour ship. These samples will be used for genetic analyses to determine genetic diversity and population dynamics of Antarctic blue whales prior to their commercial exploitation throughout the 20th century. Samples will be sent back to the USA for analysis.

Location

South Shetland Islands, sites along Antarctic Peninsula.

Dates

October 1, 2015–October 1, 2020

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2015–20304 Filed 8–17–15; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: NRC will convene a meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on October 8–9, 2015. A sample of agenda items to be discussed during the public session includes: (1) A discussion on training and experience for alpha and beta emitters; (2) a discussion on Title 10 of the *Code of Federal Regulations* (10 CFR) section 35.1000 licensing guidance for the use of iodine-125 and palladium-103 seeds for localization of non-palpable lesions; (3) a presentation on the proposed revisions to the 10 CFR 35.1000 licensing guidance for Yttrium-90 microspheres brachytherapy; (4) a status update on the decommissioning funding plan requirements for

germanium-68/gallium-68 generators; (5) a discussion on the project and upcoming workshops related to patients who are administered radionuclides; (6) a discussion on NUREG 1556, Volume 9, ''Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Medical Use Licensees;'' (7) an update on the current 10 CFR part 35 rulemaking effort; and (8) a presentation on the proposed revisions to the NRC's Abnormal Occurrence Reporting Criteria Policy Statement. The agenda is subject to change. The current agenda and any updates will be available at *http://www.nrc.gov/reading-rm/doc-collections/acmui/meetings/2015.html* or by emailing Ms. Sophie Holiday at the contact information below.

Purpose: Discuss issues related to 10 CFR part 35 ''Medical Use of Byproduct Material.''

Date and Time for Closed Sessions: October 8, 2015, from 7:30 a.m. to 8:30 a.m. and October 8, 2015, from 3:30 p.m. to 5:30 p.m. Both sessions on October 8, 2015, will be closed for badging and enrollment for new members to the ACMUI and annual required training.

Date and Time for Open Sessions: October 8, 2015, from 8:30 a.m. to 3:30 p.m. and October 9, 2015, from 8:00 a.m. to 4:00 p.m.

Address for Public Meeting: U.S. Nuclear Regulatory Commission, Two White Flint North Building, Room T2–B3, 11545 Rockville Pike, Rockville, Maryland 20852.

Public Participation: Any member of the public who wishes to participate in the meeting in person or via phone should contact Ms. Holiday using the information below. The meeting will also be webcast live: *video.nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Sophie J. Holiday, email: *sophie.holiday@nrc.gov,* telephone: (404) 997–4691.

Conduct of the Meeting

Bruce R. Thomadsen, Ph.D., will chair the meeting. Dr. Thomadsen will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit an electronic copy to Ms. Holiday at the contact information listed above. All submittals must be received by October 5, 2015, and must pertain to the topic on the agenda for the meeting.

2. Questions and comments from members of the public will be permitted during the meeting, at the discretion of the Chairman.

3. The draft transcript and meeting summary will be available on ACMUI's Web site *http://www.nrc.gov/reading-rm/doc-collections/acmui/meetings/2015.html* on or about November 24, 2015.

4. Persons who require special services, such as those for the hearing impaired, should notify Ms. Holiday of their planned attendance.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in 10 CFR part 7.

Dated at Rockville, Maryland, this 12th day of August, 2015.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2015–20364 Filed 8–17–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0174]

Information Collection: NRC Form 398, ''Personal Qualification Statement—Licensee''

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 398, ''Personal Qualification Statement—Licensee.''

DATES: Submit comments by October 19, 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 (unless this document describes a different method for submitting comments on a specific subject):

• Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0174. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• Mail comments to: 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–2015–0174 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–2015–0174. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2015–0174.

• 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. ML15162A011. The supporting statement is available in ADAMS under Accession No. ML15159B244.

• 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–2015–0174, 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 398, ''Personal Qualification Statement—Licensee.''

2. *OMB approval number:* 3150–0090.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* NRC Form 398.

5. *How often the collection is required or requested:* Upon application for an initial or upgrade operator license and every six years for the renewal of operator or senior operator licenses.

6. *Who will be required or asked to respond:* Facility licensees who are tasked with certifying that the applicants and renewal operators are qualified to be licensed as reactor operators and senior reactor operators.

7. *The estimated number of annual responses:* 1,500.

8. *The estimated number of annual respondents:* 1,500.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 7,225.

10. *Abstract:* NRC Form 398 is used to transmit detailed information required to be submitted to the NRC by a facility licensee on each applicant applying for new and upgraded licenses or license renewals to operate the controls at a nuclear reactor facility. This information is used to determine that each applicant or renewal operator seeking a license or renewal of a license is qualified to be issued a license, and that the licensed operator would not be expected to cause operational errors and endanger public health and safety.

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 12th day of August 2015.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2015–20360 Filed 8–17–15; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Notice—September 10, 2015 Public Hearing

TIME AND DATE: 2 p.m., Thursday, September 10, 2015.

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue NW., Washington, DC.

STATUS: Hearing OPEN to the Public at 2 p.m.

PURPOSE: Public Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation

PROCEDURES: Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m. Friday, September 4, 2015. The notice must include the individual's name, title, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m. Friday, September 4, 2015. Such statement must be typewritten, double spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda, which will be available at the hearing, that identifies speakers, the subject on which each participant will speak, and the time allotted for each presentation.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

Written summaries of the projects to be presented at the September 17, 2015 Board meeting will be posted on OPIC's Web site.

CONTACT PERSON FOR INFORMATION: Information on the hearing may be obtained from Catherine F. I. Andrade at (202) 336–8768, via facsimile at (202) 408–0297, or via email at *Catherine.Andrade@opic.gov.*

Dated: August 14, 2015.

Catherine F.I. Andrade,

OPIC Corporate Secretary.

[FR Doc. 2015–20466 Filed 8–14–15; 11:15 am]

BILLING CODE 3210–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

[OPIC–129, OMB–3420–0018]

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 modifying an existing previously approved information collection for OMB review and approval and requests

public review and comment on the submission. OPIC received no comments in response to the sixty (60) day notice published in **Federal Register** on June 12, 2015. The purpose of this notice is to allow an additional thirty (30) days for public comments to be submitted. 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 thirty (30) 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: OPIC received no comments in response to the sixty (60) day notice published in **Federal Register** volume 80 page 33571 on June 12, 2015. The purpose of this notice is to allow an additional thirty (30) days for public comments to be submitted. 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.

All mailed comments and requests for copies of the subject form should include form number OPIC–129 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–129.

Summary Form Under Review

Type of Request: Revision of currently approved information collection.

Title: Sponsor Disclosure Report.

Form Number: OPIC–129.

Frequency of Use: One per investor per project.

Type of Respondents: Business or other institution (except farms); individuals.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 1890 (3 hours per form).

Number of Responses: 630 per year.

Federal Cost: $64,801.80 ($51.43 × 630 × 2).

Authority for Information Collection: Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The information provided in the OPIC–129 is used by OPIC as a part of the Character Risk Due Diligence/ background check procedure (similar to a commercial bank's Know Your Customer procedure) that it performs on each party that has a significant relationship (10% or more beneficial ownership, provision of significant credit support, significant managerial relationship) to the projects that OPIC finances. The questions on the form have been updated to improve OPIC's due diligence process and the format has been modified to make it easier for employees to review.

Dated: August 11, 2015.

Nichole Skoyles,

Administrative Counsel, Department of Legal Affairs.

[FR Doc. 2015–20223 Filed 8–17–15; 8:45 am]

BILLING CODE 3210–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2015–125; Order No. 2658]

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:* August 19, 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

On August 11, 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. CP2015–125 for consideration of matters raised by the Notice.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than August 19, 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. CP2015–125 for consideration of the matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, Lyudmila Y. Bzhilyanskaya is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than August 19, 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. 2015–20246 Filed 8–17–15; 8:45 am]

BILLING CODE 7710–FW–P

[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, August 11, 2015 (Notice).

POSTAL REGULATORY COMMISSION

[Docket No. CP2015–124; Order No. 2659]

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:* August 19, 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

On August 11, 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. CP2015–124 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 August 19, 2015. The public portions of the filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Kenneth R. Moeller to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2015–124 for consideration of the matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, Kenneth R. Moeller is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than August 19, 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. 2015–20247 Filed 8–17–15; 8:45 am]

BILLING CODE 7710–FW–P

[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, August 11, 2015 (Notice).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75685; File No. SR–EDGA–2015–30]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Operation of MidPoint Peg Orders Under Rule 11.8(d)

August 12, 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 August 7, 2015, EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the operation of MidPoint Peg Orders under Rule 11.8(d) when a Locking Quotation exists.[5] The proposed amendment is based on the operation of Mid-Point Peg Orders on EDGX, Exchange, Inc. (''EDGX''), BATS Exchange, Inc. (''BZX'') and BATS Y-Exchange, Inc. (''BYX'').[6] The Exchange has designated the proposed rule change as non-controversial and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act.[7]

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In early 2014, the Exchange and its affiliate, EDGX, received approval to effect a merger (the ''Merger'') of the Exchange's parent company, Direct Edge Holdings LLC, with BATS Global Markets, Inc., the parent of BZX and BYX (together with BZX, EDGA and EDGX, the ''BGM Affiliated

[5] The term ''Locking Quotation'' is defined as ''[t]he display of a bid for an NMS stock at a price that equals the price of an offer for such NMS stock previously disseminated pursuant to an effective national market system plan, or the display of an offer for an NMS stock at a price that equals the price of a bid for such NMS stock previously disseminated pursuant to an effective national market system plan in violation of Rule 610(d) of Regulation NMS.'' *See* Exchange Rule 11.6(g).

[6] *See* EDGX Rule 11.8(d)(6); BZX and BYX Rule 11.9(c)(9).

[7] 17 CFR 240.19b–4(f)(6)(iii).

Exchanges'').[8] In order to provide consistent rules and system functionality amongst the BGM Affiliated Exchanges, the Exchange proposes to amend the operation of MidPoint Peg Orders under EDGA Rule 11.8(d) when a Locking Quotation exists to align with the operation of Mid-Point Peg orders on EDGX, BZX and BYX.[9]

In sum, a MidPoint Peg Order is a non-displayed Market Order or Limit Order with an instruction to execute at the midpoint of the NBBO, or, alternatively, be pegged to the less aggressive of the midpoint of the NBBO or one minimum price variation inside the same side of the NBBO as the order.[10] Currently, a MidPoint Peg Order is not eligible for execution when a Locking Quotation or Crossing Quotation [11] exists. In such cases, a MidPoint Peg Order rests on the EDGX Book and is not be eligible for execution in the System until the Locking Quotation or Crossing Quotation is cleared.

The Exchange now proposes to amend the operation of MidPoint Peg Orders to provide Users [12] the ability to elect that their MidPoint Peg Orders be eligible for execution when a Locking Quotation exists. As amended, Rule 11.8(d)(6) would state that, unless otherwise instructed by the User, a MidPoint Peg Order would not be eligible for execution when a Locking Quotation exists. Where a User does not instruct the Exchange to execute its MidPoint Peg Order in such cases, the order would be treated as it is today, and would rest on the EDGA Book and not be eligible for execution until the Locking Quotation is cleared.[13] Like the operation of MidPoint Peg Orders when a Crossing Quotation exists, once the Locking Quotation is cleared, a new midpoint of the NBBO is established, and the MidPoint Peg Order becomes eligible for execution receiving a new time stamp. In such case, pursuant to Exchange Rule 11.9, all MidPoint Peg Orders that are ranked at the midpoint of the NBBO will retain their priority as compared to each other based upon the time such orders were initially received by the System,[14] including MidPoint Peg Order received when a Locking Quotation exists. This behavior is consistent with operation of Mid-Point Peg orders under EDGX Rule 11.8(d)(6) and BYX and BZX Rules 11.9(c)(9). The Exchange is not proposing to amend the operation of Midpoint Peg Orders when a Crossing Quotation exists.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [15] and furthers the objectives of Section 6(b)(5) of the Act [16] because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1) [17] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets.

The proposed rule change is intended to align the operation of MidPoint Peg Orders when a Locking Quotation exists with that of MidPoint Peg Orders under EDGX Rule 11.8(d) and BYX and BZX Rules 11.9(c)(9) in order to provide a consistent functionality across the BGM Affiliated Exchanges. Consistent functionality between the exchanges will reduce complexity and streamline functionality, thereby resulting in simpler technology implementation, changes and maintenance by Users of the Exchange that are also participants on EDGX, BZX and BYX. The Exchange also believes the proposed rule change would provide Users with increased flexibility over their MidPoint Peg Orders when a Locking Quotation exists. For the reasons set forth above, the Exchange believes the proposal would 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.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposal will provide consistent functionality across the BGM Affiliated Exchanges, thereby reducing complexity and streamlining duplicative functionality, resulting in simpler technology implementation, changes and maintenance by Users of the Exchange that are also participants on EDGX, BZX and BYX. Thus, the Exchange believes this proposed rule change is necessary to permit fair competition among national securities exchanges. In addition, the Exchange believes the proposed rule change will benefit Exchange participants in that it is designed to achieve a consistent technology offering by the BGM Affiliated Exchanges.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[18]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the

[8] *See* Securities Exchange Act Release No. 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR–EDGX–2013–43; SR–EDGA–2013–34).

[9] *See* EDGX Rule 11.8(d); BZX and BYX Rule 11.9(c)(9).

[10] *See* Exchange Rule 11.8(d) for a complete description of the MidPoint Peg Orders.

[11] The term ''Crossing Quotation'' is defined as ''[t]he display of a bid (offer) for an NMS stock at a price that is higher (lower) than the price of an offer (bid) for such NMS stock previously disseminated pursuant to an effective national market system plan in violation of Rule 610(d) of Regulation NMS.'' *See* Exchange Rule 11.6(c).

[12] The term ''User'' is defined as ''any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.'' *See* Exchange Rule 1.5(ee).

[13] Under Rule 11.8(d), a MidPoint Peg Order will receive a new time stamp when the Locking Quotation is cleared and a new midpoint of the NBBO is established.

[14] The term ''System'' is defined as ''the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.'' *See* Exchange Rule 1.5(cc).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78k–1(a)(1).

[18] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. Waiver of the 30-day operative delay would allow the Exchange to harmonize its rules across BGM Affiliated Exchanges in a timely manner, thereby simplifying the rules available to Members of the Exchange that are also participants on EDGX, BZX and BYX. Based on the foregoing, the Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest.[19] The Commission hereby grants the waiver and designates the proposal 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. 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–EDGA–2015–30 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–EDGA–2015–30. 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 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–EDGA–2015–30 and should be submitted on or before September 8, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Brent J. Fields,

Secretary.

[FR Doc. 2015–20282 Filed 8–17–15; 8:45 am]

BILLING CODE 8011–01–P

[19] For purposes only of waiving the 30-day operative delay, the Commission has also 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).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31746; 812–14496]

Principal ETMF Trust, et al.; Notice of Application

August 11, 2015.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

SUMMARY: *Summary of Application:* Applicants request an order (''Order'') that permits: (a) Actively managed series of certain open-end management investment companies to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at the next-determined net asset value plus or minus a market-determined premium or discount that may vary during the trading day; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days from the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares; and (f) certain series to create and redeem Shares in kind in a master-feeder structure. The Order would incorporate by reference terms and conditions of a previous order granting the same relief sought by applicants, as that order may be amended from time to time (''Reference Order'').[1]

DATES: *Filing Date:* The application was filed on June 26, 2015.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 8, 2015, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: The Commission: Brent J. Fields, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

Applicants: Principal ETMF Trust, Principal Management Corporation, and Principal Funds Distributor, Inc., c/o Adam U. Shaikh, Esq., The Principal

Applicants: Principal ETMF Trust (the ''Trust''), Principal Management Corporation (the ''Manager''), and Principal Funds Distributor, Inc. (the ''Distributor'').

[1] Eaton Vance Management, *et al.,* Investment Company Act Rel. Nos. 31333 (Nov. 6, 2014) (notice) and 31361 (Dec. 2, 2014) (order).

Financial Group, Des Moines, IA 50392–0300.

ADDRESSES: Diane L. Titus, Paralegal Specialist, or Dalia Osman Blass, Assistant Chief Counsel, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants

1. The Trust will be registered as an open-end management investment company under the Act and is a statutory trust organized under the laws of Delaware. Applicants seek relief with respect to a Fund (as defined below, and that Fund, the ''Initial Fund''). The portfolio positions of the Fund will consist of securities and other assets selected and managed by its Manager or Subadviser (as defined below) to pursue the Fund's investment objective.

2. The Adviser, an Iowa corporation, will be the investment adviser to the Initial Fund. An Adviser (as defined below) will serve as investment adviser to each Fund. The Adviser is, and any other Adviser will be, registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). The Adviser and the Trust may retain one or more subadvisers (each a ''Subadviser'') to manage the portfolios of the Funds. Any Subadviser will be registered, or not subject to registration, under the Advisers Act.

3. The Distributor is a Washington corporation and a broker-dealer registered under the Securities Exchange Act of 1934 and will act as the principal underwriter of Shares of the Funds. Applicants request that the requested relief apply to any distributor of Shares, whether affiliated or unaffiliated with the Adviser (included in the term ''Distributor''). Any Distributor will comply with the terms and conditions of the Order.

Applicants' Requested Exemptive Relief

4. Applicants seek the requested Order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act. The requested Order would permit applicants to offer exchange-traded managed funds. Because the relief requested is the same as the relief granted by the Commission under the Reference Order and because the Adviser has entered into, or anticipates entering into, a licensing agreement with Eaton Vance Management, or an affiliate thereof in order to offer exchange-traded managed funds,[2] the Order would incorporate by reference the terms and conditions of the Reference Order.

5. Applicants request that the Order apply to the Initial Funds and to any other existing or future open-end management investment company or series thereof that: (a) Is advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser (any such entity included in the term ''Adviser''); and (b) operates as an exchange-traded managed fund as described in the Reference Order; and (c) complies with the terms and conditions of the Order and of the Reference Order, which is incorporated by reference herein (each such company or series and Initial Fund, a ''Fund'').[3]

6. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general purposes of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

7. Applicants submit that for the reasons stated in the Reference Order: (1) With respect to the relief requested pursuant to section 6(c) of the Act, the relief is appropriate, in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act; (2) with respect to the relief request pursuant to section 17(b) of the Act, the proposed transactions are reasonable and fair and do not involve overreaching on the part of any person concerned, are consistent with the policies of each registered investment company concerned and consistent with the general purposes of the Act; and (3) with respect to the relief requested pursuant to section 12(d)(1)(J) of the Act, the relief is consistent with the public interest and the protection of investors.

By the Division of Investment Management, pursuant to delegated authority.

Brent J. Fields,

Secretary.

[FR Doc. 2015–20326 Filed 8–17–15; 8:45 am]

BILLING CODE 8011–01–P

[2] Eaton Vance Management has obtained patents with respect to certain aspects of the Funds' method of operation as exchange-traded managed funds.

[3] All entities that currently intend to rely on the Order are named as applicants. Any other entity that relies on the Order in the future will comply with the terms and conditions of the Order and of the Reference Order, which is incorporated by reference herein.

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–562, OMB Control No. 3235–0624]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:
Regulation R, Rule 701.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Regulation R, Rule 701 (17 CFR 247.701) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Regulation R, Rule 701 requires a broker or dealer (as part of a written agreement between the bank and the broker or dealer) to notify the bank if the broker or dealer makes certain

determinations regarding the financial status of the customer, a bank employee's statutory disqualification status, and compliance with suitability or sophistication standards.

The Commission estimates that brokers or dealers would, on average, notify 1,000 banks approximately two times annually about a determination regarding a customer's high net worth or institutional status or suitability or sophistication standing as well as a bank employee's statutory disqualification status. Based on these estimates, the Commission anticipates that Regulation R, Rule 701 would result in brokers or dealers making approximately 2,000 notifications to banks per year. The Commission further estimates (based on the level of difficulty and complexity of the applicable activities) that a broker or dealer would spend approximately 15 minutes per notice to a bank. Therefore, the estimated total annual third party disclosure burden for the requirements in Regulation R, Rule 701 is 500 [1] hours for brokers or dealers.

Written comments are invited on: (a) 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; (b) the accuracy of the Commission's estimates 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Please direct your written comments to: Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: August 13, 2015.

Brent J. Fields,

Secretary.

[FR Doc. 2015–20324 Filed 8–17–15; 8:45 am]

BILLING CODE 8011–01–P

[1] (2000 notices × 15 minutes) = 30,000 minutes/60 minutes = 500 hours.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75676 ; File No. SR–BOX–2015–28]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule

August 12, 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 August 6, 2015, BOX Options Exchange LLC (the ''Exchange'' or ''BOX'') 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Fee Schedule to specify that affiliated Exchange Participants (or ''Participants'') may request that the Exchange aggregate its [sic] eligible activity with activity of the Participant's affiliates for purposes of charges or credits based on volume. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule for trading on BOX to specify that an Exchange Participant may request that the Exchange aggregate their eligible activity with activity of affiliates for purposes of charges or credits based on volume. The proposed rule change is based on NYSE Arca, Inc.'s (''NYSE Arca'') Schedule of Fees and Charges for Exchange Services, NASDAQ Stock Market LLC (''NASDAQ'') Rule 7027, NASDAQ Options Market LLC (''NOM'') Rules at Chapter XV, and the NASDAQ OMX PHLX LLC (''PHLX'') Pricing Schedule.[3]

As proposed, for purposes of applying any provision of the Exchange's Fee Schedule where the charge assessed, or credit provided, by the Exchange depends on the volume of a Participant's activity, a Participant may request that the Exchange aggregate its eligible activity with activity of affiliates.[4] The Exchange further proposes that a Participant requesting aggregation of eligible affiliate activity would be required to (1) certify to the Exchange the affiliate status of Participants whose activity it seeks to aggregate prior to receiving approval for aggregation, and (2) inform the Exchange immediately of any event that causes an entity to cease being an affiliate. The Exchange would review available information regarding the entities and reserves the right to request additional information to verify the affiliate status of an entity. As further

[3] Effective March 18, 2015, NYSE Arca amended its Schedule of Fees and Charges for Exchange Services to specify that affiliated Exchange ETP Holders may request that the Exchange aggregate its eligible activity with activity of the ETP Holder's affiliates for purposes of Charges or Credits based on volume. *See* Securities Exchange Act Release No. 74604 (March 30, 2015), 80 FR 18270 (April 3, 2015) (SR–NYSEArca–2015–20). Effective December 1, 2014, NASDAQ amended Rule 7027 to harmonize the treatment of aggregation of affiliate activity of affiliated members to be consistent with the rules governing NOM and PHLX. *See* Securities Exchange Act Release No. 72966 (Sept. 3, 2014), 79 FR 53473 (Sept. 9, 2014) (SR–NASDAQ–2014–083). NOM and PHLX also amended their respective rules to harmonize the process by which it collects information from its members for purposes of aggregating member activity between its equity and options markets. *See* Securities Exchange Act Release Nos. 72967 (Sept. 2, 2014), 79 FR 53471 (Sept. 9, 2014) (SR–NASDAQ–2014–082) and 72969 (Sept. 3, 2014), 79 FR 53485 (Sept. 9, 2014) (SR–PHLX–2014–56).

[4] *See* Exhibit 5 for proposed language to be added to the Fee Schedule. The Exchange notes that this language is similar to that found in NYSE Arca's Schedule of Fees and Charges for Exchange Services and NASDAQ Rule 7027.

proposed, the Exchange would approve a request, unless it determines that the certificate is not accurate.[5]

The Exchange also proposes that if two or more Participants become affiliated on or prior to the sixteenth day of a month, and submit the required request for aggregation on or prior to the twenty-second day of the month, an approval of the request would be deemed to be effective as of the first day of that month. If two or more Participants become affiliated after the sixteenth day of a month, or submit a request for aggregation after the twenty-second day of the month, an approval of the request by the Exchange would be deemed to be effective as of the first day of the next calendar month. The Exchange believes that this requirement is a fair and objective way to apply the aggregation rule to fees and streamline the billing process.

The Exchange further proposes to provide that for purposes of applying any provision of the Fee Schedule where the charge assessed, or credit provided, by the Exchange depends upon the volume of a Participant's activity, references to an entity would be deemed to include the entity and its affiliates that have been approved for aggregation.[6]

Finally, the Exchange proposes that for purposes of the Fee Schedule, the term ''affiliate'' of a Participant would mean any BOX Participant under 75% common ownership or control of that Participant.[7]

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5)of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers and because it is designed to prevent fraudulent and manipulative acts and practices, 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 protect investors and the public interest. The Exchange further believes that the proposed rule change is reasonable because it establishes a manner for the Exchange to treat affiliated Participants for purposes of assessing charges or credits that are based on volume. The provision is equitable because all Participants seeking to aggregate their activity are subject to the same parameters, in accordance with a standard that recognizes an affiliation as of the month's beginning or close in time to when the affiliation occurs, provided the Participant submits a timely request. Moreover, the proposed billing aggregation language, which would lower the Exchange's administrative burden, is substantially similar to aggregation language adopted by other exchanges.[9]

The Exchange further notes that the proposal would serve to reduce disparity of treatment between Participants with regard to the pricing of different services and reduce any potential for confusion on how activity can be aggregated. The Exchange believes that the proposed rule change avoids disparate treatment of Participants that have divided their various business activities between separate corporate entities as compared to Participants that operate those business activities within a single corporate entity. The Exchange further notes that the proposed rule change is reasonable and is designed to remove impediments to and perfect the mechanism of a free and open market by harmonizing the manner by which the Exchanges permits Participants to aggregate volume with other exchanges. In particular, the Exchange notes that NYSE Arca, NASDAQ, NOM, and PHLX all have a similar standard that the Exchange is proposing to adopt.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[10] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As stated above, the proposed rule change, which applies equally to all Participants, is intended to reduce the Exchange's administrative burden in applying volume price discounts for firms which have requested aggregation with that of an affiliated Participant, and is substantially similar to rules adopted by other exchanges. Because the market for order execution and routing is extremely competitive, Participants may readily opt to disfavor the Exchange if they believe that alternatives offer them better value. The Exchange does not believe the proposed changes will impair the ability of Participants or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6)(iii) thereunder.[14]

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 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:

[5] *See* NASDAQ Rule 7027(a)(1).

[6] *See supra* note 4.

[7] *See* supra note 4.

[8] 15 U.S.C. 78f(b)(4) and (5).

[9] *See supr*a note 3.

[10] 15 U.S.C. 78f(b)(8).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[15] 15 U.S.C. 78s(b)(2)(B).

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–BOX–2015–28 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–BOX–2015–28. 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–BOX–2015–28 and should be submitted on or before September 8, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Brent J. Fields,

Secretary.

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BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75677; File No. SR–BYX–2015–34]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of BATS Y-Exchange, Inc.

August 12, 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 August 3, 2015, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members[5] and non-members of the Exchange pursuant to BYX Rules 15.1(a) and (c) (''Fee Schedule'') to: (i) Modify the rebate structure for certain routing strategies that route to NASDAQ OMX BX, Inc. (''Nasdaq BX''); and (ii) adopt a new tier applicable to certain routed orders as well as a new definition to support such tier.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The term ''Member'' is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange.'' *See* Exchange Rule 1.5(n).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to: (i) Modify the rebate structure for certain routing strategies that route to Nasdaq BX; and (ii) adopt a new tier applicable to certain routed orders as well as a new definition to support such tier.

Amended Fee Code C

The Exchange currently provides: (i) A rebate of $0.0016 per share for Members' orders that yield fee code C, applicable to orders routed to Nasdaq BX using the Destination Specific routing strategy;[6] (ii) a rebate of $0.0010 per share for Members' orders that yield fee code TV, applicable to orders routed to Nasdaq BX using the TRIM2 routing strategy;[7] and (iii) a rebate of $0.0015 per share for Members' orders that yield fee code TX, applicable to orders routed to Nasdaq BX using the TRIM routing strategy.[8] The Exchange proposes to amend its Fee Schedule to provide a standard rebate of $0.0010 per share for Members' orders that yield fee code C, which would continue to include Destination Specific routing to Nasdaq BX as well as routing to Nasdaq BX using the TRIM and TRIM2 routing strategies. The Exchange would, in turn, eliminate fee codes TV and TX. The Exchange notes that the $0.0010 per share rebate provided pursuant to the proposed change may still be a higher rebate for an order routed to Nasdaq BX that a Member may obtain when routing directly to Nasdaq BX, depending on the applicable tier for which such Member may qualify. Nasdaq BX currently provides a standard rebate to remove

[6] The Destination Specific routing strategy is defined in Rule 11.13(b)(3)(E).

[7] The TRIM2 routing strategy is defined in Rule 11.13(b)(3)(G)(v).

[8] The TRIM routing strategy is defined in Rule 11.13(b)(3)(G)(iv).

liquidity of $0.0006 per share, with various tiers providing rebates up to $0.0017 per share.[9]

Routing Tier

In conjunction with the change above, the Exchange proposes to adopt a Routing Tier that would allow Members to achieve a higher rebate for orders routed to Nasdaq BX through the Destination Specific, TRIM and TRIM2 routing strategies. Specifically, for such orders, which will yield fee code C, the Exchange proposes to provide a rebate of $0.0016 per share to any Member that maintains ADV, as defined below, equal to or greater than 0.10% of the TCV.[10] Thus, if a Member qualifies for this tier, such Member will be able to continue to receive the same rebate that was previously provided for Destination Specific routing and a higher rebate than has been previously provided for routing through the TRIM and TRIM2 routing strategies.

The Exchange's Fee Schedule currently defines the term ADAV, which means the average daily volume calculated as the number of shares added per day. The Exchange proposes to adopt a definition of ADV, which would mean the number of shares added or removed, combined, per day. As is true for ADAV, the Exchange proposes to calculate ADV on a monthly basis.

The Exchange also proposes to extend each of the volume exclusions and details applicable to ADAV to the new definition of ADV. Thus, the Exchange proposes to exclude from its calculation of ADV shares added on any day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours (''Exchange System Disruption''), on any day with a scheduled early market close and on the last Friday in June (the ''Russell Reconstitution Day''). The Exchange also proposes to make clear that routed shares are not included in ADAV or ADV calculation. Finally, the Exchange proposes to state on the Fee Schedule that with prior notice to the Exchange, a Member may aggregate ADAV or ADV with other Members that control, are controlled by, or are under common control with such Member (as evidenced on such Member's Form BD). The Exchange notes that the proposed definition of ADV is based on the fee schedules of affiliates of the Exchange, including BATS Exchange, Inc., which already has definitions of both ADV and ADAV.[11]

Implementation Date

The Exchange proposes to implement these amendments to its Fee Schedule immediately.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[12] in general, and furthers the objectives of Section 6(b)(4),[13] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

The Exchange believes that its proposal to modify the rebate for Members' orders that yield fee code C from $0.0016 to $0.0010 per share and to include TRIM and TRIM2 routing strategies that execute at Nasdaq BX within such fee code represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities. The Exchange notes that this will not result in any change, other than the fee code assigned, to Members using the TRIM2 routing strategy. Though the proposed change will result in a lower rebate for Members using the Destination Specific and TRIM routing strategies, the Exchange notes that the rebate provided for routing to Nasdaq BX through the Exchange is still higher than the rebate provided by Nasdaq BX unless a Member would otherwise qualify for certain higher rebate tiers at Nasdaq BX. Further, the Exchange notes that the proposed Routing Tier will provide Members with an opportunity to maintain the same rebate earned for Destination Specific routing to Nasdaq BX and a higher rebate than was previously available for the TRIM and TRIM2 routing strategies for orders executed at Nasdaq BX. Therefore, the Exchange believes that the proposed changes to fee code C and the elimination of fee codes TX and TV is equitable and reasonable. The Exchange notes that routing through the Exchange is voluntary. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

The Exchange believes that the proposed addition of the Routing Tier represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities because it rewards Members that contribute to price discovery on the Exchange. Volume-based rebates such as the ones proposed herein have been widely by equities and options exchanges, and are equitable and reasonable because they are open to all Members on an equal basis and provide discounts or rebates that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery processes. The Exchange believes that the proposed rebate for the Routing Tier is reasonable because it is the same rebate as is currently provided for Destination Specific routing for orders executed at Nasdaq BX and is comparable to the rebate provided by Nasdaq BX directly to participants on Nasdaq BX that reach the highest tier.[14] The Exchange also believes that the proposed Routing Tier is fair and equitable and non-discriminatory in that it will be available to all Members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe its proposed amendments to its Fee Schedule would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will

[9] *See* the Nasdaq BX fee schedule *available at: http://www.nasdaqtrader.com/Trader.aspx?id=bx_pricing.*

[10] ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges to the consolidated transaction reporting plan for the month for which the fees apply.

[11] *See* the BATS Exchange fee schedule *available at: http://batstrading.com/support/fee_schedule/bzx/.*

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(4).

[14] *See supra,* note 7.

impair the ability of Members or competing venues to maintain their competitive standing in the financial markets. The Exchange does not believe that its proposal would burden intramarket competition because the proposed rate would apply uniformly to all Members and the Routing Tier would be equally available to all Members.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and paragraph (f) of Rule 19b–4 thereunder.[16] 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–BYX–2015–34 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–BYX–2015–34. 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 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–BYX–2015–34 and should be submitted on or before September 8, 2015.

Brent J. Fields,

Secretary.

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[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75678; File No. SR–BATS–2015–58]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

August 12, 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 August 3, 2015, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members [5] and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c) (''Fee Schedule'') to: (i) Modify the rebate structure for certain routing strategies that route to NASDAQ OMX BX, Inc. (''Nasdaq BX''); and (ii) adopt a new Cross-Asset Step-Up Tier.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to: (i) Modify the rebate structure for certain routing strategies that route to Nasdaq BX; and (ii) adopt a new Cross-Asset Step-Up Tier.

Amended Fee Code C

The Exchange currently provides: (i) A rebate of $0.0010 per share for Members' orders that yield fee code TV, applicable to orders routed to Nasdaq BX using the TRIM2 or TRIM3 routing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The term ''Member'' is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange.'' *See* Exchange Rule 1.5(n).

strategy;[6] and (ii) a rebate of $0.0013 per share for Members' orders that yield fee code TX, applicable to orders routed to Nasdaq BX using the TRIM routing strategy. The Exchange proposes to amend its Fee Schedule to provide a standard rebate of $0.0010 per share for Members' orders that yield fee code TV, which would apply to all TRIM routing strategies. Thus, fee code TV would continue to include TRIM2 and TRIM3 routing to Nasdaq BX as well as routing to Nasdaq BX using the TRIM routing strategy. The Exchange would, in turn, eliminate fee code TX. The Exchange notes that the $0.0010 per share rebate provided pursuant to the proposed change may still be a higher rebate for an order routed to Nasdaq BX that a Member may obtain when routing directly to Nasdaq BX, depending on the applicable tier for which such Member may qualify. Nasdaq BX currently provides a standard rebate to remove liquidity of $0.0006 per share, with various tiers providing rebates up to $0.0017 per share.[7]

Cross-Asset Step-Up Tiers

Currently, with respect to the Exchange's equities trading platform (''BATS Equities''), the Exchange determines the liquidity adding rebate that it will provide to Members using the Exchange's tiered pricing structure, which is based on the Member meeting certain volume tiers based on their ADAV[8] as a percentage of TCV[9] or ADV[10] as a percentage of TCV. Included amongst the volume tiers offered by the Exchange are two Cross-Asset Step-Up Tiers for purposes of BATS Equities pricing, which require participation on the Exchange's options platform (''BATS Options''). The current Cross-Asset Step-Up Tiers provide rebates of $0.0027 per share and $0.0028 per share for Tier 1 and Tier 2, respectively. To qualify for Tier 1, a Member must have an Options Step-Up Add TCV that is equal to or greater than 0.30%. To qualify for Tier 2, a Member must have an Options Step-Up Add TCV that is equal to or greater than 0.40%.

The Exchange proposes to adopt a new tier, Tier 3, as well as a new definition of ''Options Add TCV'' and a new definition of ''Step-Up ADAV'' in connection with such tier. As proposed, ''Options Add TCV'' for the purposes of BATS Equities pricing would mean ADAV as a percentage of TCV, using the definitions of ADAV and TCV as provided under the Exchange's fee schedule for BATS Options. This definition is similar to existing definitions used for cross-asset tiers on the Exchange but is different from such definitions as it does not depend on the participant's capacity on BATS Options (as does the definition of Options Market Maker Add TCV) nor does it require additional volume levels over and above a certain baseline (as does the definition of Options Step-Up Add TCV). ''Step-Up Add TCV'' for the purposes of BATS Equities pricing would mean ADAV in the relevant baseline month subtracted from current ADAV. Thus, this definition would be similar to the existing definition of Step-Up Add TCV but, in contrast, would not be calculated as a percentage of TCV.

Using these definitions, under proposed Tier 3, the Exchange would provide a rebate of $0.0029 per share to a Member with an Options Add TCV that is equal to or greater than 0.30% and a Step-Up ADAV from June 2015 that is equal to or greater than 1,000,000 shares.

In addition to the changes proposed above, the Exchange proposes to clarify the definition of ADAV to make clear that volume is calculated ''per day'' on a monthly basis. Further, in order to incorporate Tier 3 into the current table and account for the new definitions, the Exchange proposes non-substantive structural changes to the chart.

Implementation Date

The Exchange proposes to implement these amendments to its Fee Schedule immediately.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[11] in general, and furthers the objectives of Section 6(b)(4),[12] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

The Exchange believes that its proposal to modify the rebate for Members' orders that utilize the TRIM routing strategy and receive executions of orders routed to Nasdaq BX by eliminating fee code TX and applying fee code TV represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities. The Exchange notes that this proposal will not result in any change to Members using the TRIM2 or TRIM3 routing strategies. Though the proposed change will result in a lower rebate for Members using the TRIM routing strategy, the Exchange notes that the rebate provided for routing to Nasdaq BX through the Exchange is still higher than the rebate provided by Nasdaq BX unless a Member would otherwise qualify for certain higher rebate tiers at Nasdaq BX. Therefore, the Exchange believes that the proposed change to fee code TV and the elimination of fee codes TX is equitable and reasonable. The Exchange notes that routing through the Exchange is voluntary. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

Volume-based rebates and fees such as the proposed Cross-Asset Step-Up Tier 3 have been widely adopted by equities and options exchanges and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to the value to an exchange's market quality associated

[6] The TRIM routing strategies are defined in Rule 11.13(b)(3)(G).

[7] *See* the Nasdaq BX fee schedule *available at: http://www.nasdaqtrader.com/Trader.aspx?id=bx_pricing.*

[8] As provided in the fee schedule, for purposes of BATS Equities pricing, ''ADAV'' means average daily added volume calculated as the number of shares added per day on a monthly basis; neither routed shares nor shares added on any day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours (''Exchange System Disruption'') and on the last Friday in June (the ''Russell Reconstitution Day'') are included in ADAV calculation.

[9] As provided in the fee schedule, for purposes of BATS Equities pricing, ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply, excluding volume on any day that the Exchange experiences an Exchange System Disruption or the Russell Reconstitution Day.

[10] As provided in the fee schedule, for purposes of BATS Equities pricing, ''ADV'' means average daily volume calculated as the number of shares added or removed, combined, per day on a monthly basis; neither routed shares nor shares added or removed on any day that the Exchange experiences an Exchange System Disruption and the Russell Reconstitution Day are included in ADV calculation.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(4).

with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and introduction of higher volumes of orders into the price and volume discovery processes. The Exchange believes that the proposal to add a Cross-Asset Step-Up Tier 3 is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and rebates because it will provide Members with an additional incentive to reach certain thresholds on both the Exchange securities and BATS Options. The increased liquidity from this proposal also benefits all investors by deepening the Exchange and BATS Options liquidity pools, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. Such pricing programs thereby reward a Member's growth pattern on the Exchange and such increased volume increases potential revenue to the Exchange, and will allow the Exchange to continue to provide and potentially expand the incentive programs operated by the Exchange. To the extent a Member participates on the Exchange but not on BATS Options, the Exchange does believe that the proposal is still reasonable, equitably allocated and non-discriminatory with respect to such Member based on the overall benefit to the Exchange resulting from the success of BATS Options. As noted above, such success allows the Exchange to continue to provide and potentially expand its existing incentive programs to the benefit of all participants on the Exchange, whether they participate on BATS Options or not. The proposed pricing program is also fair and equitable in that membership in BATS Options is available to all market participants which would provide them with access to the benefits on BATS Options provided by the proposed changes, as described above, even where a member of BATS Options is not necessarily eligible for the proposed increased rebates on the Exchange. Further, the proposed changes will result in Members receiving either the same or an increased rebate than they would currently receive.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe its proposed amendments to its Fee Schedule would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed changes represent a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets. The Exchange does not believe that its proposal would burden intramarket competition because the proposed rebate for all TRIM routing strategies would apply uniformly to all Members.

With respect to the proposed new tier, the Exchange does not believe that the proposal burdens competition, but instead, enhances competition, as it is intended to increase the competitiveness of and draw additional volume to both BATS Equities and BATS Options. As stated above, the Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if the [sic] deem fee structures to be unreasonable or excessive. The proposed changes are generally intended to enhance the rebates for liquidity added to the Exchange, which is intended to draw additional liquidity to the Exchange.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and paragraph (f) of Rule 19b–4 thereunder.[14] 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.

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BATS–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–BATS–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 principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2015–58 and should be submitted on or before September 8, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Brent J. Fields,

Secretary.

[FR Doc. 2015–20281 Filed 8–17–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–218, OMB Control No. 3235–0242]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Rule 206(4)–3.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for approval of extension of the previously approved collection of information discussed below.

Rule 206(4)–3 (17 CFR 275.206(4)–3) under the Investment Advisers Act of 1940, which is entitled ''Cash Payments for Client Solicitations,'' provides restrictions on cash payments for client solicitations. The rule requires that an adviser pay all solicitors' fees pursuant to a written agreement. When an adviser will provide only impersonal advisory services to the prospective client, the rule imposes no disclosure requirements. When the solicitor is affiliated with the adviser and the adviser will provide individualized advisory services to the prospective client, the solicitor must, at the time of the solicitation or referral, indicate to the prospective client that he is affiliated with the adviser. When the solicitor is not affiliated with the adviser and the adviser will provide individualized advisory services to the prospective client, the solicitor must, at the time of the solicitation or referral, provide the prospective client with a copy of the adviser's brochure and a disclosure document containing information specified in rule 206(4)–3. Amendments to rule 206(4)–3, adopted in 2010 in connection with rule 206(4)–5, specify that solicitation activities involving a government entity, as defined in rule 206(4)–5, are subject to the additional limitations of rule 206(4)–5. The information rule 206(4)–3 requires is necessary to inform advisory clients about the nature of the solicitor's financial interest in the recommendation so the prospective clients may consider the solicitor's potential bias, and to protect clients against solicitation activities being carried out in a manner inconsistent with the adviser's fiduciary duty to clients. Rule 206(4)–3 is applicable to all Commission registered investment advisers. The Commission believes that approximately 4,422 of these advisers have cash referral fee arrangements. The rule requires approximately 7.04 burden hours per year per adviser and results in a total of approximately 31,130 total burden hours (7.04 × 4,422) for all advisers.

The disclosure requirements of rule 206(4)–3 do not require recordkeeping or record retention. The collections of information requirements under the rules are mandatory. Information subject to the disclosure requirements of rule 206(4)–3 is not submitted to the Commission. The disclosures pursuant to the rule are not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: August 13, 2015.

Brent J. Fields,

Secretary.

[FR Doc. 2015–20327 Filed 8–17–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Form N–8B–2. SEC File No. 270–186, OMB Control No. 3235–0186.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Form N–8B–2 (17 CFR 274.12) is the form used by unit investment trusts (''UITs'') other than separate accounts that are currently issuing securities, including UITs that are issuers of periodic payment plan certificates and UITs of which a management investment company is the sponsor or depositor, to comply with the filing and disclosure requirements imposed by section 8(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–8(b)). Form N–8B–2 requires disclosure about the organization of a UIT, its securities, the personnel and affiliated persons of the depositor, the distribution and redemption of securities, the trustee or custodian, and financial statements. The Commission uses the information provided in the collection of information to determine compliance with section 8(b) of the Investment Company Act.

Each registrant subject to the Form N–8B–2 filing requirement files Form N–8B–2 for its initial filing and does not file post-effective amendments on Form N–8B–2.[1] The Commission staff estimates that approximately four respondents each file one Form N–8B–2 filing annually with the Commission. Staff estimates that the burden for compliance with Form N–8B–2 is approximately 10 hours per filing. The total hour burden for the Form N–8B–2 filing requirement therefore is 40 hours in the aggregate (4 respondents × one filing per respondent × 10 hours per filing).

Estimates of the burden hours are made solely for the purposes of the PRA and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms. The information provided on Form N–8B–2 is mandatory. The information provided on Form N–8B–2 will not be kept confidential. An agency

[15] 17 CFR 200.30–3(a)(12).

[1] Post-effective amendments are filed with the Commission on the UIT's Form S–6. Hence, respondents only file Form N–8B–2 for their initial registration statement and not for post-effective amendments.

may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Brent J. Fields,

Secretary.

[FR Doc. 2015–20325 Filed 8–17–15; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is publishing this notice to comply with requirements of the Paperwork Reduction Act (PRA) (44 U.S.C. Chapter 35), which requires agencies to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. This notice also allows an additional 30 days for public comments.

DATES: Submit comments on or before September 17, 2015.

ADDRESSES: Comments should refer to the information collection by name and/or OMB Control Number and should be sent to: *Agency Clearance Officer,* Curtis Rich, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416; and *SBA Desk Officer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205–7030 *curtis.rich@sba.gov*

Copies: A copy of the Form OMB 83–1, supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

SUPPLEMENTARY INFORMATION: This information collection is reported to SBA's Office Credit Risk Management (OCRM) by SBA's 7(A) Lenders, Certified Development Companies Microloan Lenders, and Non-Lending Technical Assistance Providers OCRM uses the information reported to facilitate its oversight and monitoring of these groups, including their overall performance on SBA loans and their compliance with the applicable program requirements.

Solicitation of Public Comments

Comments may be submitted on (a) whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collections

Title: SBA Lender Microloan Intermediary and NTAP Reporting Requirements.

Description of Respondents: SBA Loan Applications.

Form Number: N/A.

Estimated Annual Responses: 2,422.

Estimated Annual Hour Burden: 6,840.

Curtis B. Rich,

Management Analyst.

[FR Doc. 2015–20291 Filed 8–17–15; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14413 and #14414]

South Dakota Disaster #SD–00067

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of South Dakota (FEMA–4237–DR), dated 08/07/2015.

Incident: Severe Storms, Straight-line Winds, and Flooding.

Incident Period: 05/08/2015 through 05/29/2015.

Effective Date: 08/07/2015.

Physical Loan Application Deadline Date: 10/06/2015.

Economic Injury (EIDL) Loan Application Deadline Date: 05/07/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/07/2015, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): The Pine Ridge Indian Reservation Contained In The Counties Of: Bennett, Jackson, Oglala Lakota.

Contiguous Counties (Economic Injury Loans Only): Nebraska: Cherry, Dawes, Sheridan.

South Dakota: Custer, Fall River, Mellette, Pennington, Todd.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.375
Homeowners Without Credit Available Elsewhere	1.688
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14413B and for economic injury is 144140.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2015–20290 Filed 8–17–15; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14415 and #14416]

Missouri Disaster #MO–00076

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of MISSOURI (FEMA–4238–DR), dated 08/07/2015.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 05/15/2015 through 07/27/2015.

Effective Date: 08/07/2015.

Physical Loan Application Deadline Date: 10/06/2015.

Economic Injury (EIDL) Loan Application Deadline Date: 05/07/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration Processing, and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/07/2015, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster: *Primary Counties:* Adair, Andrew, Atchison, Audrain, Barry, Bates, Benton, Buchanan, Caldwell, Chariton, Christian, Clark, Clay, Clinton, Cole, Crawford, Dade, Dallas, Daviess, Dekalb, Douglas, Gentry, Harrison, Henry, Hickory, Holt, Jefferson, Johnson, Knox, Laclede, Lafayette, Lewis, Lincoln, Linn, Livingston, Macon, Maries, Marion, Mcdonald, Miller, Moniteau, Monroe, Montgomery, Morgan, Osage, Ozark, Perry, Pettis, Pike, Platte, Polk, Putnam, Ralls, Ray, Sainte Genevieve, Saline, Schuyler, Scotland, Shannon, Shelby, Stone, Sullivan, Taney, Texas, Washington, Webster, Worth, Wright.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14415B and for economic injury is 14416B

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2015–20287 Filed 8–17–15; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14417 and #14418]

West Virginia Disaster #WV–00041

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of West Virginia (FEMA–4236–DR), dated 08/07/2015.

Incident: Severe Storms, Straight-line Winds, Flooding, Landslides, and Mudslides.

Incident Period: 07/10/2015 through 07/14/2015.

Effective Date: 08/07/2015.

Physical Loan Application Deadline Date: 10/06/2015.

ECONOMIC INJURY (EIDL) LOAN APPLICATION DEADLINE DATE: 05/07/2016.

ADDRESSES: Submit completed loan applications to:

U.S. Small Business Administration Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/07/2015, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Braxton, Clay, Lincoln, Logan, Nicholas, Roane, Webster, Wood.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14417B and for economic injury is 14418B

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2015–20288 Filed 8–17–15; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 9222]

60-Day Notice of Proposed Information Collection: Local U.S. Citizen Skills/Resources Survey

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to October 19, 2015.

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

- *Web:* Persons with access to the Internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering Docket Number: DOS–2015–0026 in the search field. Then click the ''Comment

Now'' button and complete the comment form.

- *Email: RiversDA@state.gov.*
- *Mail:* (paper, disk, or CD–ROM submissions): U.S. Department of State, CA/OCS/PMO, SA–17, 10th Floor, Washington, DC 20036.
- *Fax:* 202–736–9111.
- *Hand Delivery or Courier:* U.S. Department of State, CA/OCS/PMO, 600 19th St. NW., 10th Floor, Washington, DC 20036.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Kaye Shaw, Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS/PMO), U.S. Department of State, SA–17, 10th Floor, Washington, DC 20036 or at *mailto:shawkm@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Local U.S. Citizen Skills/Resources Survey.
- *OMB Control Number:* OMB No. 1405–0188.
- *Type of Request:* Extension.
- *Originating Office:* Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS).
- *Form Number:* DS–5506.
- *Respondents:* United States Citizens.
- *Estimated Number of Respondents:* 2,400.
- *Estimated Number of Responses:* 2,400.
- *Average Hours per Response:* 15 minutes.
- *Total Estimated Burden:* 600 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Voluntary.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the requests for information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection: The Local U.S. Citizen Skills/Resources Survey is a systematic method of gathering information about skills and resources from U.S. citizens that will assist in improving the well-being of other U.S. citizens affected or potentially affected by a crisis.

Methodology: This information collection can be completed by the respondent electronically or manually. The information will be collected on-site at a U.S. Embassy/Consulate, by mail, fax, or email.

Dated: July 29, 2015.

Michelle Bernier-Toth,

Managing Director, Bureau of Consular Affairs, Department of State.

[FR Doc. 2015–20239 Filed 8–17–15; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice: 9221]

60-Day Notice of Proposed Information Collection: Electronic Application for Immigration Visa and Alien Registration.

AGENCY: Department of State.

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to October 19, 2015.

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

- *Web:* Persons with access to the Internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering Docket Number: DOS–2015–0025 in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: PRA_BurdenComments@state.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Taylor Mauck who may be reached at 202–485–7635 or at *PRA_BurdenComments@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Electronic Application for Immigration Visa and Alien Registration.
- *OMB Control Number:* 1405–0185.
- *Type of Request:* Extension.
- *Originating Office:* Bureau of Consular Affairs, Visa Services (CA/VO/L/R).
- *Form Number:* DS–260.
- *Respondents:* Immigrant Visa Applicants.
- *Estimated Number of Respondents:* 581,642.
- *Estimated Number of Responses:* 581,642.
- *Average Time per Response:* 2 Hours.
- *Total Estimated Burden Time:* 1,163,284 Hours.
- *Frequency:* Once per respondent.
- *Obligation to Respond:* Required to Obtain Benefits.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection: Form DS–260 will be used to elicit information to determine the eligibility of aliens applying for immigrant visas.

Methodology: The DS–260 will be submitted electronically to the

Department via the Internet. The applicant will be instructed to print a confirmation page containing a 2–D bar code record locator, which will be scanned at the time of processing. Applicants who submit the electronic application will no longer submit paper-based applications to the Department.

Dated: August 6, 2015.

Edward J. Ramotowski,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2015–20261 Filed 8–17–15; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice: 9227]

Culturally Significant Objects Imported for Exhibition Determinations: ''Carlo Crivelli'' Exhibitions

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that certain objects to be imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Isabella Stewart Gardner Museum, Boston, Massachusetts, from on or about October 22, 2015, until on or about January 25, 2016, in the exhibition ''Ornament and Illusion: Carlo Crivelli of Venice,'' at The Walters Art Museum, Baltimore, Maryland, from on or about February 20, 2016, until on or about May 15, 2016, in the exhibition ''Carlo Crivelli: A Renaissance Original [wt],'' and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: August 12, 2015.

Evan Ryan,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2015–20423 Filed 8–17–15; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2014–51]

Petition for Exemption; Summary of Petition Received; Ameriflight

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before September 8, 2015.

ADDRESSES: Send comments identified by docket number FAA–2014–0278 using any of the following methods:

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dale Williams (202) 267–4179, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on August 12, 2015.

Lirio Liu,

Director, Office of Rulemaking.

Petition For Exemption

Docket No.: FAA–2014–0278.

Petitioner: Ameriflight, LLC.

Section(s) of 14 CFR Affected: § 135.243(c)(2).

Description of Relief Sought: Ameriflight, LLC seeks relief to allow an incremental reduction of the current 14 CFR 135.243(c)(2) 1,200 hour minimum flight time requirement for pilots in command of aircraft under instrument flight rules (IFR) to 1,000 flight hours provided specific operational restrictions, additional training, checking, Initial Operating Experience, and monitoring requirements are complied with as necessary to ensure an equivalent level of safety. The relief would apply exclusively to pilots in command engaged in Ameriflight, LLC cargo-only operations conducted under 14 CFR part 135 in propeller-powered airplanes which do not require a type rating. Ameriflight previously requested relief from § 135.243(c)(2) under Docket FAA–2012–0964 but withdrew its petition before FAA action in order to provide a new petition, which includes different information on how the petitioner proposes to achieve an equivalent level of safety.

[FR Doc. 2015–20253 Filed 8–17–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2015–0054; Notice 1]

Mack Trucks, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Mack Trucks, Inc. (Mack), has determined that certain model year (MY) 2014–2016 Mack LEU model incomplete vehicles do not fully comply with paragraphs S5.3.3 and S5.3.4 of Federal Motor Vehicle Safety Standard (FMVSS) No. 121, *Air Brake Systems.* Mack has filed an appropriate report dated April 27, 2015, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.*

DATES: The closing date for comments on the petition is September 17, 2015.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Deliver:* Deliver comments by hand to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.
- *Electronically:* Submit comments electronically by: Logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/*. Follow the online instructions for submitting comments. Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

SUPPLEMENTARY INFORMATION:

I. Mack's Petition: Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Mack submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. After reviewing the petition, NHTSA requested additional information from Mack by letter dated July 9, 2015. In response to that letter, Mack provided supplemental information by letter dated July 17, 2015. Copies of NHTSA's request and Mack's response are available from the petition docket.

This notice of receipt of Mack's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. Vehicles Involved: Affected are approximately 1,977 MY 2014–2016 Mack LEU model incomplete vehicles manufactured between July 22, 2013 and April 20, 2015.

III. Noncompliance: Mack explains that the noncompliance is that the brake actuation and release times slightly (by milliseconds) exceed the requirements as specified in paragraphs S5.3.3 and S5.3.4 of FMVSS No. 121.

IV. Rule Text: Paragraph S5.3.3 of FMVSS No. 121 requires in pertinent part:

S5.3.3 *Brake Actuation time.* Each service brake system shall meet the requirements of S5.3.3.1(a) and (b) . . .

S5.3.3.1(a) With an initial service reservoir system air pressure of 100 psi, the air pressure in each brake chamber shall, when measured from the first movement of the service brake control, reach 60 psi in not more than 0.45 second in the case of trucks and buses, . . .

Paragraph S5.3.4 of FMVSS No. 121 requires in pertinent part:

S5.3.4 *Brake Release time.* Each service brake system shall meet the requirements of S5.3.4.1(a) and (b) . . .

S5.3.4.1(a) With an initial service brake chamber air pressure of 95 psi, the air pressure in each brake chamber shall, when measured from the first movements of the service brake control, fall to 5 psi in not more than 0.55 second in the case of trucks and buses, . . .

V. Summary of Mack's Analyses: Mack stated its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

(A) Mack conducted pneumatic brake timings tests on a test vehicle representative of the affected population to show the results compared to the requirement. The test vehicle was configured similar to a dual-drive (or twin steer) residential garbage truck equipped with left-hand and right-hand steering and brake controls. Tests were conducted on each axle, separately, using the left-hand brake control and then, the right hand brake control.

Mack's data indicate that, on average, steer axle pneumatic brake actuation times exceed the requirement by 0.04 seconds, steer axle pneumatic brake release times, on average, exceed the requirement by 0.09 seconds, and drive axle brake timing results indicate compliance with the safety standard's requirement.

Mack stated that a change in brake chamber size from type 24 to type 30, which occurred in 2013 production, may have caused the noncompliance.

(B) Mack conducted additional brake timing and dynamic performance tests to evaluate how this noncompliance affects overall brake performance. The tests were performed by an independent testing and evaluation company, Link Commercial Vehicle Testing (Link) located in East Liberty, Ohio. According to Mack, the results of these tests clearly show that the trucks that are affected by the subject noncompliance are compliant with the brake stopping distance requirements. Mack provided a chart to illustrate the stopping distance test results. (Detailed results from the tests provided by Mack are available from the docket for this petition).

(C) Mack stated that LEU's are used almost exclusively in residential garbage collection service. Because of that, Mack

says there are no concerned vehicles that tow air-braked trailers and that compatibility with other air brake vehicles is also not cause for concern.

(D) Mack also stated that brake release timing has been the subject of previous petitions that it believes are similar to its petition and were granted by NHTSA.

Mack has additionally informed NHTSA that it is correcting the noncompliance so that all future production of the subject trucks will fully comply with FMVSS No. 121.

In summation, Mack believes that the described noncompliance of the subject trucks is inconsequential to motor vehicle safety, and that its petition, to exempt Mack from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject incomplete vehicles that Mack no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant incomplete vehicles under their control after Mack notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8).

Jeffrey Giuseppe,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2015–20310 Filed 8–17–15; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2014–0098; Notice No. 15–15]

Hazardous Materials: Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Requests (ICRs) discussed below will be forwarded to the Office of Management and Budget (OMB) for renewal and extension. These ICRs describe the nature of the information collections and their expected burdens. A **Federal Register** notice with a 60-day comment period soliciting comments on these ICRs was published in the **Federal Register** on April 29, 2015 [80 FR 23582] under Docket No. PHMSA–2015–0098 (Notice No. 15–8). PHMSA did not receive any comments in response to the April 29, 2015 notice.

DATES: Interested persons are invited to submit comments on, or before September 17, 2015.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, by mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for DOT–PHMSA, 725 17th Street NW., Washington, DC 20503, by fax, 202–395–5806, or by email, to *OIRA_Submission@omb.eop.gov.* Comments should refer to the information collection by title and/or OMB Control Number.

We invite comments on: (1) 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; (2) the accuracy of the Department's estimate of the burden of the proposed information collection; (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 the use of automated collection techniques or other forms of information technology.

Docket: For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Steven Andrews or T. Glenn Foster, Standards and Rulemaking Division (PHH–12), U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., East Building, 2nd Floor, Washington, DC 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION: Section 1320.8 (d), Title 5, Code of Federal Regulations requires Federal agencies to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies information collection requests that PHMSA will be submitting to OMB for renewal and extension. These information collections are contained in 49 CFR parts 172, 173, 174, 175, 176, and 177 of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180). PHMSA has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on changes in proposed or final rules published since the information collections were last approved. The following information is provided for each information collection: (1) Title of the information collection, including former title if a change is being made; (2) OMB Control Number; (3) abstract of the information collection activity; (4) description of affected persons; (5) estimate of total annual reporting and recordkeeping burden; and (6) frequency of collection. PHMSA will request a three-year term of approval for each information collection activity and, when approved by OMB, publish notice of the approvals in the **Federal Register**.

PHMSA requests comments on the following information collections:

Title: Hazardous Materials Shipping Papers and Emergency Response Information.

OMB Control Number: 2137–0034.

Summary: This information collection is for the requirement to provide a shipping paper and emergency response information with shipments of hazardous materials. Shipping papers are considered to be a basic communication tool relative to the transportation of hazardous materials. The definition of a shipping paper in 49 CFR 171.8 includes a shipping order, bill of lading, manifest, or other shipping document serving a similar purpose and containing the information required by §§ 172.202, 172.203, and 172.204 of the HMR. A shipping paper with emergency response information must accompany most hazardous materials shipments and be readily

available at all times during transportation.

Shipping papers serve as the principal source of information regarding the presence of hazardous materials, identification, quantity, and emergency response procedures. They also serve as the source of information for compliance with other requirements, such as the placement of rail cars containing different hazardous materials in trains; prevent the loading of poisons with foodstuffs; maintain the separation of incompatible hazardous materials; and limit the amount of radioactive materials that may be transported in a vehicle or aircraft. Shipping papers and emergency response information serve as a means of notifying transport workers that hazardous materials are present. Most importantly, shipping papers serve as a principal means of identifying hazardous materials during transportation emergencies. Firefighters, police, and other emergency response personnel are trained to obtain the Department of Transportation (DOT) shipping papers and emergency response information when responding to hazardous materials transportation emergencies. The availability of accurate information concerning hazardous materials being transported significantly improves response efforts in these types of emergencies.

PHMSA is revising this information collection burden to reflect the anticipated completion of the collection of information under the Hazardous Materials Automated Cargo Communications for Efficient and Safe Shipments (HM–ACCESS) pilot program.

Affected Public: Shippers and carriers of hazardous materials in commerce.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 260,000.

Total Annual Responses: 185,000,000.

Total Annual Burden Hours: 4,625,846.

Frequency of Collection: On occasion.

Title: Radioactive (RAM) Transportation Requirements.

OMB Control Number: 2137–0510.

Summary: This information collection describes the information collection provisions in the HMR involving the transportation of radioactive materials (RAM) in commerce. Information collection requirements for RAM include: Shipper notification to consignees of the dates of shipments of RAM; expected arrival; special loading/unloading instructions; verification that shippers using foreign-made packages hold a foreign competent authority certificate and verification that the terms of the certificate are being followed for RAM shipments being made into this country; and specific handling instructions from shippers to carriers for fissile RAM, bulk shipments of low specific activity RAM, and packages of RAM which emit high levels of external radiation. These information collection requirements help to establish that proper packages are used for the type of radioactive material being transported; external radiation levels do not exceed prescribed limits; and packages are handled appropriately and delivered in a timely manner, so as to ensure the safety of the general public, transport workers, and emergency responders.

Affected Public: Shippers and carriers of radioactive materials in commerce.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 3,817.

Total Annual Responses: 21,519.

Total Annual Burden Hours: 15,270.

Frequency of Collection: On occasion.

Title: Subsidiary Hazard Class and Number/Type of Packagings.

OMB Control Number: 2137–0613.

Summary: The HMR require that shipping papers and emergency response information accompany each shipment of hazardous materials in commerce. In addition to the basic shipping description information, we also require the subsidiary hazard class or subsidiary division number(s) to be entered in parentheses following the primary hazard class or division number on shipping papers. This requirement was originally required only by transportation by vessel. However, the lack of such a requirement posed problems for motor carriers with regard to complying with segregation, separation, and placarding requirements, as well as posing a safety hazard. For example, in the event the motor vehicle becomes involved in an accident, when the hazardous materials being transported include a subsidiary hazard such as ''dangerous when wet'' or a subsidiary hazard requiring more stringent requirements than the primary hazard, there is no indication of the subsidiary hazards on the shipping papers and no indication of the subsidiary risks on placards. Under circumstances such as motor vehicles being loaded at a dock, labels are not enough to alert hazardous materials employees loading the vehicles, nor are they enough to alert emergency responders of the subsidiary risks contained on the vehicles. Therefore, we require the subsidiary hazard class or subsidiary division number(s) to be entered on the shipping paper, for purposes of enhancing safety and international harmonization.

We also require the number and type of packagings to be indicated on the shipping paper. This requirement makes it mandatory for shippers to indicate on shipping papers the numbers and types of packages, such as drums, boxes, jerricans, etc., being used to transport hazardous materials by all modes of transportation.

Shipping papers serve as a principal means of identifying hazardous materials during transportation emergencies. Firefighters, police, and other emergency response personnel are trained to obtain the DOT shipping papers and emergency response information when responding to hazardous materials transportation emergencies. The availability of accurate information concerning hazardous materials being transported significantly improves response efforts in these types of emergencies. The additional information would aid emergency responders by more clearly identifying the hazard.

Affected Public: Shippers and carriers of hazardous materials in commerce.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 250,000.

Total Annual Responses: 6,337,500.

Total Annual Burden Hours: 17,604.

Frequency of Collection: On occasion.

William S. Schoonover,

Deputy Associate Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2015–20274 Filed 8–17–15; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Public Input on Expanding Access to Credit Through Online Marketplace Lending

AGENCY: Office of the Undersecretary for Domestic Finance, Department of the Treasury.

ACTION: Notice; extension of comment period.

SUMMARY: On July 20, 2015, the Office of the Undersecretary for Domestic Finance (the Office) published the Request for Information (RFI) ''Public Input on Expanding Access to Credit Through Online Marketplace Lending,'' which states that comments on the RFI must be submitted on or before August 31, 2015. The Office has determined that an extension of the comment period through September 30, 2015 is appropriate.

DATES: Comments must be received not later than September 30, 2015.

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

FOR FURTHER INFORMATION CONTACT: For general inquiries, submission process questions or any additional information, please email *Marketplace_Lending@treasury.gov* or call (202) 622–1083. All responses to this Notice and Request for Information should be submitted via *http://www.regulations.gov* to ensure consideration. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On July 20, 2015, the Office published the RFI,[1] seeking public comment on (i) the various business models of and products offered by online marketplace lenders to small businesses and consumers; (ii) the potential for online marketplace lending to expand access to credit to historically underserved market segments; and (iii) how the financial regulatory framework should evolve to support the safe growth of this industry. The RFI states that comments must be submitted on or before August 31, 2015. The Office has determined that an extension of the comment period through September 30, 2015, is appropriate in order to provide the public more time to review, consider, and comment on the RFI.

Dated: August 11, 2015.

David G. Clunie,

Executive Secretary.

[FR Doc. 2015–20394 Filed 8–17–15; 8:45 am]

BILLING CODE P

[1] Public Input on Expanding Access to Credit Through Online Marketplace Lending, 80 FR 42,866 (July 20, 2015).

FEDERAL REGISTER

Vol. 80 Tuesday,
No. 159 August 18, 2015

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 635

Atlantic Highly Migratory Species; Large Coastal and Small Coastal Atlantic Shark Management Measures; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 100825390–5664–03]

RIN 0648–BA17

Atlantic Highly Migratory Species; Large Coastal and Small Coastal Atlantic Shark Management Measures

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

ACTION: Final rule; fishery re-opening.

SUMMARY: This final rule implements Amendment 6 to the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP) (Amendment 6) to increase management flexibility to adapt to the changing needs of the Atlantic shark fisheries; prevent overfishing while achieving on a continuing basis optimum yield; and rebuild overfished shark stocks. Specifically, this final rule increases the large coastal shark (LCS) retention limit for directed shark permit holders to a maximum of 55 LCS per trip, with a default limit of 45 LCS per trip, and reduces the sandbar shark research fishery quota to account for dead discards of sandbar sharks during LCS trips; establishes a management boundary in the Atlantic region along 34°00′ N. latitude for the small coastal shark (SCS) fishery, north of which harvest and landings of blacknose sharks is prohibited and south of which the quota linkage between blacknose sharks and non-blacknose SCS is maintained; implements a non-blacknose SCS total allowable catch (TAC) of 489.3 mt dw and a commercial quota of 264.1 mt dw in the Atlantic region; apportions the Gulf of Mexico (GOM) regional commercial quotas for aggregated LCS, blacktip, and hammerhead sharks into western and eastern sub-regional quotas along 88°00′ W. longitude; implements a non-blacknose SCS TAC of 999.0 mt dw, increases the commercial non-blacknose SCS quota to 112.6 mt dw, and prohibits retention of blacknose sharks in the GOM; and removes the current upgrading restrictions for shark directed limited access permit (LAP) holders.

DATES: Effective August 18, 2015.

ADDRESSES: Copies of Amendment 6, including the Final Environmental Assessment (EA), and other relevant documents, are available from the HMS Management Division Web site at *http://www.nmfs.noaa.gov/sfa/hms/*. Copies of the 2013 Atlantic sharpnose and bonnethead shark stock assessment results are available on the Southeast Data Assessment and Review Web site at *http://sedarweb.org/sedar-34.*

FOR FURTHER INFORMATION CONTACT: LeAnn Hogan, Guý DuBeck, Delisse Ortiz, or Karyl Brewster-Geisz by phone: 301–427–8503, or by fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: Atlantic sharks are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and the authority to issue regulations has been delegated from the Secretary to the Assistant Administrator (AA) for Fisheries, NOAA. On October 2, 2006, NMFS published in the **Federal Register** (71 FR 58058) final regulations, effective November 1, 2006, which detail management measures for Atlantic HMS fisheries, including for the Atlantic shark fisheries. The implementing regulations for the 2006 Consolidated HMS FMP and its amendments are at 50 CFR part 635. This final rule implements Amendment 6.

Background

A brief summary of the background of this final rule is provided below. A more detailed history of the development of these regulations and the alternatives considered are described in the Final Environmental Assessment (EA) for Amendment 6, which can be found online on the HMS Web site (see **ADDRESSES**).

NMFS published a proposed rule on January 20, 2015 (80 FR 2648), which outlined the preferred alternatives analyzed in the Draft EA and solicited public comments on the measures, which were designed to address the objectives of increasing management flexibility to adapt to the changing needs of the Atlantic shark fisheries, prevent overfishing while achieving on a continuing basis optimum yield, and rebuild overfished shark stocks. Specifically, the action proposed to adjust the commercial LCS retention limit for shark directed LAP holders; create sub-regional quotas in the Atlantic and Gulf of Mexico regions for LCS and SCS; modify the LCS and SCS quota linkages; establish TACs and adjust the commercial quotas for non-blacknose SCS in the Atlantic and Gulf of Mexico regions based on the results of the 2013 stock assessments for Atlantic sharpnose and bonnethead sharks; and modify upgrading restrictions for shark permit holders. The full description of the management and conservation measures considered are included in the Final EA for Amendment 6 and the proposed rule and are not repeated here.

The comment period for the Draft EA and proposed rule for Amendment 6 ended on April 3, 2015. The comments received, and responses to those comments, are summarized below in the section labeled ''Response to Comments.''

Management measures in Amendment 6 are designed to respond to the problems facing Atlantic commercial shark fisheries, such as commercial landings that exceed the quotas, declining numbers of fishing permits since limited access was implemented, complex regulations, derby fishing conditions due to small quotas and short seasons, increasing numbers of regulatory discards, and declining market prices. This rule finalizes most of the management measures, and modifies others, that were contained in the Draft EA and proposed rule for Amendment 6. This section provides a summary of the final management measures being implemented by Amendment 6 and notes changes from the proposed rule to this final rule that may be of particular interest to the regulated community. Measures that are different from the proposed rule, or measures that were proposed but not implemented, are described in detail in the section titled, ''Changes from the Proposed Rule.''

This final rule increases the LCS retention limit for shark directed LAP holders to a maximum of 55 LCS other than sandbar sharks per trip and sets the default LCS retention limit for shark directed LAP holders to 45 LCS other than sandbar sharks per trip. NMFS may adjust the commercial LCS retention limit before the start of or during a fishing season, based on the fishing rates from the current or previous years, among other factors. In order to increase the commercial LCS retention limit, NMFS is using a portion of the unharvested sandbar shark research fishery quota to account for any dead discards of sandbar sharks that might occur with a higher commercial LCS retention limit. As such, the sandbar shark research fishery quota has been reduced accordingly.

Regarding the SCS fishery in the Atlantic region, this final rule establishes a management boundary in the Atlantic region along 34°00′ N. lat. for the SCS fishery and adjusts the SCS quotas. Specifically, retention of blacknose sharks will be prohibited north of 34°00′ N. lat., necessitating the removal of the quota linkage between blacknose and non-blacknose SCS north

of 34°00′ N. lat. However, NMFS is maintaining the quota linkage between non-blacknose SCS and blacknose sharks south of 34°00′ N. lat. With these changes, fishermen operating north of 34°00′ N. lat. will be able to continue to fish for non-blacknose SCS once the blacknose quota is harvested, provided that non-blacknose SCS quota is available. Fishermen operating south of 34°00′ N. lat. will not be able to fish for non-blacknose SCS or blacknose sharks once either quota is harvested. Furthermore, in order to account for any blacknose shark discard mortality north of 34°00′ N. lat., NMFS is reducing the Atlantic blacknose shark quota from 18 mt dw (39,749 lb dw) to 17.2 mt dw (37,921 lb dw). This final rule also establishes a non-blacknose SCS TAC of 489.3 mt dw (1,078,711 lb dw) and increases the commercial quota to 264.1 mt dw (582,333 lb dw). Results of the 2013 stock assessments for Atlantic sharpnose and bonnethead sharks showed that both species would not become overfished or experience overfishing at these harvest levels. As described below, these measures in the final rule have been modified from the proposed rule based on additional data analyses and public comment on sub-regional quotas and the non-blacknose SCS TAC and commercial quota.

This final rule also modifies the LCS and SCS commercial quotas in the GOM region. Specifically, this final rule apportions the GOM regional commercial quotas for aggregated LCS, blacktip, and hammerhead sharks into western and eastern sub-regional quotas along 88°00′ W. long. West of 88°00′ W. long., the sub-regional quotas are as follows: 231.5 mt dw for blacktip shark, 72.0 mt dw for aggregated LCS, and 11.9 mt dw for hammerhead shark. East of 88°00′ W. long., the sub-regional quotas are as follows: 25.1 mt dw for blacktip shark, 85.5 mt dw for aggregated LCS, and 13.4 mt dw for hammerhead shark. This final rule also implements a non-blacknose SCS TAC of 999.0 mt dw (2,202,395 lb dw), increases the non-blacknose SCS commercial quota to 112.6 mt dw (248,215 lb dw), prohibits retention of blacknose sharks in the GOM region, and removes the linkage between blacknose and non-blacknose SCS quotas. These non-blacknose SCS TAC and commercial quota levels would account for all blacknose shark mortality, including blacknose shark discards that were previously landed. As described below, the GOM management measures in the final rule have been modified from the proposed rule based on additional data analyses and public comment.

This final rule also removes the upgrading restrictions for shark directed LAP holders. Before this rule, an owner could upgrade a vessel with a shark directed LAP or transfer the shark directed LAP to another vessel only if the upgrade or transfer did not result in an increase in horsepower of more than 20 percent or an increase of more than 10 percent in length overall, gross registered tonnage, or net tonnage from the vessel baseline specifications. Removing these restrictions allows shark directed LAP holders to upgrade their vessel or transfer the shark directed LAP to another vessel without restrictions related to an increase in horsepower, length overall, or tonnage.

All management measures in Amendment 6 will be effective upon publication of the final rule in the **Federal Register**.

Response to Comments

During the proposed rule stage, NMFS received approximately 30 written comments from fishermen, States, environmental groups, academia and scientists, and other interested parties. NMFS also received feedback from the HMS Advisory Panel, constituents who attended the four public hearings held from February to March 2015 in St. Petersburg, FL, Melbourne, FL, Belle Chasse, LA, and Manteo, NC, and constituents who attended the conference call/webinar held on March 25, 2015. Additionally, NMFS consulted with the five Atlantic Regional Fishery Management Councils, along with the Atlantic States and Gulf States Marine Fisheries Commissions. A summary of the comments received on the proposed rule during the public comment period is provided below with NMFS' responses. All written comments submitted during the comment period can be found at *http://www.regulations.gov* by searching for NOAA–NMFS–2010–0188.

Permit Stacking

Comment 1: NMFS received overall support for not implementing permit stacking under Alternative A1, including from the North Carolina Division of Marine Fisheries (NCDMF), South Carolina Department of Natural Resources (SCDNR), Virginia Marine Resources Commission (VAMRC), the Mid-Atlantic Fishery Management Council (MAFMC), and the Florida Fish and Wildlife Conservation Commission (FWC).

Response: NMFS preferred the No Action alternative in the proposed rule for Amendment 6, which would not implement permit stacking and continue to allow only one directed limited access permit per vessel and thus one retention limit. All the comments received supported the No Action alternative and agreed with NMFS' rationale that while permit stacking may have beneficial socioeconomic impacts for those fishermen that already have multiple directed shark permits or that can afford to buy additional permits, it would disadvantage those fishermen unable to buy additional permits. Permit stacking would create inequitable fishing opportunities among directed permit holders if those fishermen that currently have multiple directed permits or that could afford to buy additional directed permits gain an economic advantage from the higher retention limit resultant from permit stacking. Therefore, based on these comments, NMFS is maintaining the status quo in this action and is not implementing permit stacking.

Commercial Shark Retention Limit

Comment 2: Commenters, including the NCDMF, SCDNR, and VAMRC, supported NMFS' proposal to increase the commercial retention limit to 55 LCS per trip, while other commenters preferred a lower retention limit of 45 LCS per trip. Those commenters were concerned that the higher retention limit would increase participation in the fishery and cause the quotas to be harvested faster, especially since the quotas were not increasing. NMFS also received comments that the increased retention limit would only help state-water fishermen and not federally-permitted fishermen, because the state-water fishermen have shorter travel times to fishing grounds and fewer fishing restrictions than the federally-permitted shark fishermen.

Response: NMFS agrees with the comments that an increased LCS retention limit could cause the quotas to be harvested faster and could result in permit holders who have not participated in recent years re-entering the commercial shark fishery or selling their permits to fishermen who want to enter the commercial shark fishery. Because new or returning fishermen do not have the same experience as current fishermen in avoiding sandbar sharks while also avoiding other prohibited species such as dusky sharks, NMFS believes that increasing the retention limit too much could potentially have negative impacts such as increased sandbar shark discards. NMFS' goal with the preferred LCS retention limit of 55 LCS per trip is to increase the profitability of shark trips within current LCS quotas. Thus, as described in Chapters 2 and 4 in the Final EA,

NMFS continues to prefer to increase the commercial retention limit to a maximum of 55 LCS other than sandbar sharks per trip. However, based on public comment and due to concerns that new or returning shark fishermen may not have the experience needed to avoid certain shark species, NMFS is establishing a default commercial retention limit of 45 LCS other than sandbar sharks per trip. If the quotas are being harvested too slowly or too quickly, NMFS may use current regulations to adjust the trip limit inseason to account for spatial and temporal differences in the shark fishery. Adjusting the commercial LCS retention limit on an inseason basis will allow NMFS the ability to ensure equitable fishing opportunities throughout a region or sub-region. With regard to state-water shark fishermen, many states do not have species-specific commercial fishing permits, and instead rely on a general commercial fishing permit. In other words, a state commercial fishing permit allows fishermen to fish commercially for any species of fish, not just sharks. Fishermen who fish in state waters must comply with the state fishing regulations. Fishermen that have a directed or incidental federal shark commercial permit must abide by federal regulations, including retention limits, and must sell to a federally permitted dealer when fishing in federal or state waters. Overall, NMFS believes that establishing a default commercial retention limit of 45 LCS other than sandbar sharks per trip would benefit federally-permitted fishermen by providing increased profitability of shark trips within current LCS quotas, and increasing management flexibility to adapt to the changing needs of the Atlantic shark fisheries.

Comment 3: Some commenters were concerned that the ratios of LCS to sandbar shark used for calculating the commercial retention limits and the adjusted sandbar shark research fishery quota were incorrect. In addition, some commenters expressed concern that NMFS does not know the catch composition of state-water fishermen and therefore could not accurately estimate what impact an increased retention limit would have on the sandbar shark research fishery quota.

Response: NMFS used observer data from 2008 through 2013 to calculate the ratio of LCS to sandbar shark to analyze the impacts of modifying the commercial retention limit and adjusting the shark research fishery sandbar shark quota. While most of these data are from federal waters and not state waters, these data are the best data available to determine the catch composition ratio of LCS to sandbar sharks in the fishery. As described in this final rule, based on public comment and discussions with the SEFSC, NMFS revised the calculations slightly, resulting in adjustments to the sandbar shark research fishery quota. Specifically, in the Draft EA, NMFS calculated the number of directed trips where directed shark permit holders reported landing at least one LCS in their vessel logbook report from 2008 through 2012. Using this definition of a directed trip overestimated the number of directed shark trips taken every year. In the Final EA, NMFS calculated the number of directed trips when LCS accounted for at least two-thirds of the landings in vessel logbook reports from 2008 through 2013; this is the same approach the observer program uses to determine which vessels should be observed in the LCS fishery. Based on the variability in the directed shark trips by region and year, and the fact that the increased retention limit might result in fewer trips, NMFS decided to use the average number of directed shark trips in the calculations for the adjusted sandbar shark research fishery quota. Using the revised directed shark trips calculations, NMFS is adjusting the sandbar shark fishery quota in Alternative B2 from 75.7 mt dw in the proposed rule to 90.7 mt dw in the final rule. The increased sandbar shark fishery quota should not impact the research fishery at current funding levels, since the sandbar shark fishery quota under Amendment 6 would still be less than the current quota of 116.6 mt dw, and should ensure that a sufficient amount of sandbar quota is available for the sandbar shark research fishery while accounting for sandbar shark interactions in the LCS fishery under a higher retention limit.

Comment 4: NMFS received a comment to change the commercial shark retention limit back to a weight limit. The commenter would prefer a 2,000 lb trip limit rather than a number trip limit. The commenter believes that it would be easier to enforce trip tickets and dealer landings if it was a weight limit since the weight of 36 LCS per trip can vary and it is easier for fishermen to land more than the current trip limit.

Response: Currently, the commercial retention limit is 36 LCS other than sandbar sharks per trip, which was implemented in 2008 under Amendment 2 to the 2006 Consolidated HMS FMP (Amendment 2). Before 2008, the commercial retention limit was 4,000 lb dw LCS per trip. NMFS changed the commercial retention limit from a weight based trip limit to a number of sharks per trip because the 4,000 lb dw LCS trip limit would have caused the sandbar shark TAC and blacktip shark quotas that were implemented in Amendment 2 to be exceeded. NMFS believes that a retention limit that is based on number of sharks per trip is easier to monitor and makes compliance with these regulations easier for fishermen. In addition, a retention limit based on number of sharks per trip eases at-sea and at-port enforcement of retention limit regulations. Thus, for these reasons, NMFS did not consider changing the retention limit from a number of sharks back to weight based retention limits in this rulemaking.

Comment 5: NMFS received comments to establish the commercial shark retention limit by gear type. Specifically, the commenters suggested a limit of 55 LCS per trip for fishermen using bottom longline gear and a limit of 105 LCS per trip for fishermen using gillnet gear. The commenters stated that with one retention limit for all gear types, bottom longline fishermen would always have a greater profit per trip than gillnet fishermen because bottom longline fishermen catch larger sharks than gillnet fishermen.

Response: As described in the Draft EA for Amendment 6 under Alternative G, NMFS considered separate retention limits by gear type, but did not further analyze this alternative. Observer data from 2008–2013 confirms that gillnet fishermen are catching smaller LCS than fishermen using bottom longline gear. These smaller LCS are likely juvenile sharks. If NMFS were to separate the retention limits for LCS by gear type and increase the limit for gillnet fishermen, gillnet fishermen would be landing a higher number of juvenile LCS. Given the susceptibility of many shark species to overfishing and the number of LCS that have either an unknown or overfished status, NMFS does not want to increase mortality on one particular life stage of any shark species without stock assessment analyses indicating that the species and/or stock can withstand that level of fishing pressure. In addition, setting different retention limits for bottom longline and gillnet gears could complicate enforcement of the regulations. It is for these reasons that NMFS did not further analyze the impacts of setting retention limits based on gear types in the proposed or final rule for Amendment 6.

Atlantic and Gulf of Mexico Regional and Sub-Regional Quotas

Overall

Comment 6: Some commenters, including NCDMF, noted that the fishing season opening dates have a direct impact on fishing effort and participation from any particular region and expressed concern regarding the years chosen to calculate the sub-regional quotas based on landing history. Specifically, commenters were concerned that some of the years chosen may have disadvantaged their area.

Response: In this rulemaking, because of similar concerns expressed at the Predraft stage, NMFS took into consideration how the seasonal opening dates have impacted fishing effort and participation. For example, in the alternatives where NMFS considered apportioning the Atlantic blacknose and non-blacknose SCS quotas into sub-regions, NMFS used data from 2011 through 2012 since these were the only years that the blacknose shark quota linkage did not affect fishing effort for non-blacknose SCS. In the Gulf of Mexico region, NMFS used the range of data from 2008 through 2013 in the sub-regional data calculations for the blacktip and aggregated LCS quotas since the seasonal opening dates did not impact the fishing effort and participation in those years. However, as explained in response to comment 8 below, based on public comments opposed to implementing sub-regional quotas in the Atlantic region, NMFS changed the preferred alternative in this final rule and is not implementing sub-regional LCS and SCS quotas in the Atlantic region. This change is aligned with one of the objectives of Amendment 6, which is intended to respond to the changing needs of the Atlantic shark fisheries.

Comment 7: Some commenters expressed concern regarding how NMFS plans to count the landings for each sub-regional quota. Commenters are concerned that fishermen near the boundary lines will change where they fish or just state that they were fishing in the other sub-region when quota in their sub-region is close to 80 percent. In addition, commenters have expressed concern that NMFS will not be able to enforce where the sharks are caught and which sub-regional quota the landings are counted towards. Instead, commenters preferred that NMFS count the landings where the shark is landed instead of where it is caught.

Response: When NMFS started managing shark quotas regionally, NMFS also began monitoring shark quotas based on where the shark was landed. NMFS found this approach did not work for the shark fishery for a variety of reasons. NMFS found there are a number of shark fishermen who land their sharks at private docks or at docks that are not owned by the dealer purchasing the sharks. Once landed, the fisherman transports the sharks to the dealer via truck or other methods. At that time, the ''landings'' were counted against where the dealer was located and not where the fish were actually landed. When the dealer is located in a different region from the fisherman, it causes problems—particularly if the management of the shark species was split into regions based on the results of stock assessments. Additionally, fishermen do not always fish for sharks and land those sharks in the same region. With the implementation of the HMS electronic reporting system (eDealer) in 2013, NMFS began monitoring shark quotas based on where the sharks were reported to be caught. NMFS has found few problems with this approach since the implementation of eDealer and has not experienced any problems with managing landings reported on either side of an established management boundary (*e.g.*, the Miami-Dade line which separates the Atlantic and Gulf of Mexico regions). NMFS will continue to monitor landings via eDealer and count shark landings based on where they are caught instead of where they are landed. This approach should allow NMFS to count shark landings more accurately against the appropriate regional and sub-regional shark quotas. eDealer will incorporate the new sub-regional quota areas in the GOM to ensure that shark landings in the Gulf are counted against the appropriate GOM sub-regional quota. However, if in the future NMFS notices discrepancies regarding where sharks are caught versus landed (*e.g.*, in a comparison between observer data and dealer data), NMFS may reconsider this issue.

Comment 8: NMFS received multiple comments to revise or remove all quota linkages between the SCS and LCS management groups in both the Atlantic and Gulf of Mexico regions. In the Atlantic region, commenters requested that all quota linkages be removed. In the Gulf of Mexico region, commenters requested that the non-blacknose SCS and blacknose linkage be removed, and that the blacktip shark management group be linked to the aggregated LCS and hammerhead shark management groups in each sub-region.

Response: The current LCS and SCS quota linkages were created for shark species that are in separate management groups, but that have the potential to be caught together on the same shark fishing trip (*e.g.*, non-blacknose SCS and blacknose sharks). If the quota for one management group has been filled and the management group is closed, that species could still be caught as bycatch by fishermen targeting other shark species, possibly resulting in excess mortality and negating some of the conservation benefit of management group closures. In addition, shark quota linkages were put into place as part of the rebuilding plans for shark species that are overfished in order to reduce excess mortality of the overfished species during commercial fishing for other shark species. Thus, NMFS closes the linked shark management groups together. However, based on public comment and additional analyses, NMFS is adjusting the quota linkage changes that were proposed in Draft Amendment 6. Specifically, in the Atlantic region, NMFS is establishing a management boundary at 34°00′ N. latitude for the SCS fishery. NMFS is prohibiting landings of blacknose sharks and removing the quota linkage between the non-blacknose SCS and blacknose sharks north of 34°00′ N. latitude. NMFS is keeping the quota linkage between non-blacknose SCS and blacknose sharks south of 34°00′ N. latitude, since fishermen would still be allowed to land blacknose sharks in this area and most of the blacknose sharks are landed there. NMFS is also maintaining the current quota linkages between the aggregated LCS and hammerhead shark management groups in the Atlantic region. In the Gulf of Mexico, based on public comment and additional analyses, NMFS is removing the quota linkage between the non-blacknose SCS and blacknose sharks in the Gulf of Mexico region and prohibiting the retention and landings of blacknose sharks. In order to account for regulatory discards from the prohibition of blacknose sharks, NMFS is adjusting the Gulf of Mexico non-blacknose SCS commercial quota, taking into account the Gulf of Mexico blacknose shark TAC. As for the blacktip, aggregated LCS, and hammerhead shark management groups, NMFS is maintaining the current quota linkages for these management groups in the Gulf of Mexico because of the unknown status of aggregated LCS and the overfished and overfishing status of the hammerhead shark complex.

Comment 9: NMFS received a comment suggesting consideration of the International Commission for the Conservation of Atlantic Tunas (ICCAT) rule that prohibited landings of hammerhead sharks with pelagic

longline gear in the sub-regional quota calculations. The commenter believes that landing percentages by sub-region would be different pre- and post-rulemaking, and should not include the range of years since the fishery has changed due to the rulemaking.

Response: To comply with ICCAT Recommendations 10–07 and 10–08, NMFS implemented a final rule (76 FR 53652; August 29, 2011) prohibiting the retention, transshipping, landing, storing, or selling of hammerhead sharks (except bonnethead sharks) and oceanic whitetip sharks caught in association with ICCAT fisheries. This rule affected the commercial HMS pelagic longline fishery and recreational fisheries for tunas, swordfish, and billfish in the Atlantic Ocean, including the Caribbean Sea and Gulf of Mexico. In the proposed rule for Amendment 6, NMFS did not modify the landings from pelagic longline fishermen to account for that rule change, as few hammerhead sharks were landed by pelagic longline fishermen between 2008 and 2011. Thus, including these calculations would not have impacted the sub-regional quota calculations or NMFS' decision regarding measures adopted in this final rule. In the Atlantic region, NMFS is not implementing sub-regional quotas for the hammerhead shark management group at this time. Instead, NMFS is maintaining the overall hammerhead quota in the Atlantic region. In the Gulf of Mexico region, NMFS is establishing sub-regional quotas for the hammerhead shark management group, but NMFS revised the data used for the sub-regional quota calculation using 2014 eDealer landings data to determine the sub-regional quotas. Since this data is well after the implementation of the ICCAT rule in 2011, the sub-regional quota calculations are based on landings after the rule was in place.

Atlantic Regional and Sub-Regional Quotas

Comment 10: NMFS received some support for sub-regional quotas in the Atlantic region, including from the NCDMF, SCDNR, VAMRC, and MAFMC. Both the SCDNR and VAMRC supported the preferred Alternative C4 for the LCS and SCS fishery management groups, but expressed concern for equitable fishing opportunities when the opening date for the LCS management groups is chosen. The NCDMF, MAFMC, and other constituents supported the preferred Alternative C4, but for only the SCS management group. They did not support implementation of sub-regional quotas for the aggregated LCS and hammerhead shark management groups, requesting that NMFS examine other options for these groups. The NCDMF and MAFMC requested that NMFS implement seasons for the aggregated LCS fishery with 50 percent of the quota being available on January 1 and 50 percent of the quota being available on July 1 or July 15. Other commenters requested that NMFS use inseason trip limit adjustments for the LCS fishery instead of sub-regional quotas. The FWC did not support any of the sub-regional quota alternatives as proposed, but the FWC consulted with Florida fishery participants and FWC supports dividing the Atlantic at 34°00′ N latitude if NMFS establishes sub-regions for either the SCS or LCS fisheries.

Response: Based on public comment and additional analyses, NMFS developed a new preferred alternative, Alternative C8, which maintains the status quo for the LCS and SCS regional commercial quotas and does not apportion these quotas into sub-regions. NMFS will continue to determine season opening dates and adjust the LCS retention limits inseason in order to provide equitable fishing opportunities to fishermen throughout the Atlantic region.

In addition, NMFS is establishing a management boundary line in the Atlantic region along 34°00′ N. latitude for the SCS fishery. South of 34°00′ N. latitude, NMFS is maintaining the quota linkage between non-blacknose SCS and blacknose sharks. North of 34°00′ N. latitude, NMFS is prohibiting the commercial retention of blacknose sharks and removing the quota linkage between non-blacknose SCS and blacknose sharks. Additionally, in order to account for blacknose shark discard mortality north of 34°00′ N. latitude, NMFS is reducing the Atlantic blacknose shark quota from 18 mt to 17.2 mt dw, based on historical landings of blacknose sharks in that area. In establishing this management boundary, as long as quota is available, fishermen south of 34°00′ N. latitude could fish for, land, and sell both blacknose and non-blacknose SCS. However, as soon as either quota is harvested, the entire commercial SCS fishery south of 34°00′ N. latitude will close. For fishermen south of 34°00′ N. latitude, this is status quo. However, in a change from status quo, fishermen north of 34°00′ N. latitude could fish for, land, and sell non-blacknose SCS as long as quota is available, but would not be allowed to land or possess blacknose sharks. Overall, establishing this management boundary could result in commercial fishermen north of 34°00′ N. latitude possessing and landing non-blacknose SCS if non-blacknose SCS quota is available at the same time as commercial fishermen south of 34°00′ N. latitude cannot possess or land any SCS because of the quota linkage between blacknose and non-blacknose SCS. Prohibiting blacknose sharks and removing quota linkages north of 34°00′ N. latitude could have beneficial social and economic impacts for those fishermen, as fishermen in the area above 34°00′ N. latitude would be able to continue fishing for non-blacknose SCS without being constrained by the fishing activities south of 34°00′ N. latitude, where the majority of blacknose sharks are landed. Additionally, these management measures will not hinder blacknose shark rebuilding or have negative impacts on any other SCS because fishermen above and below the management boundary will still be fishing under quotas that are consistent with the most recent stock assessments. However, fishermen south of 34°00′ N. latitude will likely not see any short- and long-term social or economic benefits and will need to continue to avoid blacknose sharks, consistent with the rebuilding plan, in order to land non-blacknose SCS.

Comment 11: The SCDNR did not support Alternative C3, which would create sub-regional quotas at 33°00′ N. latitude, since the sub-regional quota line would split the State of South Carolina and cause confusion with the fishermen and dealers in the area.

Response: As discussed above, NMFS is not implementing sub-regional quotas in the Atlantic based on comments received and additional analyses. NMFS created a new preferred alternative, Alternative C8, which maintains the status quo for the LCS and SCS regional commercial quotas and creates a new management boundary at 34°00′ N. lat. for the blacknose and non-blacknose SCS management groups in the Atlantic region.

Comment 12: NMFS received overall comments on the opening and closing of the LCS and SCS management groups in the Atlantic region. The comments ranged from opening the LCS management group on January 1 or March 1 to maintaining a consistent season opening date every year for the LCS management groups to opening and closing the LCS and SCS management groups together.

Response: NMFS will evaluate several ''Opening Commercial Fishing Season'' criteria (§ 635.27(b)(3)) as well as the new management measures in this final action when determining the opening dates for the Atlantic shark fisheries. The ''Opening Fishing Season'' criteria

consider factors such as the available annual quotas for the current fishing season, estimated season length and average weekly catch rates from previous years, length of the season and fishermen participation in past years, impacts to accomplishing objectives of the 2006 Consolidated HMS FMP and its amendments, temporal variation in behavior or biology of target species (*e.g.*, seasonal distribution or abundance), impact of catch rates in one region on another, and effects of delayed season openings. NMFS will publish the season opening dates of the Atlantic shark fishery and the shark fishery quotas in the 2016 Atlantic shark season specifications proposed and final rules.

Comment 13: NMFS received a number of requests, including from the NCDMF, SCDNR, VAMRC, and MAFMC, to change the Atlantic non-blacknose SCS TAC and quota from Alternative C6 to Alternative C7, to increase the non-blacknose SCS TAC and quota to the highest amount analyzed, because the fishery should not be limited by the bonnethead shark stock assessment, since bonnethead sharks do not comprise a large portion of landings.

Response: After consulting with the HMS Advisory Panel and other constituents and re-reviewing the data from the stock assessments, NMFS is preferring Alternative C7 and implementing a non-blacknose SCS TAC of 489.3 mt dw and a commercial quota of 264.1 mt dw (which is the current adjusted quota). This represents a higher non-blacknose SCS TAC and commercial quota than those preferred in the proposed rule under Alternative C6, likely resulting in shark fishermen taking more trips, in order to land the larger number of non-blacknose SCS allowed. NMFS does not believe that a higher non-blacknose SCS TAC and commercial quota would have a negative impact on the non-blacknose SCS management group, given the results of the SEDAR 34. The projections that were run for Atlantic sharpnose and bonnethead sharks in SEDAR 34 indicated that there was a 70 percent chance that both species would not become overfished or experience overfishing at current harvest levels and could withstand harvest above current levels. NMFS preferred Alternative C6 in the proposed rule to be cautious regarding the ''unknown'' status of bonnethead sharks. However, based on public comments and after reviewing the combined Gulf of Mexico and Atlantic non-blacknose SCS landings in 2014, NMFS found that bonnethead sharks represented only 6 percent of landings, and therefore, limiting the quota based on bonnethead sharks would be overly conservative. Thus, the higher non-blacknose SCS commercial quota under Alternative C7 would continue to allow fishermen to land these species at current levels, while maintaining the Atlantic sharpnose and bonnethead stocks at sustainable levels, without unnecessarily limiting the quota, and thus limiting economic gains, due to bonnethead sharks. Regarding finetooth sharks, while results from the SEDAR 13 stock assessment for finetooth sharks should be viewed cautiously, NMFS does not anticipate that this quota would negatively impact the finetooth shark stock. The quota under Alternative C7 is significantly lower than the maximum non-blacknose SCS quota put in place (332.4 mt dw), which still provided for sustainable harvest of non-blacknose SCS. This combined with the fact that finetooth sharks represented only 21 percent of combined Gulf of Mexico and Atlantic non-blacknose SCS landings in 2014, compared to Atlantic sharpnose representing 73 percent, further supports that this quota would have minimal impacts on the finetooth shark stock. The higher non-blacknose SCS commercial quota under the new preferred Alternative C7 will continue to allow fishermen to land these species at current levels, while maintaining the Atlantic sharpnose, bonnethead, and finetooth shark stocks at sustainable levels.

Comment 14: NMFS received a comment stating that NMFS should implement a commercial retention limit for blacknose sharks that ranged from 100–200 lb dw per trip or establish an incidental SCS retention limit of 16 blacknose sharks per trip to directed and incidental shark limited access permit holders in the Atlantic Region.

Response: In the Final EIS for Amendment 5a to the 2006 Consolidated HMS FMP, NMFS included the consideration of a commercial retention limit for blacknose sharks in Section 2.3 Alternatives Considered But Not Further Analyzed. Blacknose sharks are known to form large schools, and even skilled fishermen with a high success rate of avoiding blacknose sharks may still encounter schools. Applying a blacknose shark retention limit of 16 sharks per trip could result in sets with high regulatory dead discards because the trip limit would be too low to cover the rare events where large numbers of blacknose sharks are incidentally encountered. NMFS also examined the blacknose shark landings from the HMS electronic dealer data in 2013 and 2014 on a per trip basis. In 2013, 285 trips landed blacknose sharks and, in 2014, there were 178 trips that landed blacknose sharks. The majority of these trips landed less than 200 lbs of blacknose sharks per trip. While a blacknose shark commercial retention limit could reduce the incentive for fishermen to avoid catching blacknose sharks, the creation of a commercial retention limit for blacknose sharks could also increase the incentive to maximize landings of blacknose sharks on each trip, thus causing the blacknose quota to be harvested faster and leading to a closure of both the blacknose and non-blacknose SCS quotas. Therefore, NMFS prefers to address blacknose shark landings and discards by linking the blacknose shark and non-blacknose SCS quotas, which should provide greater and more effective incentive for reducing landings of blacknose sharks than a retention limit, thus more effectively managing the blacknose fishery in a manner that maximizes resource sustainability, while minimizing, to the greatest extent possible, socioeconomic impacts.

Gulf of Mexico Regional and Sub-Regional Quotas

Comment 15: NMFS received general support for the idea of sub-regional quotas in the Gulf of Mexico and requests for specific changes to the preferred alternative. The FWC, after consulting with Florida fishery participants, supported dividing the Gulf of Mexico at 88°00' W. longitude. Other commenters also supported changing the sub-regional quota line to 88°00' or 88°30' W. longitude. In general, commenters suggested moving away from the proposed 89°00' W. longitude as they felt this boundary would not create enough geographic separation between the fishing activities of fishermen from the western Gulf of Mexico and those in the eastern Gulf of Mexico. These commenters felt that fishermen from the western Gulf of Mexico were close enough to the boundary that they would easily fish on both sides of the boundary, ultimately compromising the fishing opportunities of fishermen from the eastern Gulf of Mexico (who were further from the boundary between the sub-regions). Commenters also indicated that hammerhead sharks are landed in the western Gulf of Mexico and requested some hammerhead shark quota to the western Gulf of Mexico sub-region so hammerhead sharks can be landed and not discarded.

Response: NMFS proposed to apportion the GOM regional commercial quotas for LCS into western and eastern sub-regions along 89°00' W. longitude,

maintain the hammerhead and aggregated LCS linkages in the eastern sub-region, and remove this linkage and prohibit hammerhead sharks in the western sub-region. In the proposed rule, NMFS also evaluated alternatives which apportion the GOM regional commercial quotas for LCS into western and eastern sub-regions along 89°00' W. and 88°00' W. longitude with maintaining the hammerhead and aggregated LCS linkages in the eastern and western sub-regions. In those alternatives, for the western sub-region of the Gulf of Mexico, the aggregated LCS quota would be linked to a very small hammerhead shark quota (0.1 mt dw; 334 lb dw). Due to the management difficulty of managing such a small quota and to avoid having the aggregated LCS fishery close early, NMFS preferred to prohibit hammerhead sharks in the western sub-region. Based on public comments and additional analyses, and after consulting with the HMS AP, NMFS is apportioning the GOM regional commercial quotas for aggregated LCS, hammerhead, and blacktip shark management groups into eastern and western sub-regional quotas along 88°00' W. long. As the range of Louisiana fishermen extends east beyond 89°00' W. longitude, placing the boundary at this location would have allowed active shark fishermen in the western sub-region to utilize both sub-regional quotas while active shark fishermen in the eastern sub-region would be limited to just the eastern sub-region quota. As such, this sub-regional boundary would have resulted in less equitable economic benefits to fishermen in both sub-regions. NMFS agrees that this is a more appropriate boundary between the sub-regions, as it would provide better geographic separation between the major stakeholders in the GOM, in order to prevent active shark fishermen in the western sub-region from utilizing both sub-regional quotas to the detriment of shark fishermen who fish entirely in the eastern sub-region. This change in the sub-regional split should provide more equitable economic benefits to fishermen in both sub-regions, by allowing them increased likelihood of fully harvesting their sub-regional quota, and maximizing the potential annual revenue they could gain upon implementation of sub-regional quotas in the GOM.

Additionally, NMFS is no longer prohibiting retention of hammerhead sharks in the western sub-region of the GOM. Under the preferred alternative in the proposed rule for Amendment 6, 99.4 percent of the hammerhead shark base annual quota would have been apportioned to the eastern sub-region, while only 0.6 percent would have gone to the western sub-region. Based on these percentages, NMFS felt it was appropriate to maintain the linkage between aggregated LCS and hammerhead sharks in the eastern GOM sub-region because of the overlap of ranges of these management groups. In addition, in the proposed rule, the preferred alternative would have eliminated the linkage between aggregated LCS and hammerhead sharks in the western Gulf of Mexico sub-region and prohibited the harvest and landings of hammerhead sharks in the western Gulf of Mexico sub-region, due to predicted challenges associated with monitoring a small quota of 0.1 mt dw. However, based on public comment, NMFS took another look at the GULFIN landings data originally used for the calculation of the hammerhead shark sub-regional quotas. NMFS became aware that there were errors in how hammerhead sharks were reported in GULFIN, and also that the new hammerhead shark management group (implemented mid-season in 2013 under Amendment 5a to the 2006 Consolidated HMS FMP) impacted the landings data in GULFIN. Due to these issues, landings of hammerhead sharks reported in GULFIN likely underestimate the magnitude and regional distribution of landings in the GOM. To corroborate public comments that indicated there were increased landings of hammerhead sharks in the western sub-region, NMFS reviewed eDealer data from 2014, and decided in this final rule to apportion the hammerhead shark quota between the two sub-regions. This change is consistent with and furthers the fundamental purpose and intent of the rule, as expressed in the proposed rule, to set quotas for the sub-regions that accurately reflect landings in each sub-region. Using the eDealer data better satisfies that intent because it better reflects the current hammerhead shark landings in the Gulf of Mexico. The resultant sub-regional quotas will prevent large numbers of hammerhead sharks from being unnecessarily discarded in the western sub-region.

Comment 16: NMFS received support for Alternative D7 in the GOM region, which would increase the non-blacknose SCS TAC and quotas to the highest amounts analyzed. Commenters felt this alternative would not limit SCS fisheries based on the results of the bonnethead shark stock assessment. Commenters also requested that NMFS remove the quota linkage between the non-blacknose SCS and blacknose shark management groups and prohibit the retention of blacknose sharks in the GOM because the small blacknose shark quota has the potential to close the non-blacknose SCS fishery before the entire non-blacknose SCS quota can be harvested.

Response: In the proposed rule, NMFS proposed to establish a GOM non-blacknose SCS TAC of 954.7 mt dw and a commercial quota of 68.3 mt dw (current adjusted quota) based on the SEDAR 34 stock assessment, which accounted for uncertainty in the bonnethead assessment. However, NMFS has developed a new preferred alternative in this final rule (Alternative D8) based on these comments and additional analyses, establishing a non-blacknose SCS TAC of 999.0 mt dw and increasing the commercial quota to 112.6 mt dw (248,215 lb dw). This new preferred alternative retains the non-blacknose SCS quota originally considered under Alternative D7, but also prohibits blacknose sharks in the GOM and adjusts the commercial quota to account for blacknose shark discards, so that the level of discards would not exceed the 2015 base annual blacknose shark quota of 2.0 mt dw. Because projections from the GOM bonnethead and Atlantic sharpnose shark stock assessments indicated that there was a 70-percent chance that both stocks could withstand harvest levels almost double current levels, NMFS believes there is a relatively low likelihood that the higher non-blacknose SCS TAC and commercial quota would negatively impact the Atlantic sharpnose, bonnethead, or finetooth shark stocks. Based on public comments and a review of landings data, NMFS found that bonnethead sharks represented only 6 percent of the combined Gulf of Mexico and Atlantic non-blacknose SCS landings in 2014, and therefore, limiting the quota based on bonnethead sharks is overly conservative. Finetooth sharks represented only 21 percent of combined Gulf of Mexico and Atlantic non-blacknose SCS landings in 2014, compared to Atlantic sharpnose representing 73 percent, indicating that the increased quota would have minimal impacts on finetooth sharks. Additionally, the higher non-blacknose SCS commercial quota under Alternative D8 would continue to allow fishermen to land these species at current levels, while maintaining the Atlantic sharpnose and bonnethead stocks at sustainable levels, without unnecessarily limiting the quota due to

bonnethead sharks and limiting economic gains.

Additionally, while the commercial non-blacknose SCS quota in Alternative D8 would be lower than the quota considered under Alternative D7, removal of the quota linkage between blacknose and non-blacknose SCS (due to the prohibition of blacknose sharks) would increase the likelihood that fishermen in the GOM could harvest the entire non-blacknose SCS quota. In the Draft EA for Amendment 6, NMFS had stated that prohibiting all landings of blacknose sharks could possibly result in a loss of revenue for fishermen who land small amounts of blacknose sharks (as all interactions would be turned into discards). The socioeconomic benefits gained by access to a larger non-blacknose SCS quota, which would no longer be linked to the blacknose shark quota, would outweigh the potential revenue gained from being able to retain and land blacknose sharks. Fishermen in the GOM have also been requesting a prohibition on landing and retention of blacknose sharks since Amendment 3 to the 2006 Consolidated HMS FMP, when blacknose sharks were separated from the SCS management group and linked to the newly created non-blacknose SCS management group. The small blacknose shark quota has resulted in early closure before the non-blacknose SCS quota could be harvested. However, in recent years, blacknose sharks have not been the limiting factor in initiating closure of the linked SCS management groups in the Gulf of Mexico; instead, it has been landings of non-blacknose SCS either exceeding or being projected to exceed 80 percent of the quota. This combined with the fact that fishermen have demonstrated an ability to largely avoid blacknose sharks with the use of gillnet gear, suggest that mortality of blacknose sharks under Alternative D8 could be lower than that under the current quota.

Modifying Commercial Vessel Upgrading Restrictions

Comment 17: Constituents, including the NCDMF, SCDNR, MAFMC, and FWC, supported NMFS's proposal to remove the commercial vessel upgrading restriction under Alternative E2.

Response: In the proposed rule for Amendment 6, NMFS preferred to remove the current upgrading restrictions for shark limited access permit holders. All the comments received supported this measure. Therefore, in part based on these comments, NMFS is removing the upgrading restrictions for shark limited access permit holders in the final rule.

Comment 18: NMFS received comments to further investigate the need for upgrading restrictions in other HMS permits.

Response: NMFS appreciates the comments and recognizes the need to potentially investigate whether it is appropriate to remove upgrading restrictions for the other commercial HMS permits. However, this request is outside of the scope of this current shark fishery rulemaking. NMFS may consider the need for upgrading restrictions in other HMS permits in a future rulemaking.

General Comments

Comment 19: NMFS received suggestions to stop all shark fishing.

Response: National Standard 1 requires NMFS to prevent overfishing while achieving, on a continuing basis, optimum yield from each fishery for the U.S. fishing industry. NMFS continually monitors the federal shark fisheries, and based on the best available scientific information, takes action needed to conserve and manage the fisheries. The primary goal of Amendment 6 is to implement management measures for the Atlantic shark fisheries that will achieve the objectives of increasing management flexibility to adapt to the changing needs of the shark fisheries, prevent overfishing while and achieving on a continuing basis optimum yield, and rebuilding overfished shark stocks.

Comment 20: NMFS received multiple comments referring to the SEDAR shark stock assessment for Atlantic sharpnose and bonnethead sharks. One commenter believes the SEDAR process is flawed and gravely over-estimates the shark population in the world. Other commenters focused on the list of future SEDAR stock assessments and the timeline of those stock assessments. The NCDMF and other commenters requested that NMFS perform a SEDAR stock assessment on sandbar and dusky sharks as soon as possible. Another commenter would like NMFS to do another SEDAR stock assessment on the Gulf of Mexico blacktip shark and blacknose shark stocks.

Response: Most of the domestic shark stock assessments follow the SEDAR process. This process is also used by the South Atlantic, Gulf of Mexico, and Caribbean Fishery Management Councils and is designed to provide transparency throughout the stock assessment. Generally, SEDAR stock assessments are focused on available data, assessment models, and peer review. Sometimes these stages include face to face meetings; other times, the stages are conducted solely by webinar or conference calls. All meetings, webinars, and conference calls are open to the public. All reports from all stages of the process are available online at *http://sedarweb.org/.*

With regard to the timing of upcoming LCS and SCS SEDAR assessments, NMFS aims to conduct a number of shark stock assessments every year and to regularly reassess these stocks. The number of species that can be assessed each year depends on whether assessments are establishing baselines or are only updates to previous assessments. Assessments also depend on ensuring there are data available for a particular species. Tentatively, in addition to the shark assessments being conducted by ICCAT, NMFS is considering a dusky shark update assessment in 2016 and an update assessment for GOM blacktip sharks in 2017. NMFS has not yet decided on which species to assess in 2018.

Comment 21: NMFS received multiple comments on the status of the sandbar shark population. Commenters expressed concern that the impact of the increased sandbar shark population is now impacting other fisheries (*e.g.,* amberjack, red snapper, grouper, tilefish). In addition, commenters believe that NMFS should implement a small retention limit (1–5 per trip) of sandbar sharks in the commercial fishery.

Response: Before the most recent assessment, sandbar sharks were determined to be overfished and experiencing overfishing in a 2005/2006 stock assessment. NMFS established a rebuilding plan for this species in Amendment 2 in July 2008 (NMFS 2008a). Under that rebuilding plan, NMFS determined that sandbar sharks would rebuild by the year 2070 with a total allowable catch of 220 mt ww (158.3 mt dw). Also, as part of that rebuilding plan, NMFS maintained the bottom longline mid-Atlantic shark closed area, prohibited the landing of sandbar sharks in the recreational fishery, and established a shark research fishery in the commercial fishery. Only fishermen participating in the limited shark research fishery can land sandbar sharks.

The SEDAR 21 sandbar shark stock assessment (2011) evaluated the status of the stock based on new landings and biological data, and projected future abundance under a variety of catch levels in the U.S. Atlantic Ocean, Gulf of Mexico, and Caribbean Sea. The base model used in the SEDAR 21 sandbar shark assessment, an age-structured production model, indicated that the stock is overfished (spawning stock fecundity (SSF) 2009/SSFMSY=0.66),

but no longer experiencing overfishing (F2009/FMSY=0.62). According to the SEDAR 21, the sandbar shark stock status is improving, and the current rebuilding timeframe, with the 2008 TAC of 220 mt ww, provides a greater than 70-percent probability of rebuilding by 2070. Having a 70-percent probability of rebuilding is the level of success for rebuilding of sharks that was established in the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks and carried over in the 2006 Consolidated HMS FMP. This stock assessment also indicates that reducing the TAC from the current 220 mt ww to 178 mt ww would provide a 70-percent chance of rebuilding the stock by the year 2066, a reduction of 4 years from the current rebuilding timeframe. Because the current TAC already provides a greater than 70-percent probability of rebuilding, and because overfishing is not occurring and the stock status is improving, in Amendment 5a to the 2006 Consolidated HMS FMP, NMFS maintained the current TAC and rebuilding plan, consistent with the Magnuson-Stevens Act requirements and the National Standard Guidelines.

In the Final EA for Amendment 6, NMFS considered the implementation of a sandbar shark commercial quota (Section 2.6, Alternative F) that would allow commercial fishermen to incidentally land a limited number of sandbar sharks outside the Atlantic shark research fishery. NMFS explored several different options of distributing the unused sandbar shark research quota. While some commenters requested a limited number of sandbar sharks (between 1 to 5 per trip), the available sandbar shark quota would only provide between 1 and 7 sandbar sharks per vessel per year, not per trip. Under all options considered, NMFS is concerned about monitoring and enforcing such small individual annual retention limits without the monitoring mechanisms that are possible under a catch share scenario. NMFS is also concerned that changes to the shark research fishery could have negative effects on the status of the sandbar shark stock, which has improved and stabilized since the inception of the research fishery in 2008. In addition, NMFS is concerned about potential identification issues and impacts to dusky sharks if fishermen were allowed to incidentally land sandbar sharks outside the shark research fishery. Thus, due to these concerns and the benefits to the sandbar and dusky sharks of current management measures, NMFS prefers to continue to only allow commercial sandbar shark landings as part of the shark research fishery. NMFS may reexamine the commercial sandbar shark quotas once a new stock assessment has been completed.

Comment 22: The NCDMF and FWC request that NMFS consider increasing the federal fishery closure trigger for the shark management groups from 80 percent to greater than 90 percent, because the implementation of weekly reporting requirements for dealers and electronic reporting requirements has improved quota monitoring abilities, and increased the timeliness and accuracy of dealer reporting.

Response: NMFS' goal is to allow shark fishermen to harvest the full quota without exceeding it in order to maximize economic benefits to stakeholders while achieving conservation goals, including preventing overfishing. Based on past experiences with monitoring quotas for HMS species, NMFS believes that the 80-percent threshold works well, allowing for all or almost all of the quota to be harvested without exceeding the quota. As such, NMFS expects that, in general, the quotas would be harvested between the time that the 80-percent threshold is reached and the time that the season actually closes. In addition, NMFS must also account for late reporting by shark dealers even with the improved electronic dealer system and provide a buffer to include landings received after the reporting deadline in an attempt to avoid overharvests. At the spring 2015 HMS Advisory Panel meeting, NMFS discussed some of the difficulties in monitoring the shark fishery quotas. Some of the difficulties in monitoring shark fishery quotas include late dealer reporting, state exemptions allowing shark landings following Federal closures of some shark management groups, and late receipt of paper-based trip ticket state dealer data. The reasons listed above have contributed in some cases to the overharvest of some of the shark management groups. As such, NMFS believes that closing the fishery at 90 percent of the harvested quota would not provide a sufficient buffer and could lead to overharvests. These overharvests could result in reduced quotas in the future since all overharvests would be accounted for when establishing subsequent shark fishing seasons and quotas.

Changes From the Proposed Rule (80 FR 2648, January 20, 2015)

NMFS made numerous changes from the proposed rule, as described below.

1. Commercial Retention Limits (§ 635.24(a)(2)) and sandbar shark research fishery quota (§ 635.27(b)(1)(iii)(A)). In response to public comments received and based on discussions with the NMFS Southeast Fisheries Science Center (SEFSC), NMFS revised the calculations used to evaluate the commercial LCS retention limit for shark directed LAP holders. This final rule increases the commercial LCS retention limit to a maximum of 55 LCS other than sandbar sharks per trip and establishes a default LCS retention limit of 45 LCS other than sandbar sharks per trip. If the LCS quotas are being harvested too slowly or too quickly, the existing regulations allow NMFS to adjust the commercial LCS trip limit inseason to account for spatial and temporal differences in the shark fishery. This final rule also reduces the sandbar shark research fishery quota from the current 116.6 mt dw to 90.7 mt dw, which is an increase from the quota in the proposed rule. These revised measures better correspond with NMFS' intent to increase management flexibility to adapt to the changing needs of the Atlantic shark fisheries, while still providing opportunities to collect scientific data in the sandbar shark research fishery.

2. Atlantic Regional and Sub-Regional Quotas (§ 635.27(b)(1)(i), § 635.27(b)(1)(i)(A)–(D), § 635.28(b)(4)(i) and (iv)). In response to public comment and additional analyses, NMFS has modified a number of the proposed management measures in the Atlantic region related to quotas and quota linkages. First, NMFS is not apportioning the Atlantic regional commercial LCS and SCS quotas along 34°00′ N. lat. into northern and southern sub-regional quotas. For LCS, NMFS is instead maintaining the existing regulations that provide for the LCS retention limit to be adjusted during the fishing season to ensure fishermen throughout the region have opportunities to fish for LCS.

Second, for SCS, NMFS is establishing a management boundary in the Atlantic region along 34°00′ N. lat. Retention of blacknose sharks is prohibited north of 34°00′ N. lat., and fishermen fishing north of 34°00′ N. lat. can fish for non-blacknose SCS as long as quota is available. South of 34°00′ N. lat., the quota linkage between blacknose and non-blacknose SCS is maintained, and fishermen in this area may only fish for SCS when quota of both blacknose and non-blacknose SCS is available.

Third, this final rule includes a non-blacknose SCS TAC of 489.3 mt dw (1,078,711 lb dw) and a commercial quota of 264.1 mt dw (582,333 lb dw (*i.e.,* the current adjusted quota)), which is an increase from 401.3 mt dw

(884,706 lb dw) TAC and 176.1 mt dw (388,222 lb dw (*i.e.,* current base) commercial quota in the proposed rule. The final TAC and commercial quota are consistent with results of the 2013 stock assessments, which showed that both species would not become overfished or experience overfishing at these harvest levels, and consistent with NMFS' objectives of preventing overfishing while achieving on a continuing basis optimum yield and rebuilding overfished shark stocks.

The removal of quota linkages north of 34°00′ N. lat., and the increased non-blacknose SCS commercial quota would allow fishermen to maximize fishing opportunities and additional revenues from harvesting more non-blacknose SCS without being constrained by fishing activities south of 34°00′ N. lat., where the majority of blacknose sharks are landed. This new management boundary along 34°00′ N. lat. will not impact LCS, as NMFS will maintain the existing quota linkages for the LCS management groups across the Atlantic region.

3. Gulf of Mexico Regional and Sub-Regional Quotas (§ 635.27(b)(1)(ii), § 635.27(b)(1)(ii)(A)–(E), § 635.28(b)(4)(ii) and (iii)). Similar to the Atlantic region, NMFS has modified a number of the proposed management measures for the GOM region in response to public comment and additional analyses. While NMFS is still apportioning the GOM regional commercial quotas for aggregated LCS, hammerhead, and blacktip shark management groups into eastern and western sub-regional quotas, the boundary line has changed from 89°00′ W. long. to 88°00′ W. long. Additionally, this final rule will not prohibit retention of hammerhead sharks in the western sub-region of the GOM, but instead, apportions the hammerhead shark quota between the two sub-regions.

Changes were also made to management measures impacting the SCS fishery in the GOM region. NMFS proposed to establish a non-blacknose SCS TAC of 954.7 mt dw and a commercial quota of 68.3 mt dw (150,476 lb dw (*i.e.,* the current adjusted quota)). Based on public comments and additional analyses revealing the interaction ratio between non-blacknose SCS and blacknose sharks in the GOM, in the final rule, NMFS is implementing a non-blacknose SCS TAC of 999.0 mt dw (2,202,395 lb dw), increasing the commercial quota to 112.6 mt dw (248,215 lb dw), and prohibiting the retention of blacknose sharks in the entire GOM region. These non-blacknose SCS TAC and commercial quota levels would account for all blacknose shark mortality, including blacknose shark discards that were previously landed. This change is consistent with NMFS' efforts to reduce regulatory discards, as the level of discards would not exceed the 2015 base annual blacknose shark quota of 2.0 mt dw, and fishermen have demonstrated an ability to largely avoid blacknose sharks with the use of gillnet gear since Amendment 3. It also simultaneously allows fishermen to maximize revenue from the non-blacknose SCS landings, without concerns of early closure due to the linkage of the non-blacknose SCS and blacknose shark management groups.

4. Blacktip shark fishery closure (§ 635.28(b)(5)). NMFS is making a minor, non-substantive change to language in the regulations regarding the fishery closure procedure for blacktip sharks in the GOM. This change is merely a language clarification, and it does not change the substance of the paragraph or agency practice. In 2008, NMFS finalized regulations as part of Amendment 2 to the 2006 Consolidated HMS FMP (73 FR 40658; July 15, 2008) that requires NMFS to close shark management groups or regional areas once the landings of that shark management group or regional area have reached or are projected to reach 80 percent of the available quota. NMFS currently uses this regulation to close shark species groups and regional areas and is not changing that regulation in this final rule; all shark management groups will continue to close when landings reach, or are projected to reach, 80 percent of the relevant quota. In the final rule for Amendment 5a to the 2006 Consolidated HMS FMP (78 FR 40318; July 3, 2013), NMFS established a separate Gulf of Mexico blacktip shark management group, established that NMFS could close the Gulf of Mexico blacktip shark management group if Gulf of Mexico blacktip shark landings are less than 80 percent of the relevant quota, and implemented criteria for NMFS to consider before closing the Gulf of Mexico blacktip shark management group at less than 80 percent of the relevant quota. As described in that final rule and Amendment 5a (78 FR 40318; July 3, 2013), NMFS' intent was to ''maintain flexibility to close the Gulf of Mexico blacktip shark management group depending on several criteria to ensure that the bycatch of hammerhead sharks and aggregated LCS would not result in mortality that would exceed the TAC of either management group.'' As explained in that 2013 final rule, NMFS' intent was that NMFS could close the Gulf of Mexico blacktip management group, based on consideration of the criteria listed in paragraph § 635.28(b)(5), after, or at the same time as, the hammerhead and aggregated LCS management groups close, to ensure that bycatch of hammerhead sharks and aggregated LCS does not result in mortality that would exceed the TAC of either management group. Since publication of that 2013 final rule, NMFS has found that the language was confusing regarding what actions require consideration of the criteria in § 635.28(b)(5). As a result, in this final rule, NMFS has revised § 635.28 (b)(5) to clarify that, consistent with the language and intent of the final rule implementing Amendment 5a, NMFS would consider those criteria only when NMFS is considering closing the unlinked blacktip shark management group in the Gulf of Mexico before landings reach, or are expected to reach, 80 percent of the quota.

5. Atlantic Tuna Longline category (§ 635.4(1)(2)(iv) and (v)). NMFS is making a minor, non-substantive change to language in the regulations clarifying that the name of the ''tuna limited access permit'' previously referenced in two places in the regulations is the ''Atlantic Tuna Longline category limited access permit.'' Paragraphs (1)(2)(iv) and (v) of § 635.4 have been revised to clarify the language referring to the limited access permit by its name. This is the only tuna limited access permit that NMFS currently has, and therefore, it is more appropriate to reference the permit by name. This change also makes these references consistent with the language throughout 50 CFR part 635, which refers to the ''Atlantic Tuna Longline category limited access permit.'' This change is merely a language clarification, and it does not change the substance of the paragraph or agency practice.

Commercial Fishing Season Notification

Pursuant to the measures being implemented in this final rule, the commercial LCS retention limit will be 45 LCS other than sandbar sharks per trip, unless further modified by NMFS. The current 2015 adjusted base quotas, preliminary 2015 landings, annual base quotas under Amendment 6, and information on whether the fisheries for those quotas will remain open or will re-open as a result of this final rule are located in Tables 1 and 2.

TABLE 1—2015 LARGE AND SMALL COASTAL SHARK QUOTAS AND LANDINGS BEFORE AMENDMENT 6. NOTE: 1 METRIC TON = 2,204.6 LB.

Region	Management group	2015 Base quota (A)	2015 Adjusted annual quota [1] (B)	Preliminary 2015 landings [2] (C)	Remaining 2015 quota (B − C = D)
No regional quota	Sandbar shark research fishery	116.6 mt dw (257,056 lb dw)	116.6 mt dw (257,056 lb dw)	60.6 mt dw (133,496 lb dw)	56.0 mt dw (123,560 lb dw).
Atlantic	Aggregated Large Coastal Sharks.	168.9 mt dw (372,552 lb dw)	168.9 mt dw (372,552 lb dw)	12.3 mt dw (27,100 lb dw)	156.6 mt dw (345,452 lb dw).
	Hammerhead Sharks	27.1 mt dw (59,736 lb dw)	27.1 mt dw (59,736 lb dw)	0.7 mt dw (1,476 lb dw)	26.4 mt dw (58,260 lb dw).
	Non-Blacknose Small Coastal Sharks.	176.1 mt dw (388,222 lb dw)	176.1 mt dw (388,222 lb dw)	98.6 mt dw (217,360 lb dw)	77.5 mt dw (170,862 lb dw).
	Blacknose Sharks	18.0 mt dw (39,749 lb dw)	17.5 mt dw (38,638 lb dw)	20.4 mt dw (44,966 lb dw)	−2.9 mt dw (−6,328 lb dw).
Gulf of Mexico	Blacktip Sharks	256.6 mt dw (565,700 lb dw)	328.6 mt dw (724,302 lb dw)	291.1 mt dw (641,771 lb dw)	37.5 mt dw (82,531 lb dw).
	Aggregated Large Coastal Sharks.	157.5 mt dw (347,317 lb dw)	156.5 mt dw (344,980 lb dw)	150.4 mt dw (331,479 lb dw)	6.1 mt dw (13,501 lb dw).
	Hammerhead Sharks	25.3 mt dw (55,722 lb dw)	25.3 mt dw (55,722 lb dw)	13.8 mt dw (30,326 lb dw)	11.5 mt dw (25,396 lb dw).
	Non-Blacknose Small Coastal Sharks.	45.5mt dw (100,317 lb dw)	45.5mt dw (100,317 lb dw)	46.2 mt dw (101,948 lb dw)	−0.7 mt dw (−1,631 lb dw).
	Blacknose Sharks	2.0 mt dw (4,513 lb dw)	1.8 mt dw (4,076 lb dw)	1.0 mt dw (2,096 lb dw)	0.8 mt dw (1,980 lb dw)

[1] On December 2, 2014, NMFS published a final rule (79 FR 71331) to implement the 2015 shark fishing season quotas.
[2] Landings are from January 1, 2015, through July 17, 2015.

TABLE 2—LARGE AND SMALL COASTAL SHARK QUOTAS AND FISHERY RE-OPENINGS AS A RESULT OF THIS FINAL ACTION. NOTE: THIS ACTION INCREASES BASE QUOTAS FOR NON-BLACKNOSE SCS MANAGEMENT GROUPS AND DECREASES THE BASE QUOTAS FOR THE SANDBAR SHARK RESEARCH FISHERY AND THE BLACKNOSE SHARK MANAGEMENT GROUPS. FOR ALL OTHER MANAGEMENT GROUPS, THE BASE QUOTAS UNDER THIS ACTION ARE THE SAME AS THE PREVIOUS BASE QUOTAS. THIS TABLE REFERS BACK TO THE 2015 BASE QUOTA (COLUMN A), PRELIMINARY 2015 LANDINGS (COLUMN C), AND REMAINING 2015 QUOTA (COLUMN D) IN TABLE 1. 1 METRIC TON = 2,204.6 LB.

Region	Management group	Sub-Region	Annual base quotas under Amendment 6 (E)	Remaining quota (If base quota remained the same, this is equal to column D in Table 1. If base quota changed, then E − C from Table 1 = F)	Percent of Amendment 6 quota landed to date ((E − F)/E × 100)	Will fishery remain open or re-open with implementation of Amendment 6?
No regional quota	Sandbar shark research fishery.	N/A	90.7 mt dw (199,943 lb dw).	30.1 mt dw (66,447 lb dw)	67%	Yes.
Atlantic	Aggregated Large Coastal Sharks.	N/A	Same as Column A. 168.9 mt dw (372,552 lb dw).	Same as Column D. 156.6 mt dw (345,452 lb dw)	7	Yes.
	Hammerhead Sharks		Same as Column A. 27.1 mt dw (59,736 lb dw)	Same as Column D. 26.4 mt dw (58,260 lb dw)	2	Yes.
	Non-Blacknose Small Coastal Sharks.		264.1 mt dw (582,333 lb dw).	165.5 mt dw (364,973 lb dw)	37	Yes, North of 34° N. latitude only.
	Blacknose Sharks		17.2 mt dw (37,921 lb dw)	−3.2 mt dw (−7,045 lb dw)	119	No.
Gulf of Mexico	Blacktip Sharks	Eastern	9.8% of Column A. 25.1 mt dw (55,439 lb dw)	9.8% of Column D. 3.7 mt dw (8,088 lb dw)	85	No.

TABLE 2—LARGE AND SMALL COASTAL SHARK QUOTAS AND FISHERY RE-OPENINGS AS A RESULT OF THIS FINAL ACTION. NOTE: THIS ACTION INCREASES BASE QUOTAS FOR NON-BLACKNOSE SCS MANAGEMENT GROUPS AND DECREASES THE BASE QUOTAS FOR THE SANDBAR SHARK RESEARCH FISHERY AND THE BLACKNOSE SHARK MANAGEMENT GROUPS. FOR ALL OTHER MANAGEMENT GROUPS, THE BASE QUOTAS UNDER THIS ACTION ARE THE SAME AS THE PREVIOUS BASE QUOTAS. THIS TABLE REFERS BACK TO THE 2015 BASE QUOTA (COLUMN A), PRELIMINARY 2015 LANDINGS (COLUMN C), AND REMAINING 2015 QUOTA (COLUMN D) IN TABLE 1. 1 METRIC TON = 2,204.6 LB.—Continued

Region	Management group	Sub-Region	Annual base quotas under Amendment 6 (E)	Remaining quota (If base quota remained the same, this is equal to column D in Table 1. If base quota changed, then E − C from Table 1 = F)	Percent of Amendment 6 quota landed to date ((E − F)/E × 100)	Will fishery remain open or re-open with implementation of Amendment 6?
	.....	Western	90.2% of Column A. 231.5 mt dw ... (510,261 lb dw).	90.2% of Column D. 33.8 mt dw ..... (74,443 lb dw) ..	85	No.
	Aggregated Large Coastal Sharks.	Eastern	54.3% of Column A. 85.5 mt dw ..... (188,593 lb dw).	54.3% of Column D. 3.3 mt dw ..... (7,331 lb dw)	96	No.
	.....	Western	45.7% of Column A. 72.0 mt dw ..... (158,724 lb dw).	45.7% of Column D. 2.8 mt dw ..... (6,170 lb dw)	96	No.
	Hammerhead Sharks	Eastern	52.8% of Column A. 13.4 mt dw ..... (29,421 lb dw)	52.8% of Column D. 6.1 mt dw ..... (13,409 lb dw) ..	54	No.
	.....	Western	47.2% of Column A. 11.9 mt dw ..... (26,301 lb dw)	47.2% of Column D. 5.4 mt dw ..... (11,987 lb dw) ..	54	No.
	Non-Blacknose Small Coastal Sharks.	N/A	112.6 mt dw ... (248,215 lb dw).	66.4 mt dw ..... (146,267 lb dw)	41	Yes.
	Blacknose Sharks	N/A	0.0 mt dw ..... (0 lb dw)	0.0 mt dw ..... (0 lb dw)	—	No.

As described in the 2015 shark fishing season rule (79 FR 71331, December 2, 2014) that established the opening dates and adjusted the 2015 quotas based on over- and underharvests from previous years, the commercial quotas for the GOM aggregated LCS, GOM blacknose shark, and Atlantic blacknose shark management groups were exceeded in 2014 and previous fishing seasons. As such, if NMFS were to re-open these fisheries, the new base annual quotas established in this final rule would have to be adjusted for overharvests. However, on May 3, 2015 (80 FR 24836, May 1, 2015), the GOM blacktip, GOM aggregated LCS, and GOM hammerhead shark management groups were closed since the harvest of the blacktip and aggregated LCS management groups exceeded 80 percent of available commercial quotas. The 2015 landings of these GOM LCS management groups also exceed the new sub-regional LCS quotas in this final rule. Because the LCS quotas are not increasing, NMFS is not re-opening the GOM LCS management group quota upon publication of the final rule.

Regarding blacknose sharks, since this final rule prohibits the retention of blacknose sharks in the GOM region, NMFS does not need to adjust the commercial blacknose shark quota based on previous overharvests, as the new blacknose shark quota would be 0 mt dw. As for GOM non-blacknose SCS, this final rule will re-open the GOM non-blacknose SCS fishery with a quota of 112.6 mt dw. Landings of non-blacknose SCS in the GOM are currently at 41% of this new quota.

Additionally, in this final rule, NMFS adjusts the Atlantic blacknose shark management group based on overharvest from previous years. On June 7, 2015, the Atlantic blacknose shark and non-blacknose SCS management groups were closed since the harvest of the blacknose shark management group exceeded 80 percent of the available quota. Since the increased Atlantic non-blacknose SCS quota under this final rule has not been exceeded, NMFS will re-open the Atlantic non-blacknose SCS fishery, for fishermen in the area north of the management boundary at 34°00′ N. lat. only, based on the new management measures in this final rule. The fishery would have a quota of 264.1 mt dw, and current landings of non-blacknose SCS in the Atlantic are currently at 37% of this new quota.

Classification

The NMFS Assistant Administrator for Fisheries (''AA'') has determined that this final rule is consistent with the

2006 Consolidated Atlantic HMS FMP and its amendments, the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The AA finds that there is good cause under 5 U.S.C. 553(b)(B) to waive notice and comment for the revised Gulf of Mexico blacktip shark fishery closure language in § 635.28(b)(5) and the ''Atlantic Tuna Longline category limited access permit'' language in § 635.4(1)(2)(iv) and (v). NMFS did not propose these specific changes in the proposed rule for Amendment 6. However, notice and comment on these language changes is unnecessary, because the changes are only minor, non-substantive changes, they do not change agency practice, and they will have no impact on the public. The revision regarding the Gulf of Mexico blacktip shark fishery closure language does not change the timing or procedures for closure of the Gulf of Mexico blacktip shark management group, it merely clarifies, consistent with the language and intent of the final rule implementing Amendment 5a to the 2006 Consolidated HMS FMP (78 FR 40318; July 3, 2013), that NMFS would consider the criteria in § 635.28(b)(5) only when NMFS closes the unlinked blacktip shark management group in the Gulf of Mexico before landings reach, or are expected to reach, 80 percent of the quota. The revision regarding the Atlantic Tuna Longline category limited access permit language is a technical change. It does not change the name of the permit or change what permit is being referenced, it merely clarifies the language by referring to the permit by its name. These changes do not change the meaning of the paragraphs or NMFS practice. Because these are minor, non-substantive language changes, there would be no public interest in them, and therefore, notice and comment are unnecessary.

The AA finds that there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date for the language changes regarding the Gulf of Mexico blacktip shark fishery closure process and the ''Atlantic Tuna Longline category limited access permit'' references. Delaying the effectiveness of the revised language is unnecessary, because these changes are minor, non-substantive, technical changes, they do not change agency practice, and they will have no impact on the public. These revisions simply clarify the language describing the existing process for how NMFS may close the unlinked blacktip shark management group in the Gulf of Mexico and clarify the tuna permit references by referring to the limited access permit by its name.

The AA finds that certain measures in this final rule are exempt from the 30-day delay in effective date because they relieve a restriction, 5 U.S.C. 553(d)(1). First, in the Atlantic region, the non-blacknose SCS fishery is currently closed. However, upon implementation of this final rule, the non-blacknose SCS fishery could reopen for fishermen in the area north of the management boundary at 34°00′ N. lat. As explained above, establishing a management boundary in the Atlantic region along 34°00′ N. lat. for the SCS fishery and removing the quota linkage between blacknose and non-blacknose SCS north of 34°00′ N. lat. (due to the prohibition of blacknose sharks) would relive a restriction on fishermen north of 34°00′ N. lat. due to a species (blacknose sharks) that is not prevalent in that area. There is good cause to waive the delay in effectiveness of the management boundary and quota linkage, because this would allow positive economic and ecological impacts as fishermen would be able to land non-blacknose SCS north of 34°00′ N. lat. instead of discarding them. Second, in the Gulf of Mexico, this final rule increases the non-blacknose SCS quota, increases opportunities to harvest that quota, and reopens the fishery. As described above, prohibiting the retention of blacknose sharks in the GOM would relive the quota linkage restriction with the non-blacknose SCS. There is good cause to waive the delay in effectiveness of the blacknose shark prohibition in the GOM, because this would allow positive economic impacts as fishermen and provide for optimum yield from the fishery. Finally, this final rule removes upgrading restrictions on vessels.

In addition, for other measures in this final rule, the AA finds that there is good cause under 5 U.S.C. 553(d)(3) to waive the delay in effective date. The 30-day delay provides a reasonable opportunity for the regulated community to come into compliance with, or take other action with respect to, a final rule. As described further here, NMFS believes that there is no need to delay the effective date of the remaining measures in this rule, as they do not require specific action from the public and the public does not need time to come into compliance with the measures. Further, implementing this final rule quickly is in the public interest: Measures in this rule increase management flexibility and economic benefits and provide for optimum yield from the fishery, consistent with Magnuson-Stevens Act conservation and management requirements.

As reflected in Table 2, several fisheries (*i.e.*, Atlantic blacknose sharks, eastern and western Gulf of Mexico blacktip sharks, eastern and western Gulf of Mexico aggregated LCS, and eastern and western Gulf of Mexico hammerhead sharks) are currently closed, and this rule will not result in them being reopened. As a result, there is no further action that the public needs to take. Under the current regulations, fishermen targeting LCS in the Atlantic region are subject to the 36 LCS other than sandbar shark commercial retention limit. This rule will increase that limit to a maximum of 55 LCS other than sandbar sharks with a default limit of 45 LCS per trip. There is good cause to waive the 30-day delay for the increased retention limit, because this change would allow for immediate positive economic and ecological impacts, as fishermen would be able to have more profitable trips and discard fewer sharks with the higher commercial retention limit, and no further action is required from the public to attain these positive impacts. Related to that, this final rule reduces the sandbar research fishery quota. There is good cause to waive the delay in effectiveness of the revised sandbar shark quota, because that lower quota is needed in order to account for additional dead discards of sandbar sharks that will occur under the increased commercial retention limit, and thus to ensure that sandbar sharks continue on the current rebuilding plan for the stock. Regarding the apportioning of the GOM regional commercial quotas for aggregated LCS, blacktip, and hammerhead sharks into western and eastern sub-regional quotas along 88°00′ W. long., NMFS believes that there is no need to delay the effective date of this measures in this rule, as these measures do not require specific action from the public and the public does not need time to come into compliance with the measures. In addition, all of these management measures are so closely tied together and directly impact shark fishermen that it is in the public's best interest to have the management measures all go into effect at the same time.

A final regulatory flexibility analysis (FRFA) was prepared for this rule. The FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA), and a summary of the analyses completed to support the action. The full FRFA and analysis of economic and ecological impacts are available from NMFS (see **ADDRESSES**). A summary of the FRFA follows.

Section 604(a)(1) of the Regulatory Flexibility Act (RFA) requires a succinct statement of the need for and objectives of the rule. Chapter 1 of the Final EA and the final rule fully describes the need for and objectives of this final rule. The purpose of this final rulemaking, consistent with the Magnuson-Stevens Act, and the 2006 Consolidated HMS FMP and its amendments, is to enact management measures that increase management flexibility to adapt to the changing needs of the Atlantic shark fisheries, prevent overfishing while achieving on a continuing basis optimum yield, and rebuilding overfished shark stocks. Management measures in Amendment 6 are designed to respond to the problems facing Atlantic commercial shark fisheries, such as commercial landings that exceed the quotas, declining numbers of fishing permits since limited access was implemented, complex regulations, derby fishing conditions due to small quotas and short seasons, increasing numbers of regulatory discards, and declining market prices.

Section 604(a)(2) of the RFA requires a summary of the significant issues raised by the public comments in response to the IRFA, a summary of the assessment of the Agency of such issues, and a statement of any changes made in the rule as a result of such comments. NMFS received many comments on the proposed rule and the Draft EA during the public comment period. A summary of these comments and the Agency's responses, including changes as a result of public comment, are included above. NMFS did not receive comments specifically on the IRFA, though NMFS did receive comments on the potential economic impacts of this rule generally, and those comments and NMFS' responses are discussed under comments 2, 3, 5, 6, 7, 8, 10, 13, 15, 16, 21, and 22 above.

Section 604(a)(3) of the RFA requires the Agency to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made in the rule as a result of such comments. NMFS did not receive any comments from the Chief Counsel for Advocacy of the SBA in response to the proposed rule.

Section 604(a)(4) of the RFA requires Agencies to provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States, including fish harvesters. The SBA size standards are $20.5 million for finfish fishing, $5.5 million for shellfish fishing, and $7.5 million for other marine fishing, for-hire businesses, and marinas (79 FR 33467; June 12, 2014). NMFS considers all HMS permit holders to be small entities because they had average annual receipts of less than $20.5 million for finfish-harvesting. The commercial shark fisheries are comprised of fishermen who hold shark directed or incidental limited access permits and the related shark dealers, all of which NMFS considers to be small entities according to the size standards set by the SBA. The final rule would apply to the approximately 208 directed commercial shark permit holders, 255 incidental commercial shark permit holders, and 100 commercial shark dealers as of July 2015.

The final rule would apply to the 464 commercial shark permit holders in the Atlantic shark fishery, based on an analysis of permit holders as of October 2014. Of these permit holders, 206 have directed shark permits and 258 hold incidental shark permits. Not all permit holders are active in the fishery in any given year. Active directed permit holders are defined as those with valid permits that landed one shark based on HMS electronic dealer reports. Based on 2014 HMS electronic dealer data, 24 shark directed permit holders were active in the Atlantic and 20 shark directed permit holders were active in the Gulf of Mexico. NMFS has determined that the final rule would not likely affect any small governmental jurisdictions.

Section 604(a)(5) of the RFA requires Agencies to describe any new reporting, record-keeping and other compliance requirements. The action does not contain any new collection of information, reporting, record-keeping, or other compliance requirements.

The RFA requires a description of the steps the Agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and the reason that each one of the other significant alternatives to the rule considered by the Agency that affect small entities was rejected. These impacts are discussed below and in the Final EA/RIR/FRFA for Amendment 6. Additionally, the RFA (5 U.S.C. 603(c)(1)–(4)) lists four general categories of ''significant'' alternatives that could assist an agency in the development of significant alternatives. These categories of alternatives are: Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; use of performance rather than design standards; and, exemptions from coverage of the rule for small entities.

In order to meet the objectives of this rule, consistent with the Magnuson-Stevens Act and other applicable law, such as the Endangered Species Act, we cannot exempt small entities or change the reporting requirements only for small entities because all the entities affected are considered small entities. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act. Thus, there are no alternatives considered under the third category. As described below, NMFS analyzed several different alternatives in this rulemaking and provided a rationale for identifying the preferred alternative to achieve the desired objective.

The alternatives considered and analyzed are described below. The FRFA assumes that each vessel will have similar catch and gross revenues to show the relative impact of the proposed action on vessels.

Permit Stacking

Under Alternative A1, the preferred alternative, NMFS would not implement permit stacking for the shark directed limited access permit holders. NMFS would continue to allow only one directed limited access permit per vessel and thus one retention limit. The current retention limit of 36 LCS per trip would result in potential trip revenues of $1,184 (1,224 lb of meat, 61 lb of fins) per vessel, assuming an ex-vessel price of $0.58 for meat and $7.68 for fins. It is likely that this alternative could possibly have minor adverse economic impacts in the long term, because if fishermen are unable to retain an increased number of LCS per trip by stacking permits, the profitability of each trip could decline over time, due to declining prices for shark products and increasing prices for gas, bait, and other associated costs. The No Action alternative could also have neutral indirect impacts to those supporting the commercial shark fisheries, since the retention limits, and thus current fishing efforts, would not change under this alternative.

Under Alternative A2, NMFS would allow fishermen to concurrently use a maximum of two shark directed permits on one vessel, which would result in aggregated, and thus higher, trip limits. Under the current LCS retention limit of 36 LCS, this would allow a vessel with two stacked permits to have a LCS retention limit of 72 LCS per trip. This new retention limit would result in potential trip revenues of $2,368 (2,448 lb of meat, 122 lb of fins) per vessel, assuming an ex-vessel price of $0.58 for meat and $7.68 for fins, which is an increase of $1,184 per trip compared to the status quo alternative. For fishermen that currently have two directed limited access permits, this alternative would have short-term minor beneficial economic impacts because these fishermen would be able to stack their permits and avail themselves of the retention limit of 72 LCS per trip. The higher retention limit is likely to make each trip more profitable for fishermen, as well as more efficient, if they decide to take fewer trips and in turn save money on gas, bait, and other associated costs. However, the current number of directed permits in the Atlantic region is 136, and 130 of those permits have different owners. In the Gulf of Mexico, of the 83 directed shark permits, 73 have different owners. Therefore, it is unlikely that many of the current directed shark permit holders would be able to benefit from this alternative in the short-term. In addition, the cost of one directed shark permit can run anywhere between $2,000 and $5,000, which could be difficult for many shark fishermen to afford. For fishermen that do not currently have more than one directed shark permit, this alternative could have long-term minor beneficial impacts if these fishermen are able to acquire an additional permit and offset the cost of the additional permit by taking advantage of the potential economic benefits of the higher retention limits. Nevertheless, this alternative is unlikely to have beneficial economic impacts for the shark fishery as whole because only shark fishermen that could afford to buy multiple shark permits would benefit from the higher retention limit and higher revenues whereas those shark fishermen that cannot afford to buy a second directed shark permit would be at a disadvantage, unable to economically benefit from the higher retention limits. Given the current make-up of the shark fishery, which primarily consists of small business fishermen with only one permit, and the cost of the additional permit, this could potentially lead to negative economic impacts among the directed shark permit holders if those fishermen that currently have multiple directed permits or that could afford to buy an additional directed permit gain an economic advantage.

Under Alternative A3, NMFS would allow fishermen to concurrently use a maximum of three shark directed permits on one vessel, which would result in aggregated, and thus higher, trip limits. Under the current LCS retention limit of 36 LCS, this would mean that a vessel with three stacked permits would have a LCS retention limit of 108 LCS per trip. This alternative would allow shark directed permit holders to retain three times as many LCS per trip then the current retention limit. This new retention limit would result in potential trip revenues of $3,552 (3,672 lb of meat, 184 lb of fins) per vessel, assuming an ex-vessel price of $0.58 for meat and $7.68 for fins, which is an increase of $2,368 per trip compared to the status quo alternative. The higher retention limit is likely to make each trip more profitable for fishermen, as well as more efficient, if they decide to take fewer trips and in turn save money on gas, bait, and other associated costs. Similar to Alternative A2, this alternative would have short-term minor beneficial economic impacts for fishermen that currently have three shark directed limited access permits, because these fishermen would be able to stack their permits and avail themselves of the retention limit of 108 LCS per trip. As mentioned above, the current number of shark directed permit holders is 219, with 93 percent having different owners. Therefore, it is unlikely that many of the current directed shark permit holders currently hold three directed shark permits and would be able to benefit from this alternative in the short-term. For fishermen who do not currently have more than one directed shark permit, this alternative could have larger long-term beneficial economic impacts than Alternative 2, if these fishermen are able to acquire two additional permits and offset the cost of the additional permits by taking advantage of the potential economic benefits of retaining up to 108 LCS per trip. However, for the same reasons discussed for Alternative A2, this alternative is unlikely to have economic benefits for those shark fishermen that cannot afford to buy two additional directed permits, and thus would be unable to economically benefit from a higher retention limit. Thus, given the current make-up of the shark fishery, Alternative A3 could potentially lead to more inequity and unfairness among the directed shark permit holders than Alternative A2, especially if those fishermen that currently have multiple directed permits or that could afford to buy additional directed permits gain an economic advantage under this alternative.

Commercial Retention Limits

Alternative B1 would not change the current commercial LCS retention limit for directed shark permit holders. The retention limit would remain at 36 LCS other than sandbar sharks per trip for directed permit holders. This retention limit would result in potential trip revenues of $1,184 (1,224 lb of meat, 61 lb of fins), assuming an ex-vessel price of $0.58 for meat and $7.68 for fins. It is likely that this alternative would have short-term neutral economic impacts, since the retention limits would not change under this alternative. However, not adjusting the retention limit would have long-term minor adverse economic impacts, due to the expected continuing decline in prices for shark products and increase in gas, bait, and other associated costs, which would lead to declining profitability of individual trips. In recent years, there have been changes in federal and state regulations, including the implementation of Amendment 5a and state bans on the possession, sale, and trade of shark fins, which have impacted shark fishermen. In addition to federal and state regulations, there have also been many international efforts to prohibit shark finning at sea, as well as campaigns targeted at the shark fin soup markets. All of these efforts have impacted the market and demand for shark fins. In addition, NMFS has seen a steady decline in ex-vessel prices for shark fins in all regions since 2010.

Alternative B2, the preferred alternative, would increase the LCS retention limit to a maximum of 55 LCS other than sandbar sharks per trip for shark directed permit holders and reduce the sandbar shark research fishery quota to 90.7 mt dw (199,943 lb dw). NMFS would also set the default LCS retention limit to 45 LCS other than sandbar sharks per trip for shark directed permit holders but could adjust the retention limits to account for spatial, temporal, and other differences in the shark fisheries. This alternative would allow shark directed permit holders to retain 19 more LCS per trip than the current retention limit if the retention limit were increased to 55 LCS other than sandbar sharks per trip during the fishing season. Under a retention limit of 55 LCS other than sandbar sharks per trip, the potential trip revenues would be $1,809 (1,870 lb

of meat, 94 lb of fins), assuming an ex-vessel price of $0.58 for meat and $7.68 for fins. Under the 45 LCS other than sandbar sharks per trip, the potential trip revenues would be lower at $1,488 (1,530 lb of meat, 77 lb of fins), assuming an ex-vessel price of $0.58 for meat and $7.68 for fins. This alternative would have short- and long-term direct minor beneficial socioeconomic impacts under both commercial retention limits, since shark directed permit holders could land more sharks per trip when compared to the current retention limit of 36 LCS per trip. The higher retention limit is likely to make each trip more profitable for fishermen, as well as more efficient, if they decide to take fewer trips, and in turn save money on fuel, bait, and other associated costs. Regarding the shark research fishery, this alternative could cause an average annual loss of $68,307, since the sandbar research fishery quota would be reduced by 57,113 lb dw. If NMFS continues to select the same number of vessels as in 2015, this alternative would impact 7 shark research vessel participants. Based on this number, the total average annual gross revenue loss for each shark research fishery vessel would be $9,758 per vessel. This potential lost income for the research fishery could be positive for commercial fishermen, since the increased retention limit could make trips more profitable. NMFS estimates that this reduction in the sandbar research fishery quota would have neutral socioeconomic impacts, based on current limited resources available to fund observed trips in the fishery and the current harvest level of the sandbar research fishery quota. In 2014, the vessels participating in the Atlantic shark research fishery landed 54.2 mt dw (119,527 lb dw), or 46 percent, of the available sandbar shark quota. Under the new sandbar shark quota with the Atlantic shark research fishery, the 2014 landings would result in 60 percent of the new sandbar shark quota being landed. If available resources increase in the future for more observed trips in the fishery, then this alternative could have minor adverse economic impacts if the full quota is caught and the fishery has to close earlier in the year.

Alternative B3 would increase the LCS retention limit to a maximum of 72 LCS other than sandbar sharks per trip for shark directed permit holders and reduce the sandbar shark research fishery quota to 82.7 mt dw (182,290 lb dw). This alternative would double the current retention limit. This new retention limit would result in potential trip revenues of $2,368 (2,448 lb of meat, 124 lb of fins), assuming an ex-vessel price of $0.58 for meat and $7.68 for fins. This alternative would have short- and long-term minor beneficial economic impacts, since shark directed permit holders could land twice as many LCS per trip. Shark directed trips would become more profitable, but more permit holders could become active in order to avail themselves of this higher trip limit, and potentially causing a derby fishery and bringing the price of shark products even lower. Thus, NMFS needs to balance providing the flexibility of increasing the efficiency of trips and the associated economic benefits with the negative economic impacts of derby fishing and lower profits. This alternative could have neutral impacts for fishermen participating in the Atlantic shark research fishery, since the 2014 landings (54.2 mt dw; 119,527 lb dw) would result in 66 percent of the new sandbar shark quota being landed. Under Alternative B3, the new sandbar shark quota could result in average annual lost revenue of $89,420 for those fishermen participating in the shark research fishery, but the income could be recouped by the increased retention limit outside the shark research fishery. If NMFS continues to select the same number of vessels as in 2015, this alternative would impact 7 shark research vessel participants. Based on this number, the total average annual gross revenue loss for each shark research fishery vessel would be $12,774 per vessel. If available resources increase in the future for more observed trips in the fishery, then this alternative still would have neutral economic impacts, since the observed trips would be distributed throughout the year, to ensure the research fishery remains open and obtains biological and catch data all year round.

Alternative B4 would increase the LCS retention limit to a maximum of 108 LCS other than sandbar sharks per trip for shark directed permit holders and reduce the sandbar shark research fishery quota to 65.7 mt dw (144,906 lb dw). This alternative would allow shark directed permit holders to retain three times as many LCS per trip as the current retention limit. This new retention limit would result in potential trip revenues of $3,552 (3,672 lb of meat, 184 lb of fins), assuming an ex-vessel price of $0.58 for meat and $7.68 for fins. This alternative could have short- and long-term moderate beneficial economic impacts, since shark directed permit holders could land three times the current LCS retention limit. This increased retention limit could result in 3,672 lb dw of LCS per trip, which could bring the fishery almost back to historical levels of 4,000 lb dw LCS per trip. While a retention limit of 108 LCS per trip would make each trip more profitable and potentially require fishermen to take fewer trips per year, this large increase in the retention limit would likely result in more permit holders becoming active in the LCS fishery. Thus, the shark fishery could return to a derby fishery, with quotas being caught at a faster rate and the fishing season shortened. Additionally, in order to increase the retention limit to 108 LCS per trip, the sandbar shark research quota would need to be reduced to an amount comparable to the 2014 landing in the shark research fishery, which could have minor adverse impacts on fishermen in the shark research fishery, who would lose revenue associated with this loss of quota.

Atlantic Regional and Sub-Regional Quotas

Alternative C1, the No Action alternative, would not change the current management of the Atlantic shark fisheries. This alternative would likely result in short-term direct neutral economic impacts, as the shark fisheries would continue to operate under current conditions, with shark fishermen continuing to fish at current rates. Based on the 2014 ex-vessel prices, the annual gross revenues for the entire fleet from aggregated LCS and hammerhead shark meat in the Atlantic region would be $313,464, while the shark fins would be $85,009. Thus, total average annual gross revenues for aggregated LCS and hammerhead shark landings in the Atlantic region would be $398,473 ($313,464 + $85,009), which is 9 percent of the entire revenue for the shark fishery. Based on eDealer landings, there are approximately 35 active directed shark permit holders that landed LCS in 2014. Based on this number of individual permits, the total average annual gross revenue for the active directed permit holders in the Atlantic region would be $11,385 per vessel. For the non-blacknose SCS and blacknose shark landings, the annual gross revenues for the entire fleet from the meat would be $318,289, while the shark fins would be $85,594. The total average annual gross revenues for non-blacknose SCS and blacknose shark landings in the Atlantic region would be $403,883 ($318,289 + $85,594), which is 9 percent of the entire revenue for the shark fishery. Based on eDealer landings, there are approximately 26 active directed shark permit holders that landed SCS in 2014. Based on this

number of individual permits, the total average annual gross revenues for the active directed permit holders in Atlantic would be $15,534 per vessel. However, this alternative would likely result in long-term minor adverse economic impacts. Negative impacts would be partly due to the continued negative effects of federal and state regulations related to shark finning and sale of shark fins, which have resulted in declining ex-vessel prices of fins since 2010, as well as continued changes in shark fishery management measures. Additionally, under the current regulations, fishermen operating in the south of the Atlantic region drastically impact the availability of quota remaining for fishermen operating in the north of the Atlantic region. If fishermen in the south fish early in the year and NMFS does not adjust the LCS retention limit, they have the ability to land a large proportion of the quota before fishermen in the north have the opportunity to fish, due to time/area closures and seasonal migrations of LCS and SCS, potentially resulting in indirect long-term minor adverse economic impacts. However, NMFS would intend to use existing regulations to monitor the LCS quotas and adjust the retention limit as needed to ensure equitable fishing opportunities throughout the region. This approach could result in some minor beneficial impacts over the long-term. Indirect short-term economic impacts resulting from any of the actions in Alternative C1 would likely be neutral because the measures would maintain the status quo with respect to shark landings and fishing effort. However, this alternative would likely result in indirect long-term minor beneficial economic impacts. Beneficial economic impacts and increased revenues associated with ensuring equitable fishing opportunities through trip limit adjustments experienced by fishermen within Atlantic shark fisheries would carry over to the dealers and supporting businesses they regularly interact with.

Alternative C2 would apportion the Atlantic regional quotas for LCS and SCS along 33°00′ N. lat. (approximately at Myrtle Beach, South Carolina) into northern and southern sub-regional quotas and potentially adjust the non-blacknose SCS quota based on the results of the 2013 assessments for Atlantic sharpnose and bonnethead sharks. Establishing sub-regional quotas could allow for flexibility in seasonal openings within the Atlantic region. Different seasonal openings within sub-regions would allow fishermen to maximize their fishing effort during periods when sharks migrate into local waters or when regional time/area closures are not in effect. This would benefit the economic interests of North Carolina and Florida fishermen, the primary constituents impacted by the timing of seasonal openings for LCS and SCS in the Atlantic, by placing them in separate sub-regions with separate sub-regional quotas.

Under this alternative, the northern Atlantic sub-region would receive 21.0 percent of the total aggregated LCS quota (35.4 mt dw; 78,236 lb dw) and 34.9 percent of the total hammerhead shark quota (9.5 mt dw; 20,848 lb dw). Based on the 2014 ex-vessel prices, the annual gross revenues for aggregated LCS and hammerhead shark meat in the northern Atlantic sub-region would be $70,560, while the shark fins would be $18,819. Thus, total average annual gross revenues for aggregated LCS and hammerhead shark landings in the northern Atlantic sub-region would be $89,379 ($70,560 + $18,819). Based on eDealer landings, there are approximately 14 active directed shark permit holders in the northern Atlantic sub-region that landed LCS in 2014. Based on this number of individual permits, the total average annual gross revenues for the active directed permit holders in this sub-region would be $6,384 per vessel. When compared to the other alternatives, the northern Atlantic sub-region would have minor beneficial economic impacts under Alternative C2, because this alternative would result in the highest total average annual gross revenues for aggregated LCS and hammerhead sharks. In the southern Atlantic sub-region, fishermen would receive 79.0 percent of the total aggregated LCS quota (133.5 mt dw; 294,316 lb dw) and 65.1 percent of the total hammerhead shark quota (17.6 mt dw; 38,888 lb dw). Based on the 2014 ex-vessel prices, the annual gross revenues for aggregated LCS and hammerhead shark meat in the southern Atlantic sub-region would be $242,903, while the shark fins would be $66,190. The total average annual gross revenues for aggregated LCS and hammerhead shark landings in the southern Atlantic sub-region would be $309,093 ($242,903 + $66,190). Based on eDealer landings, there are approximately 21 active directed shark permit holders in the southern Atlantic sub-region that landed LCS in 2014. Based on this number of individual permits, the total average annual gross revenues for the active directed permit holders in this sub-region would be $14,719 per vessel. When compared to the other alternatives, the southern Atlantic sub-region would have minor adverse economic impacts under Alternative C2, because this alternative would result in lower total average annual gross revenues for aggregated LCS and hammerhead sharks.

Under Alternative C2, NMFS would determine the blacknose shark quota for each sub-region using the percentage of landings associated with blacknose sharks within each sub-region and the new non-blacknose SCS quotas in conjunction with Alternatives C5, C6, and C7. The northern Atlantic sub-region would receive 33.5 percent of the total non-blacknose SCS quota, while the southern Atlantic sub-region would receive 66.5 percent of the total non-blacknose SCS quota in this alternative. For the blacknose sharks, the northern Atlantic sub-region would receive 6.2 percent of the total blacknose shark quota (1.1 mt dw; 2,464 lb dw), while the southern Atlantic sub-region would receive 93.8 percent of the total blacknose shark quota (16.9 mt dw; 37,285 lb dw). Based on the 2014 ex-vessel prices, the annual gross revenues for blacknose shark meat in the northern Atlantic sub-region would be $1,953, while the shark fins would be $493. Thus, total average annual gross revenues for blacknose shark landings in the northern Atlantic sub-region would be $2,446 ($1,953 + $493). Based on eDealer landings, there are approximately 5 active directed shark permit holders in the northern Atlantic sub-region that landed SCS in 2014. Based on this number of individual permits, the total average annual gross revenues for the active directed permit holders in Atlantic would be $489 per vessel. Based on the 2014 ex-vessel prices, the annual gross revenues for blacknose shark meat in the southern Atlantic sub-region would be $29,082, while the shark fins would be $7,457. The total average annual gross revenues for blacknose shark landings in the southern Atlantic sub-region would be $36,539 ($29,082 + $7,457). Based on eDealer landings, there are approximately 21 active directed shark permit holders in the southern Atlantic sub-region that landed SCS in 2014. Based on this number of individual permits, the total average annual gross revenues for the active directed permit holders in Atlantic would be $1,740 per vessel.

Alternative C3 would apportion the Atlantic regional quotas for LCS and SCS along 34°00′ N. lat. (approximately at Wilmington, North Carolina) into northern and southern sub-regional quotas and potentially adjust the non-blacknose SCS quota based on the results of the 2013 assessments for

Atlantic sharpnose and bonnethead sharks. This alternative would likely result in direct short-term minor beneficial impacts, and ultimately direct long-term moderate beneficial impacts. However, drawing the regional boundary between the northern and southern Atlantic sub-regions along 34°00′ N. lat. would result in more equitable sub-regional quotas, in comparison to the boundary considered in Alternative C2. Under this alternative, the northern Atlantic sub-region would receive 18.4 percent of the total aggregated LCS quota (31.0 mt dw; 68,550 lb dw) and 34.9 percent of the total hammerhead shark quota (9.5 mt dw; 20,848 lb dw). Based on the 2014 ex-vessel prices, the annual gross revenues for aggregated LCS and hammerhead shark meat in the northern Atlantic sub-region would be $63,296, while the shark fins would be $14,697. Thus, total average annual gross revenues for aggregated LCS and hammerhead shark landings in the northern Atlantic sub-region would be $77,993 ($63,296 + $14,697). Based on eDealer landings, there are approximately 14 active directed shark permit holders in the northern Atlantic sub-region that landed LCS in 2014. Based on this number of individual permits, the total average annual gross revenues for the active directed permit holders in this sub-region would be $5,571 per vessel. When compared to Alternative C2, the northern Atlantic sub-region would have minor adverse economic impacts under this alternative. In the southern Atlantic sub-region, fishermen would receive 81.6 percent of the total aggregated LCS quota (137.9 mt dw; 304,002 lb dw) and 65.1 percent of the total hammerhead shark quota (17.6 mt dw; 38,888 lb dw). Based on the 2014 ex-vessel prices, the annual gross revenues for aggregated LCS and hammerhead shark meat in the southern Atlantic sub-region would be $250,168, while the shark fins would be $68,219. The total average annual gross revenues for aggregated LCS and hammerhead shark landings in the southern Atlantic sub-region would be $318,387 ($250,168 + $68,219). Based on eDealer landings, there are approximately 21 active directed shark permit holders in the southern Atlantic sub-region that landed LCS in 2014. Based on this number of individual permits, the total average annual gross revenues for the active directed permit holders in this sub-region would be $15,161 per vessel.

As in Alternative C2, NMFS would determine the blacknose shark quota for each sub-region using the percentage of landings associated with blacknose sharks within each sub-region in Alternative C3 and the new non-blacknose SCS quotas in conjunction in Alternatives C5, C6, and C7. Under Alternative C3, the northern Atlantic sub-region would receive 32.9 percent of the total non-blacknose SCS quota, while the southern Atlantic sub-region would receive 67.1 percent of the total non-blacknose SCS quota. For the blacknose sharks, the northern Atlantic sub-region would receive 4.6 percent of the total blacknose shark quota (0.8 mt dw; 1,828 lb dw), while the southern Atlantic sub-region would receive 95.4 percent of the total blacknose shark quota (16.7 mt dw; 37,921 lb dw). Based on the 2014 ex-vessel prices, the annual gross revenues for blacknose shark meat in the northern Atlantic sub-region would be $1,426, while the shark fins would be $366. Thus, total average annual gross revenues for blacknose shark landings in the northern Atlantic sub-region would be $1,792 ($1,426 + $366). Based on eDealer landings, there are approximately 5 active directed shark permit holders in the northern Atlantic sub-region that landed SCS in 2014. Based on this number of individual permits, the total average annual gross revenues for the active directed permit holders in Atlantic would be $358 per vessel. Based on the 2014 ex-vessel prices, the annual gross revenues for blacknose shark meat in the southern Atlantic sub-region would be $29,578, while the shark fins would be $7,584. The total average annual gross revenues for blacknose shark landings in the southern Atlantic sub-region would be $37,162 ($29,578 + $7,584). Based on eDealer landings, there are approximately 21 active directed shark permit holders in the southern Atlantic sub-region that landed SCS in 2014. Based on this number of individual permits, the total average annual gross revenues for the active directed permit holders in Atlantic would be $1,770 per vessel. This alternative would have neutral economic impacts for the northern Atlantic sub-region fishermen when compared to Alternative C2, and would have beneficial economic impacts for the southern Atlantic sub-region fishermen when compared to Alternative C2.

Alternative C4 would apportion the Atlantic regional quotas for certain LCS and SCS management groups along 34°00′ N. lat. (approximately at Wilmington, North Carolina) into northern and southern sub-regional quotas, maintain SCS quota linkages in the southern sub-region of the Atlantic region, remove the SCS quota linkages in the northern sub-region of the Atlantic region, and prohibit the harvest and landings of blacknose sharks in the northern Atlantic sub-region. The economic impacts of apportioning the Atlantic regional quotas for LCS and SCS along 34°00′ N. lat. into northern and southern sub-regional quotas would have the same impacts as described in alternative C3 above. Removing quota linkages within the northern Atlantic sub-region would have beneficial impacts, as active fishermen in this region would be able to continue fishing for non-blacknose SCS without the fishing activities in the southern Atlantic sub-region, where the majority of blacknose sharks are landed, impacting the timing of the non-blacknose SCS fishery closure. Economic advantages associated with removing quota linkages, allowing the northern Atlantic sub-region to land a larger number of non-blacknose SCS, would outweigh the income lost from prohibiting landings of blacknose sharks ($1,426) for fishermen in the northern sub-region, particularly given the minimal landings of blacknose sharks attributed to the northern sub-region. In the southern Atlantic region, no economic impacts are expected by maintaining the quota linkages already in place for SCS. Thus, by removing quota linkages in the northern Atlantic region, in combination with apportioning the Atlantic regional quota at 34°00′ N. lat. to allow fishermen to maximize their fishing effort, and thereby maximize revenue, during periods when sharks migrate into local waters or when regional time/area closures are not in place, Alternative C4 would result in overall direct and indirect, short- and long-term moderate beneficial economic impacts.

Alternative C5 would establish a non-blacknose SCS TAC of 353.2 mt dw and reduce the non-blacknose SCS commercial quota to 128 mt dw (282,238 lb dw). When combined with the other alternatives to establish sub-regional non-blacknose SCS quotas, the economic impacts of Alternative C5 would vary based on the alternative. Under Alternative C2, the northern Atlantic sub-region would receive 33.5 percent of the total non-blacknose SCS quota (42.9 mt dw; 94,550 lb dw) and the southern Atlantic sub-region would receive 65.5 percent of the total non-blacknose SCS quota (85.1 mt dw; 187,668 lb dw). Based on the 2014 ex-vessel prices, the annual gross revenues for non-blacknose SCS meat in the northern Atlantic sub-region would be $69,967, while the shark fins would be

$18,910. Thus, total average annual gross revenues for non-blacknose SCS landings in the northern Atlantic sub-region would be $88,877 ($69,967 + $18,910). Based on eDealer landings, there are approximately 5 active directed shark permit holders in the northern Atlantic sub-region that landed SCS in 2014. Based on this number of individual permits, the total average annual gross revenues for the active directed permit holders in Atlantic would be $17,775 per vessel. Based on the 2014 ex-vessel prices, the annual gross revenues for non-blacknose SCS meat in the southern Atlantic sub-region would be $138,889, while the shark fins would be $37,538. The total average annual gross revenues for non-blacknose SCS landings in the southern Atlantic sub-region would be $176,427 ($138,889 + $37,538). Based on eDealer landings, there are approximately 21 active directed shark permit holders in the southern Atlantic sub-region that landed SCS in 2014. Based on this number of individual permits, the total average annual gross revenue for the active directed permit holder in Atlantic would be $8,401 per vessel. Sub-regional quotas under Alternatives C2 are about a two percent increase in landings allocated to the northern region for non-blacknose SCS when compared to Alternative C3. This percentage would lead to a slight increase in some of the sub-regional quotas within the northern Atlantic sub-region, as compared to Alternative C3, and would result in short-term minor beneficial economic impacts, and ultimately long-term moderate beneficial economic impacts in the northern Atlantic sub-region.

Using the quotas considered under Alternative C5 and the sub-regional split under Alternatives C3 and C4, the northern Atlantic sub-region would receive 33.5 percent of the total non-blacknose SCS quota (42.1 mt dw; 92,856 lb dw), while the southern Atlantic sub-region would receive 67.1 percent of the total non-blacknose SCS quota (85.9 mt dw; 189,382 lb dw). Based on the 2014 ex-vessel prices, the annual gross revenues for non-blacknose SCS meat in the northern Atlantic sub-region would be $68,714, while the shark fins would be $18,571. The total average annual gross revenues for non-blacknose SCS landings in the northern Atlantic sub-region would be $87,285 ($68,714 + $18,571). Based on eDealer landings, there are approximately 5 active directed shark permit holders in the northern Atlantic sub-region that landed SCS in 2014. Based on this number of individual permits, the total average annual gross revenue for the active directed permit holder in Atlantic would be $17,457 per vessel. Based on the 2014 ex-vessel prices, the annual gross revenues for non-blacknose SCS meat in the southern Atlantic sub-region would be $140,142, while the shark fins would be $37,876. The total average annual gross revenues for non-blacknose SCS landings in the southern Atlantic sub-region would be $178,018 ($140,142 + $37,876). Based on eDealer landings, there are approximately 21 active directed shark permit holders in the southern Atlantic sub-region that landed SCS in 2014. Based on this number of individual permits, the total average annual gross revenues for the active directed permit holders in Atlantic would be $8,477 per vessel. Overall, the non-blacknose SCS commercial quota considered under this alternative is almost thirty percent less than the current base quota and less than half of the current adjusted quota for this management group. Therefore, NMFS believes this alternative would have short- and long-term minor adverse economic impacts due to the quota being capped at a lower level than what is currently being landed in the non-blacknose SCS fisheries, leading to a loss in annual revenue for these shark fishermen. In addition, the adverse impacts would be compounded by the unknown stock status of bonnethead, which would prevent NMFS from carrying forward underharvested quota. Thus, the commercial quota of 128 mt dw would not be adjusted and the fishermen would be limited to this amount each year, which could lead to shorter seasons and reduced flexibility, potentially affecting fishermen's decisions to participate.

Under Alternative C6, NMFS would establish a non-blacknose SCS TAC and maintain the current base annual quota of 176.1 mt dw (388,222 lb dw). When combined with the other alternatives to establish sub-regional non-blacknose SCS quotas, the economic impacts of Alternative C6 would vary based on the sub-regional quotas. Under Alternatives C2, the northern Atlantic sub-region would receive 33.5 percent of the total non-blacknose SCS quota (59.0 mt dw; 130,054 lb dw) and the southern Atlantic sub-region would receive 66.5 percent of the total non-blacknose SCS quota (117.1 mt dw; 258,168 lb dw). Based on the 2014 ex-vessel prices, the annual gross revenues for non-blacknose SCS meat in the northern Atlantic sub-region would be $96,240, while the shark fins would be $26,011. Thus, total average annual gross revenues for non-blacknose SCS landings in the northern Atlantic sub-region would be $122,251 ($96,240 + $26,011). Based on eDealer landings, there are approximately 5 active directed shark permit holders in the northern Atlantic sub-region that landed SCS in 2014. Based on this number of individual permits, the total average annual gross revenues for the active directed permit holders in Atlantic would be $24,450 per vessel. Based on the 2014 ex-vessel prices, the annual gross revenues for non-blacknose SCS meat in the southern Atlantic sub-region would be $191,044, while the shark fins would be $51,634. The total average annual gross revenues for non-blacknose SCS landings in the southern Atlantic sub-region would be $242,678 ($191,044 + $51,634). Based on eDealer landings, there are approximately 21 active directed shark permit holders in the southern Atlantic sub-region that landed SCS in 2014. Based on this number of individual permits, the total average annual gross revenues for the active directed permit holders in Atlantic would be $11,556 per vessel. Sub-regional quotas under Alternative C2 would lead to some slightly higher sub-regional quotas within the northern Atlantic sub-region, as compared to Alternative C3, and would result in short-term minor beneficial impacts, and ultimately long-term moderate beneficial economic impacts in the northern Atlantic sub-region.

Using the quotas considered under Alternative C6 and the sub-regional split considered under Alternatives C3 and C4, the northern Atlantic sub-region would receive 32.9 percent of the total non-blacknose SCS quota (57.9 mt dw; 127,725 lb dw), while the southern Atlantic sub-region would receive 67.1 percent of the total non-blacknose SCS quota (118.2 mt dw; 260,497 lb dw). Based on the 2014 ex-vessel prices, the annual gross revenues for non-blacknose SCS meat in the northern Atlantic sub-region would be $94,517, while the shark fins would be $25,545. The total average annual gross revenues for non-blacknose SCS landings in the northern Atlantic sub-region would be $120,062 ($94,517 + $25,545). Based on eDealer landings, there are approximately 5 active directed shark permit holders in the northern Atlantic sub-region that landed SCS in 2014. Based on this number of individual permits, the total average annual gross revenues for the active directed permit holders in Atlantic would be $24,012 per vessel. Based on the 2014 ex-vessel prices, the annual gross revenues for non-blacknose SCS meat in the southern Atlantic sub-region would be $192,768, while the shark fins would be $52,099. The total

average annual gross revenues for non-blacknose SCS landings in the southern Atlantic sub-region would be $244,867 ($192,768 + $52,099). Based on eDealer landings, there are approximately 21 active directed shark permit holders in the southern Atlantic sub-region that landed SCS in 2014. Based on this number of individual permits, the total average annual gross revenue for the active directed permit holder in Atlantic would be $11,660 per vessel. Overall, Alternative C6 would lead to a lower quota in the northern Atlantic sub-region, as compared to current landings under the higher base quota. Because this alternative would maintain the non-blacknose SCS commercial quota, it is likely to have short-term neutral economic impacts. Recent non-blacknose SCS landings have been below 176.1 mt dw, thus, this commercial quota could allow for increased landings and additional revenue if the entire quota is caught, which could have beneficial socioeconomic impacts. However, since the quota of 176.1 mt dw would not be adjusted for underharvests due to the unknown status of bonnethead sharks, the fishermen would be capped at a lower quota than is possible in the current non-blacknose SCS fisheries if there is underharvest, potentially leading to long-term minor adverse socioeconomic impacts. NMFS does not expect fishing effort to dramatically increase for non-blacknose SCS in the southern region of the Atlantic, since landings would continue to be limited by blacknose shark landings and the linkage between these two groups.

Under Alternative C7, a preferred alternative, NMFS would establish a non-blacknose SCS TAC of 489.3 mt dw and increase the quota to the current adjusted base annual quota of 264.1 mt dw (582,333 lb dw) which is equal to the 2014 adjusted non-blacknose SCS quota. Based on the 2014 ex-vessel prices, the annual gross revenues for the entire fleet from non-blacknose SCS meat in the Atlantic region would be $430,926 while the shark fins would be $116,467. Thus, total average annual gross revenues for non-blacknose shark landings in the Atlantic region would be $547,393 ($430,926 + $116,467), which is 12 percent of the entire revenue for the shark fishery. The economic impacts of Alternative C7 would vary when combined with Alternatives C2 through C4 to establish sub-regional non-blacknose SCS quotas as considered in the Draft EA, and a new preferred Alternative C8 that would maintain the status quo of a regional quota for the blacknose and non-blacknose SCS management groups and would establish a management boundary to modify the blacknose and non-blacknose SCS quota linkage. Under Alternative C2, the northern Atlantic sub-region would receive 33.5 percent of the total non-blacknose SCS quota (88.4 mt dw; 195,082 lb dw) and the southern Atlantic sub-region would receive 66.5 percent of the total non-blacknose SCS quota (175.7 mt dw; 387,251 lb dw). Based on the 2014 ex-vessel prices, the annual gross revenues for non-blacknose SCS meat in the northern Atlantic sub-region would be $144,360, while the shark fins would be $39,016. Thus, total average annual gross revenues for non-blacknose SCS landings in the northern Atlantic sub-region would be $183,376 ($144,360 + $39,016). Based on eDealer landings, there are approximately 5 active directed shark permit holders in the northern Atlantic sub-region that landed SCS in 2014. Based on this number of individual permits, the total average annual gross revenues for the active directed permit holders in Atlantic would be $36,675 per vessel. Based on the 2014 ex-vessel prices, the annual gross revenues for non-blacknose SCS meat in the southern Atlantic sub-region would be $286,566, while the shark fins would be $77,450. The total average annual gross revenues for non-blacknose SCS landings in the southern Atlantic sub-region would be $364,016 ($286,566 + $77,450). Based on eDealer landings, there are approximately 21 active directed shark permit holders in the southern Atlantic sub-region that landed SCS in 2014. Based on this number of individual permits, the total average annual gross revenue for the active directed permit holder in Atlantic would be $17,334 per vessel.

Under Alternative C7 and either Alternative C3 or C4, the northern Atlantic sub-region would receive 32.9 percent of the total non-blacknose SCS quota (86.9 mt dw; 191,588 lb dw), while the southern Atlantic sub-region would receive 67.1 percent of the total non-blacknose SCS quota (177.2 mt dw; 390,745 lb dw). Based on the 2014 ex-vessel prices, the annual gross revenues for non-blacknose SCS meat in the northern Atlantic sub-region would be $141,775, while the shark fins would be $38,318. The total average annual gross revenues for non-blacknose SCS landings in the northern Atlantic sub-region would be $180,093 ($141,775 + $38,318). Based on eDealer landings, there are approximately 5 active directed shark permit holders in the northern Atlantic sub-region that landed SCS in 2014. Based on this number of individual permits, the total average annual gross revenue for the active directed permit holder in Atlantic would be $36,019 per vessel. Based on the 2014 ex-vessel prices, the annual gross revenues for non-blacknose SCS meat in the southern Atlantic sub-region would be $289,152, while the shark fins would be $78,149. The total average annual gross revenues for non-blacknose SCS landings in the southern Atlantic sub-region would be $367,301 ($289,152 + $78,149). Based on eDealer landings, there are approximately 21 active directed shark permit holders in the southern Atlantic sub-region that landed SCS in 2014. Based on this number of individual permits, the total average annual gross revenue for the active directed permit holder in Atlantic would be $17,491 per vessel.

Under Alternative C7 and a new preferred Alternative C8, the commercial quota for the SCS fishery would be 264.1 mt dw (582,333 lb dw) for the Atlantic region, which is equal to the 2014 adjusted non-blacknose SCS quota. Based on the 2014 ex-vessel prices, the annual gross revenues for the entire fleet from non-blacknose SCS meat in the Atlantic region would be $430,926, while the shark fins would be $116,467. Thus, total average annual gross revenues for non-blacknose shark landings in the Atlantic region would be $547,393 ($430,926 + $116,467), which is 13 percent of the entire revenue for the shark fishery. Based on eDealer landings, there are approximately 26 active directed shark permit holders that landed SCS in 2014. Based on this number of individual permits, the total average annual gross revenue for the active directed permit holder in the Atlantic region would be $21,054 per vessel.

The quota considered under Alternative C7 is an increase compared to the non-blacknose SCS commercial quotas under Alternatives C5 or C6. Since underharvested quota would no longer be carried forward, this quota would provide a buffer, potentially providing for landings to increase in the future, and thus, providing some beneficial socioeconomic impacts in the long-term due to the potential to gain additional revenue. The increased landings could result in additional revenues of up to $302,526 in total average annual gross revenue for non-blacknose shark landings relative to Alternative C6, the preferred alternative in the Draft EA. However, recent landings of non-blacknose SCS have been less than half of the commercial quota under this alternative (in part because of increasing blacknose landings), so it is unlikely that

fishermen would catch this entire quota in the short-term (unless this alternative is combined with Alternative C8), such that this alternative would have neutral economic impacts. When combined with Alternative C8, the increased quota in Alternative C7 could have positive economic impacts for fishermen.

Alternative C8, one of the preferred alternatives, would maintain the current aggregated LCS (168.9 mt dw; 372,552 lb dw) and hammerhead shark (27.1 mt dw; 59,736 lb dw) regional quotas in the Atlantic region, establish a management boundary for the SCS fishery, and prohibit the retention of blacknose sharks north of the management boundary at 34°00′ N. lat. Based on historical landings and 2014 ex-vessel prices, the annual gross revenues for blacknose meat in the Atlantic region south of 34°00′ N. lat. would be $29,578, while the blacknose shark fins would be $7,584. Thus, total average annual gross revenues for blacknose landings in the Atlantic region south of 34°00′ N. lat. would be $37,162 (29,578 + $7,584). Based on eDealer landings, there are approximately 21 active directed shark permit holders that landed SCS in 2014 south of 34°00′ N. lat. Based on this number of individual permits, the total average annual gross revenue for the active directed permit holder south of 34°00′ N. lat. would be $1,770 per vessel. No economic impacts are expected from maintaining the current LCS and hammerhead regional quotas structure as fishermen would continue to fish at current rates and would not be limited by sub-regional quotas. However, NMFS would intend to use existing regulations to monitor the LCS quotas and adjust the retention limit as needed to ensure equitable fishing opportunities throughout the region. This approach could result in some minor beneficial impacts over the long-term. Establishing a management boundary and removing quota linkages north of 34°00′ N. lat. in this alternative would have beneficial impacts for fishermen north of the management boundary, as active fishermen in the area above 34°00′ N. lat. would be able to continue fishing for non-blacknose SCS without being constrained by the fishing activities south of 34°00′ N. lat., where the majority of blacknose sharks are landed. Given the fact that in recent years the SCS fishery has closed before the non-blacknose SCS quota has been harvested, fishermen north of the management boundary who would be able to continue to fish after the fisheries are closed south of the management boundary, could have substantial economic gains under this alternative. Economic benefits associated with removing quota linkages between non-blacknose SCS and blacknose sharks, allowing fishermen north of the management boundary to land a larger number of non-blacknose SCS, would outweigh for the fishermen north of the boundary the income lost from prohibiting landings of blacknose sharks. This is in part due to the minimal landings of blacknose sharks north of 34°00′ N. lat. and the request of fishermen in the Atlantic to remove the linkage between the two management groups in order to continue fishing for non-blacknose SCS when the blacknose quota is reached. In the area south of 34°00′ N. lat., no change in socioeconomic impacts is expected by maintaining the quota linkages already in place for the SCS fishery as this alternative is essentially status quo. Fishermen south of the management boundary line would be able to continue fishing for non-blacknose SCS based upon how successful they are at avoiding blacknose sharks. If blacknose shark bycatch remains low, fishermen would have the opportunity to continue fishing the non-blacknose SCS quota. Thus, by implementing management measures considered in Alternative C8, this alternative would result in overall direct and indirect, short- and long-term minor beneficial socioeconomic impacts.

Gulf of Mexico Regional and Sub-Regional Quotas

Alternative D1, the No Action alternative, would maintain the current regional quotas and quota linkages in the Gulf of Mexico region and continue to allow harvest of hammerhead sharks throughout the entire Gulf of Mexico region. This alternative would likely result in short-term neutral direct economic impacts, because shark fishermen would continue to operate under current conditions, with shark fishermen continuing to fish at similar rates. Based on the 2014 ex-vessel prices, the annual gross revenues for the entire fleet from blacktip, aggregated LCS, and hammerhead shark meat in the Gulf of Mexico region would be $497,148, while the shark fins would be $472,355. Thus, total average annual gross revenues for blacktip, aggregated LCS, and hammerhead shark landings in the Gulf of Mexico region would be $969,503 ($497,148+ $472,355), which would be 22 percent of the entire shark fishery. Based on eDealer landings, there are approximately 28 active directed shark permit holders that landed LCS in 2014. Based on this number of individual permits, the total average annual gross revenues for the active directed permit holders in the Gulf of Mexico would be $34,625 per vessel. For the non-blacknose SCS and blacknose shark landings, the annual gross revenues for the entire fleet from the meat would be $39,995, while the shark fins would be $30,610. The total average annual gross revenues for non-blacknose SCS and blacknose shark landings in the Gulf of Mexico region would $70,605 ($39,995 + $30,610), which is 2 percent of the entire revenue for the shark fishery. Based on eDealer landings, there are approximately 8 active directed shark permit holders that landed SCS in 2014. Based on this number of individual permits, the total average annual gross revenues for the active directed permit holders in the Gulf of Mexico would be $8,826 per vessel. Alternative D1 would likely result in short-term neutral direct socioeconomic impacts because shark fishermen would continue to operate under current conditions and to fish at similar rates. However, this alternative would likely result in long-term minor adverse socioeconomic impacts. Negative impacts would be partly due to the continued negative impact of federal and state regulations related to shark finning and sale of shark fins, which have resulted in declining ex-vessel prices of fins since 2010, as well as continued changes in shark fishery management measures. In addition, under the No Action alternative, the non-blacknose SCS quota would not be modified. This could potentially lead to negative socioeconomic impacts, since the non-blacknose SCS quotas could be increased based on results from the most recent stock assessment, as described in Alternatives D6–D8 below. Additionally, under the current regulations, differences in regional season opening dates would impact the availability of quota remaining in the Gulf of Mexico. Florida fishermen prefer to begin fishing the LCS quotas in the beginning of the year, when sharks are in local waters. However, opening the season at the beginning of the year puts Louisiana fishermen at a slight economic disadvantage, as many Louisiana fishermen prefer to delay fishing, maximizing fishing efforts during the religious holiday Lent when prices for shark meat are higher. Indirect short-term socioeconomic impacts resulting from any of the actions in Alternative D1 would likely be neutral because the measures would maintain the status quo with respect to shark landings and fishing effort. However, this alternative would likely result in indirect long-term minor adverse socioeconomic impacts. Negative

socioeconomic impacts and decreased revenues associated with financial difficulties experienced by fishermen within the Gulf of Mexico shark fisheries would carry over to the dealers and supporting businesses they regularly interact with. In addition, this alternative would not achieve the goals of this rulemaking of increasing management flexibility to adapt to the changing needs of the Atlantic shark fisheries.

Alternative D2 would apportion the Gulf of Mexico regional quotas for blacktip, aggregated LCS and hammerhead sharks along 89°00′ W. longitude into western and eastern sub-regional quotas. Establishing sub-regional quotas would provide flexibility in seasonal openings within the Gulf of Mexico region. Different seasonal openings within sub-regions would allow fishermen to maximize their fishing effort during periods when sharks migrate into local waters or during periods when sales of shark meat are increased (*e.g.*, in Louisiana, during Lent). Allowing fishermen in these states more flexibility, by implementing sub-regions, could result in a higher proportion of the quota being landed and increased average annual gross revenues. This would benefit the economic interests of the Louisiana and Florida fishermen, the primary constituents impacted by the timing of seasonal openings for LCS and SCS in the Gulf of Mexico, by placing them in separate sub-regions with separate sub-regional quotas. No negative impacts are expected for either the fishermen or the length of the fishing season since NMFS will be able to transfer quota between sub-regions to ensure that the full quota is harvested.

Under this alternative, the eastern Gulf of Mexico sub-region would receive 30.8 mt dw in blacktip shark, 88.8 mt dw in aggregated LCS, and 13.4 mt dw in hammerhead shark quotas. Based on the 2014 ex-vessel prices, the annual gross revenues for blacktip, aggregated LCS, and hammerhead shark meat in the eastern Gulf of Mexico sub-region would be $153,897, while the shark fins would be $145,758. Thus, total average annual gross revenues for blacktip, aggregated LCS, and hammerhead shark landings in the eastern Gulf of Mexico sub-region would be $299,655 ($153,897 + $145,758). Based on eDealer landings, there are approximately 11 active directed shark permit holders in the eastern Gulf of Mexico sub-region that landed LCS in 2014. Based on this number of individual permits, the total average annual gross revenues for the active directed permit holders in this sub-region would be $27,241 per vessel. When compared to Alternative D3, the eastern Gulf of Mexico sub-region would have minor beneficial economic impacts under Alternative D2, because this alternative would result in the highest total average annual gross revenues for blacktip, aggregated LCS, and hammerhead sharks. In the western Gulf of Mexico sub-region, fishermen would receive 225.8 mt dw in blacktip shark, 68.7 mt dw in aggregated LCS, and 11.9 mt dw in hammerhead shark quotas. Based on the 2014 ex-vessel prices, the annual gross revenues for blacktip, aggregated LCS, and hammerhead shark meat in the eastern Gulf of Mexico sub-region would be $343,251, while the shark fins would be $326,597. Thus, total average annual gross revenues for blacktip, aggregated LCS, and hammerhead shark landings in the eastern Gulf of Mexico sub-region would be $669,502 ($343,251 + $326,251). Based on eDealer landings, there are approximately 17 active directed shark permit holders in the western Gulf of Mexico sub-region that landed LCS in 2014. Based on this number of individual permits, the total average annual gross revenues for the active directed permit holders in this sub-region would be $39,382 per vessel.

Alternative D2 would result in $19,753 more in annual gross revenues for the eastern Gulf of Mexico sub-region, as compared to Alternative D3. This alternative would have direct short-term minor beneficial economic impacts as a result of implementing a sub-regional quota structure, combined with higher sub-regional quotas and therefore increased potential gross revenue, received by the eastern Gulf of Mexico sub-region. However, despite the increase in the quota for the eastern Gulf of Mexico sub-region, in the long-term, there could be minor adverse economic impacts based on the boundary line chosen to separate the sub-regions in the Gulf of Mexico. Placing the boundary between the eastern and western Gulf of Mexico sub-regions along 89°00′ W. long. (*i.e.,* between fishing catch areas 11 and 12) may not create sufficient geographic separation between the major stakeholders in the Gulf of Mexico (*i.e.,* Louisiana and Florida), as opposed to the boundary in Alternative D3. As the range of Louisiana fishermen extends east beyond this boundary, placing the boundary along 89°00′ W. long. would allow active shark fishermen in the western sub-region to utilize both sub-regional quotas while active shark fishermen in the eastern sub-region would be limited to just the eastern sub-region quota. As such, this alternative could result in less equitable economic benefits to fishermen in both sub-regions. Fishermen in the western sub-region could potentially increase their gross annual revenues by harvesting some of the eastern sub-regional quota, which would be lost by fishermen from the eastern sub-region, who could lose some of their potential annual revenue as a result of not fully harvesting the eastern sub-regional quota.

Alternative D3, one of the preferred alternatives, would apportion the Gulf of Mexico regional quotas for blacktip, aggregated LCS, and hammerhead sharks along 88°00′ W. long. into western and eastern sub-regional quotas. Under this alternative, the eastern Gulf of Mexico sub-region would receive 9.8 percent of the total blacktip quota (25.1 mt dw; 55,439 lb dw), 54.3 percent of the total aggregated LCS quota (85.5 mt dw; 188,593 lb dw), and 52.8 percent of the total hammerhead shark quota (13.4 mt dw; 29,421 lb dw). Based on the 2014 ex-vessel prices, the annual gross revenues for blacktip, aggregated LCS, and hammerhead shark meat in the eastern Gulf of Mexico sub-region would be $143,735 while the shark fins would be $136,167. Thus, total average annual gross revenues for blacktip, aggregated LCS, and hammerhead shark landings in the eastern Gulf of Mexico sub-region would be $279,902 ($143,735 + $136,167). Based on eDealer landings, there are approximately 11 active directed shark permit holders in the eastern Gulf of Mexico sub-region that landed LCS in 2014. Based on this number of individual permits, the total average annual gross revenues for the active directed permit holders in this sub-region would be $25,446 per vessel. The eastern Gulf of Mexico sub-region would have minor adverse socioeconomic impacts under Alternative D3, because this alternative would result in lower total average annual gross revenues for blacktip, aggregated LCS, and hammerhead sharks than under Alternative D2. In the western Gulf of Mexico sub-region, fishermen would receive 90.2 percent of the total blacktip quota (231.5 mt dw; 510,261 lb dw), 45.7 percent of the total aggregated LCS quota (72.0 mt dw; 158,724 lb dw), and 47.2 percent of the total hammerhead shark quota (11.9 mt dw; 23,301 lb dw). Based on the 2014 ex-vessel prices, the annual gross revenues for blacktip, aggregated LCS, and hammerhead shark meat in the western Gulf of Mexico sub-region would be $251,403, while the shark fins would be $101,055. Thus, total average annual gross revenues for blacktip,

aggregated LCS, and hammerhead shark landings in the western Gulf of Mexico sub-region would be $689,601 ($353,412 + $336,189). Based on eDealer landings, there are approximately 17 active directed shark permit holders in the western Gulf of Mexico sub-region that landed LCS in 2014. Based on this number of individual permits, the total average annual gross revenues for the active directed permit holders in this sub-region would be $40,565 per vessel, which would be more than the average annual gross revenue per vessel under Alternatives D1 or D2.

Alternative D3 would result in $19,753 less in annual gross revenues to the eastern Gulf of Mexico sub-region, which would receive slightly smaller sub-regional quotas under this alternative, as compared to under Alternative D2. However, despite the economic disadvantages resulting from slightly smaller sub-regional quotas for the eastern Gulf of Mexico sub-region, overall there would be short-term minor beneficial economic impacts and long-term moderate beneficial socioeconomic impacts under this alternative, based on where the Gulf of Mexico sub-region would be split. Placing the boundary between the eastern and western Gulf of Mexico sub-regions along 88°00′ W. long. (*i.e.,* between fishing catch areas 10 and 11) would create better geographic separation between the major stakeholders in the Gulf of Mexico (*i.e.,* Louisiana and Florida), as opposed to the boundary in Alternative D2. This would provide more equitable economic benefits to fishermen in both sub-regions, by allowing them increased likelihood of fully harvesting their sub-regional quotas, and maximizing the potential annual revenue they could gain upon implementation of sub-regional quotas in the Gulf of Mexico.

Alternative D4 would apportion the Gulf of Mexico regional quotas for blacktip, aggregated LCS, and hammerhead sharks along 89°00′ W. longitude into western and eastern sub-regional quotas, maintain LCS quota linkages in the eastern sub-region of the Gulf of Mexico region, remove the LCS quota linkages in the western sub-region of the Gulf of Mexico region, and prohibit the harvest of hammerhead sharks in the western Gulf of Mexico sub-region. In the Draft EA for Amendment 6, NMFS originally considered this alternative to have neutral economic impacts, as there were negligible landings of hammerhead sharks in western sub-region between 2008–2013. However, based on updated landing data resulting in comparable hammerhead shark sub-regional quotas (13.4 mt dw for the eastern Gulf of Mexico sub-region, and 11.9 mt dw for the western Gulf of Mexico sub-region), it is now apparent that there would be some negative socioeconomic impacts if NMFS were to prohibit hammerhead sharks in the western sub-region. Given this information, prohibiting retention of hammerhead sharks in the western sub-region would result in a large number of regulatory discards, and would also have negative socioeconomic impacts on fishermen in this sub-region. Under Alternative D4, there would be loss of $25,941 for active shark fishermen operating within the western Gulf of Mexico region if they were unable to retain hammerhead sharks. Additionally, based on public comment on the preference for a boundary line at 88°00' W. long., placing the boundary line at 89°00′ W. long. would allow fishermen operating in the western sub-region an opportunity to harvest from both sub-regional quotas. While implementing sub-regional quotas in the Gulf of Mexico would allow fishermen to maximize their fishing effort at times when fishing would be most profitable for them, thereby maximizing revenue, placing the boundary line at 89°00′ W. long. would decrease the likelihood of fishermen from each respective sub-region fully harvesting their sub-regional quota, and maximizing the potential annual revenue they could gain upon implementation of sub-regional quotas in the Gulf of Mexico. Thus, Alternative D4 would likely result in both direct and indirect short- and long-term minor adverse socioeconomic impacts across the entire Gulf of Mexico region, as there would be potential losses from prohibiting landings of hammerhead sharks in the western Gulf of Mexico and from choosing a boundary that does not create sufficient geographic separation between the major stakeholders in the Gulf of Mexico.

Under Alternative D5, NMFS would establish a non-blacknose SCS TAC of 931.9 mt dw and maintain the current base annual quota of 45.5 mt dw (100,317 lb dw). However, given the impact of federal and state regulations related to shark finning and sale of shark fins, which have resulted in declining ex-vessel prices of fins since 2010, on fishermen in the Gulf of Mexico, maintaining the current base annual quota would likely have negative socioeconomic impacts. Based on the 2014 ex-vessel prices, the annual gross revenues for non-blacknose SCS and blacknose shark meat in the Gulf of Mexico region would be $36,114, while the shark fins would be $29,293. Thus, total average annual gross revenues for non-blacknose SCS landings would be $65,407 ($36,114 + $29,293). Based on eDealer landings, there are approximately 8 active directed shark permit holders that landed SCS in 2014. Based on this number of individual permits, the total average annual gross revenue for the active directed permit holder in Atlantic would be $8,176 per vessel. When compared to Alternative D8, the preferred alternative, this alternative would result in $96,429 ($161,836 − $65,407) less in total gross annual revenue, or $12,054 less per vessel. Alternative D5 would likely result in both direct and indirect short- and long-term moderate adverse socioeconomic impacts, as fishermen would continue to experience reduced revenue throughout the region, as would the dealers and supporting business that they regularly interact with.

Under Alternative D6, NMFS would establish a non-blacknose SCS TAC of 954.7 mt dw and increase the quota to the current adjusted annual quota of 68.3 mt dw (150,476 lb dw). Based on the 2014 ex-vessel prices, the annual gross revenues for non-blacknose SCS meat in the Gulf of Mexico region would be $54,171, while the shark fins would be $43,939. Thus, total average annual gross revenues for non-blacknose SCS landings would be $90,110 ($54,171 + $43,939). There are approximately 8 active directed shark permit holders in the entire Gulf of Mexico that landed SCS in 2014, which would result in average annual gross revenues for all SCS species of $11,264 per vessel. Given current financial difficulties faced by fishermen, associated with declining ex-vessel prices and restrictions on the sale of shark fins, the beneficial economic impacts of increasing the annual quota by 22.8 mt dw (from the quota under Alternative D5) would likely be minimal. Thus, it is likely that Alternative D6 could result in both direct and indirect short- and long-term neutral to minor adverse economic impacts.

Under Alternative D7, NMFS would establish a non-blacknose SCS TAC of 1,064.9 mt dw and increase the quota to 178.5 mt dw (393,566 lb dw). Under this alternative, the commercial quota would be increased to twice the current 2013 landings, which is almost four times the current base annual quota for non-blacknose SCS. Based on the 2014 ex-vessel prices, the annual gross revenues for non-blacknose SCS meat in the Gulf of Mexico region would be $141,684, while the shark fins would be $114,921. Thus, total average annual gross revenues for non-blacknose SCS landings would be $256,605 ($141,684 +

$114,921). There are approximately 8 active directed shark permit holders in the entire Gulf of Mexico, which would result in average annual gross revenues for all SCS species of $32,076 per vessel. The quota considered under this alternative would result in an increase of $94,769 ($256,605 − $161,836) in annual revenues or an increase of $11,846 per vessel, over the quota considered in preferred Alternative D8. Alternative D7 could have short-term beneficial socioeconomic impacts, since the commercial quota under this alternative is almost four times the current base quota for non-blacknose SCS. However, if the increase in quota results in overfishing for blacknose and/or finetooth sharks, additional restrictions would be likely in the future, which would likely have large negative economic impacts.

Alternative D8, one of the preferred alternatives, would establish a non-blacknose SCS TAC of 999.0 mt dw, increase the quota to 112.6 mt dw (248,215 lb dw), and prohibit the retention of blacknose sharks in the Gulf of Mexico. Under this alternative, the commercial quota would be increased to almost twice the 2013 landings, which is almost four times the current base annual quota for non-blacknose SCS, but then would be adjusted down to account for blacknose shark discards that would occur as a result of the prohibition on retaining blacknose sharks. Based on the 2014 ex-vessel prices, the annual gross revenues for non-blacknose SCS meat in the Gulf of Mexico region would be $89,357, while the shark fins would be $72,479. Thus, total average annual gross revenues for non-blacknose SCS landings would be $345,551 ($125,941 + $219,610). Fishermen could potentially land more non-blacknose SCS under this alternative than under either Alternatives D5 or D6, resulting in increased annual revenues. While the quota would be lower than under Alternative D7, by prohibiting blacknose sharks, this would remove the linkage between blacknose sharks and non-blacknose sharks, and increase the likelihood that fishermen could harvest the entire non-blacknose SCS quota. Additional revenue gained from increasing the non-blacknose SCS quota would outweigh a loss of $5,199 from prohibiting blacknose in the Gulf of Mexico. Potential loss of gross revenue by shark fishermen due to the prohibition on blacknose may also be less than $5,199, as fishermen have demonstrated an ability to largely avoid blacknose sharks with the use of gillnet gear. Fishermen in the Gulf of Mexico have also been requesting a prohibition on landing and retention of blacknose sharks since Amendment 3 to the 2006 Consolidated HMS FMP, when blacknose sharks were separated from the SCS management group and linked to the newly created non-blacknose SCS management group. The small blacknose shark quota has resulted in early closure before the non-blacknose SCS quota could be harvested. However, in recent years, blacknose sharks have not been the limiting factor in initiating closure of the linked SCS management groups in the Gulf of Mexico; instead, it has been landings of non-blacknose SCS either exceeding or being projected to exceed 80 percent of the quota. Thus, Alternative D8 would likely result in both direct and indirect short- and long-term moderate beneficial socioeconomic impacts, since the commercial quota under this alternative would be higher than the current base quota for non-blacknose SCS.

Upgrading Restrictions

Under Alternative E1, the No Action alternative, NMFS would maintain the current upgrading restrictions in place for shark limited access permit holders. Thus, shark limited access permit holders would continue to be limited to upgrading a vessel or transferring a permit only if it does not result in an increase in horsepower of more than 20 percent or an increase of more than 10 percent overall, gross registered tonnage, or net tonnage from the vessel baseline specifications. The No Action alternative could result in direct and indirect minor adverse economic impacts if fishermen continue to be constrained by limits on horsepower and vessel size increases. Fishermen would also be limited by these upgrading restrictions when buying, selling, or transferring shark directed limited access permits.

Alternative E2, a preferred alternative, would remove current upgrading restrictions for shark directed permit holders. Eliminating these restrictions would have short- and long-term minor beneficial economic impacts, since it would allow fishermen to buy, sell, or transfer shark directed permits without worrying about the increase in horsepower of more than 20 percent or an increase of more than 10 percent in length overall, gross registered tonnage, or net tonnage from the vessel baseline specifications. In addition, the upgrade restriction for shark permit holders was implemented to match the upgrading restrictions for the Northeast multispecies permits. NMFS is currently considering removing the upgrading restrictions for the Northeast multispecies permits, and if those are removed, then removing the upgrading restrictions for shark directed permit holders could aid in maintaining consistency for fishermen who hold multiple permits.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the HMS Management Division (see **ADDRESSES**) and the guide (*i.e.,* permit holder letter) will be sent to all holders of permits for the Atlantic shark commercial fisheries. The guide and this final rule will be available upon request.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: August 6, 2015.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

■ 2. In § 635.2, add the definition ''Management group'' in alphabetical order to read as follows:

§ 635.2 Definitions.

* * * * *

Management group in regard to sharks means a group of shark species that are combined for quota management purposes. A management group may be split by region or sub-region, as defined at § 635.27(b)(1). A fishery for a management group can be opened or closed as a whole or at the regional or sub-regional levels. Sharks have the following management groups: Atlantic

aggregated LCS, Gulf of Mexico aggregated LCS, research LCS, hammerhead, Atlantic non-blacknose SCS, Gulf of Mexico non-blacknose SCS, and pelagic sharks other than blue or porbeagle.

* * * * *

3. In § 635.4, revise paragraph (l)(2)(i), the introductory text of paragraph (l)(2)(ii), and paragraphs (l)(2)(iv) through (vi), and remove paragraph (l)(2)(x) to read as follows:

§ 635.4 Permits and fees.

* * * * *

(l) * * *

(2) * * *

(i) Subject to the restrictions on upgrading the harvesting capacity of permitted vessels in paragraph (l)(2)(ii) of this section, as applicable, and to the limitations on ownership of permitted vessels in paragraph (l)(2)(iii) of this section, an owner may transfer a shark or swordfish LAP or an Atlantic Tunas Longline category permit to another vessel that he or she owns or to another person. Directed handgear LAPs for swordfish may be transferred to another vessel or to another person but only for use with handgear and subject to the upgrading restrictions in paragraph (l)(2)(ii) of this section and the limitations on ownership of permitted vessels in paragraph (l)(2)(iii) of this section. Shark directed and incidental LAPs and swordfish incidental LAPs are not subject to the upgrading requirements specified in paragraph (l)(2)(ii) of this section. Shark and swordfish incidental LAPs are not subject to the ownership requirements specified in paragraph (l)(2)(iii) of this section.

(ii) An owner may upgrade a vessel with a swordfish LAP or an Atlantic Tunas Longline category permit, or transfer such permit to another vessel or to another person, and be eligible to retain or renew such permit only if the upgrade or transfer does not result in an increase in horsepower of more than 20 percent or an increase of more than 10 percent in length overall, gross registered tonnage, or net tonnage from the vessel baseline specifications. A vessel owner that concurrently held a directed or incidental swordfish LAP, a directed or incidental shark LAP, and an Atlantic Tunas Longline category permit as of August 6, 2007, is eligible to increase the vessel size or transfer the permits to another vessel as long as any increase in the three specifications of vessel size (length overall, gross registered tonnage, and net tonnage) does not exceed 35 percent of the vessel baseline specifications, as defined in paragraph (l)(2)(ii)(A) of this section; horsepower for those eligible vessels is not limited for purposes of vessel upgrades or permit transfers.

* * * * *

(iv) In order to transfer a swordfish, shark or an Atlantic Tunas Longline category limited access permit to a replacement vessel, the owner of the vessel issued the limited access permit must submit a request to NMFS, at an address designated by NMFS, to transfer the limited access permit to another vessel, subject to requirements specified in paragraph (l)(2)(ii) of this section, if applicable. The owner must return the current valid limited access permit to NMFS with a complete application for a limited access permit, as specified in paragraph (h) of this section, for the replacement vessel. Copies of both vessels' U.S. Coast Guard documentation or state registration must accompany the application.

(v) For swordfish, shark, and an Atlantic Tunas Longline category limited access permit transfers to a different person, the transferee must submit a request to NMFS, at an address designated by NMFS, to transfer the original limited access permit(s), subject to the requirements specified in paragraphs (l)(2)(ii) and (iii) of this section, if applicable. The following must accompany the completed application: The original limited access permit(s) with signatures of both parties to the transaction on the back of the permit(s) and the bill of sale for the permit(s). A person must include copies of both vessels' U.S. Coast Guard documentation or state registration for limited access permit transfers involving vessels.

(vi) For limited access permit transfers in conjunction with the sale of the permitted vessel, the transferee of the vessel and limited access permit(s) issued to that vessel must submit a request to NMFS, at an address designated by NMFS, to transfer the limited access permit(s), subject to the requirements specified in paragraphs (l)(2)(ii) and (iii) of this section, if applicable. The following must accompany the completed application: The original limited access permit(s) with signatures of both parties to the transaction on the back of the permit(s), the bill of sale for the limited access permit(s) and the vessel, and a copy of the vessel's U.S. Coast Guard documentation or state registration.

* * * * *

■ 4. In § 635.24, revise paragraphs (a)(2) and (3), (a)(4)(ii) and (iii), and (a)(8) to read as follows:

§ 635.24 Commercial retention limits for sharks, swordfish, and BAYS tunas.

* * * * *

(a) * * *

(2) Except as noted in paragraphs (a)(4)(iv) through (vi) of this section, the commercial retention limit for LCS other than sandbar sharks for a person who owns or operates a vessel that has been issued a directed LAP for sharks and does not have a valid shark research permit, or a person who owns or operates a vessel that has been issued a directed LAP for sharks and that has been issued a shark research permit but does not have a NMFS-approved observer on board, may range between zero and 55 LCS other than sandbar sharks per vessel per trip if the respective LCS management group(s) is open per §§ 635.27 and 635.28. Such persons may not retain, possess, or land sandbar sharks. At the start of each fishing year, the default commercial retention limit is 45 LCS other than sandbar sharks per vessel per trip unless NMFS determines otherwise and files with the Office of the Federal Register for publication notification of an inseason adjustment. During the fishing year, NMFS may adjust the retention limit per the inseason trip limit adjustment criteria listed in § 635.24(a)(8).

(3) Except as noted in paragraphs (a)(4)(iv) through (vi) of this section, a person who owns or operates a vessel that has been issued an incidental LAP for sharks and does not have a valid shark research permit, or a person who owns or operates a vessel that has been issued an incidental LAP for sharks and that has been issued a valid shark research permit but does not have a NMFS-approved observer on board, may retain, possess, or land no more than 3 LCS other than sandbar sharks per vessel per trip if the respective LCS management group(s) is open per §§ 635.27 and 635.28. Such persons may not retain, possess, or land sandbar sharks.

(4) * * *

(ii) A person who owns or operates a vessel that has been issued a shark LAP and is operating south of 34°00′ N. lat. in the Atlantic region, as defined at § 635.27(b)(1), may retain, possess, land, or sell blacknose and non-blacknose SCS if the respective blacknose and non-blacknose SCS management groups are open per §§ 635.27 and 635.28. A person who owns or operates a vessel that has been issued a shark LAP and is operating north of 34°00′ N. lat. in the Atlantic region, as defined at § 635.27(b)(1), or a person who owns or operates a vessel that has been issued a shark LAP and is operating in the Gulf

of Mexico region, as defined at § 635.27(b)(1), may not retain, possess, land, or sell any blacknose sharks, but may retain, possess, land, or sell non-blacknose SCS if the respective non-blacknose SCS management group is open per §§ 635.27 and 635.28.

(iii) Consistent with paragraph (a)(4)(ii) of this section, a person who owns or operates a vessel that has been issued an incidental shark LAP may retain, possess, or land no more than 16 SCS and pelagic sharks, combined, per trip, if the respective fishery is open per §§ 635.27 and 635.28.

* * * * *

(8) *Inseason trip limit adjustment criteria.* NMFS will file with the Office of the Federal Register for publication notification of any inseason adjustments to trip limits by region or sub-region. Before making any adjustment, NMFS will consider the following criteria and other relevant factors:

(i) The amount of remaining shark quota in the relevant area, region, or sub-region, to date, based on dealer reports;

(ii) The catch rates of the relevant shark species/complexes in the region or sub-region, to date, based on dealer reports;

(iii) Estimated date of fishery closure based on when the landings are projected to reach 80 percent of the quota given the realized catch rates;

(iv) Effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments;

(v) Variations in seasonal distribution, abundance, or migratory patterns of the relevant shark species based on scientific and fishery-based knowledge; and/or

(vi) Effects of catch rates in one part of a region or sub-region precluding vessels in another part of that region or sub-region from having a reasonable opportunity to harvest a portion of the relevant quota.

* * * * *

■ 5. In § 635.27, revise paragraph (b)(1), paragraph (b)(2) introductory text, paragraph (b)(2)(i), paragraph (b)(2)(ii), paragraph (b)(2)(iii) introductory text, and paragraph (b)(3) introductory text to read as follows:

§ 635.27 Quotas.

* * * * *

(b) *Sharks*—(1) *Commercial quotas.* The commercial quotas for sharks specified in this section apply to all sharks harvested from the management unit, regardless of where harvested. Sharks caught and landed commercially from state waters, even by fishermen without Federal shark permits, must be counted against the appropriate commercial quota. Any of the base quotas listed below, including regional and/or sub-regional base quotas, may be adjusted per paragraph (b)(2) of this section. Any sharks landed commercially as ''unclassified'' will be counted against the appropriate quota based on the species composition calculated from data collected by observers on non-research trips and/or dealer data. No prohibited sharks, including parts or pieces of prohibited sharks, which are listed under heading D of Table 1 of appendix A to this part, may be retained except as authorized under § 635.32. For the purposes of this section, the boundary between the Gulf of Mexico region and the Atlantic region is defined as a line beginning on the east coast of Florida at the mainland at 25°20.4′ N. lat., proceeding due east. Any water and land to the south and west of that boundary is considered, for the purposes of quota monitoring and setting of quotas, to be within the Gulf of Mexico region. Any water and land to the north and east of that boundary, for the purposes of quota monitoring and setting of quotas, is considered to be within the Atlantic region.

(i) *Commercial quotas that apply only in the Atlantic Region.* The commercial quotas specified in this paragraph (b)(1)(i) apply only to those species of sharks and management groups within the management unit that were harvested in the Atlantic region, as defined in paragraph (b)(1) of this section.

(A) *Atlantic aggregated LCS.* The base annual commercial quota for Atlantic aggregated LCS is 168.9 mt dw.

(B) *Atlantic hammerhead sharks.* The regional base annual commercial quota for hammerhead sharks caught in the Atlantic region is 27.1 mt dw (51.7% of the overall base quota established in paragraph (b)(1)(iii) of this section).

(C) *Atlantic non-blacknose SCS.* The base annual commercial quota for Atlantic non-blacknose SCS is 264.1 mt dw.

(D) *Atlantic blacknose sharks.* The base annual commercial quota for Atlantic blacknose sharks is 17.2 mt dw. Blacknose sharks may only be harvested for commercial purposes in the Atlantic region south of 34°00′ N. lat. The harvest of blacknose sharks by persons aboard a vessel that has been issued or should have been issued a shark LAP and that is operating north of 34°00′ N. lat. is prohibited.

(ii) *Commercial quotas that apply only in the Gulf of Mexico Region.* The commercial quotas specified in this paragraph (b)(1)(ii) apply only to those species of sharks and management groups within the management unit that were harvested in the Gulf of Mexico region, as defined in paragraph (b)(1) of this section. The Gulf of Mexico region is further split into western and eastern Gulf of Mexico sub-regions by a boundary that is drawn along 88°00′ W. long. All sharks harvested within the Gulf of Mexico region in fishing catch areas in waters westward of 88°00′ W. long. are considered to be from the western Gulf of Mexico sub-region, and all sharks harvested within the Gulf of Mexico region in fishing catch areas in waters east of 88°00′ W. long., including within the Caribbean Sea, are considered to be from the eastern Gulf of Mexico sub-region.

(A) *Gulf of Mexico aggregated LCS.* The base annual commercial quota for Gulf of Mexico aggregated LCS is 157.5 mt dw. The eastern Gulf of Mexico sub-region base quota is 85.5 mt dw (54.3% of the Gulf of Mexico region base quota) and the western Gulf of Mexico sub-region base quota is 72.0 mt dw (45.7% of the Gulf of Mexico region base quota).

(B) *Gulf of Mexico hammerhead sharks.* The regional base annual commercial quota for hammerhead sharks caught in the Gulf of Mexico region is 25.3 mt dw (48.3% of the overall base quota established in paragraph (b)(1)(iii) of this section). The eastern Gulf of Mexico sub-region base quota is 13.4 mt dw (52.8% of this regional base quota) and the western Gulf of Mexico sub-region base quota is 11.9 mt dw (47.2% of this regional base quota).

(C) *Gulf of Mexico blacktip sharks.* The base annual commercial quota for Gulf of Mexico blacktip sharks is 256.6 mt dw. The eastern Gulf of Mexico sub-region base quota is 25.1 mt dw (9.8% of the Gulf of Mexico region base quota) and the western Gulf of Mexico sub-region base quota is 231.5 mt dw (90.2% of the Gulf of Mexico region base quota).

(D) *Gulf of Mexico non-blacknose SCS.* The base annual commercial quota for Gulf of Mexico non-blacknose SCS is 112.6 mt dw. This base quota is not split between the eastern and western Gulf of Mexico sub-regions.

(E) *Gulf of Mexico blacknose sharks.* The base annual commercial quota for Gulf of Mexico blacknose sharks is 0.0 mt dw. The harvest of blacknose sharks by persons aboard a vessel that has been issued or should have been issued a shark LAP and that is operating in the Gulf of Mexico region is prohibited.

(iii) *Commercial quotas that apply in all regions.* The commercial quotas specified in this section apply to any sharks or management groups within the management unit that were

harvested in either the Atlantic or Gulf of Mexico regions.

(A) *Sandbar sharks.* The base annual commercial quota for sandbar sharks is 90.7 mt dw. This quota, as adjusted per paragraph (b)(2) of this section, is available only to the owners of commercial shark vessels that have been issued a valid shark research permit and that have a NMFS-approved observer onboard.

(B) *Research LCS.* The base annual commercial quota for Research LCS is 50 mt dw. This quota, as adjusted per paragraph (b)(2) of this section, is available only to the owners of commercial shark vessels that have been issued a valid shark research permit and that have a NMFS-approved observer onboard.

(C) *Hammerhead sharks.* The overall base annual commercial quota for hammerhead sharks is 52.4 mt dw. This overall base quota is further split for management purposes between the regions defined in paragraphs (b)(1)(i) and (ii) of this section.

(D) *Pelagic sharks.* The base annual commercial quotas for pelagic sharks are 273.0 mt dw for blue sharks, 1.7 mt dw for porbeagle sharks, and 488.0 mt dw for pelagic sharks other than blue sharks or porbeagle sharks.

(2) *Annual and inseason adjustments of commercial quotas.* NMFS will publish in the **Federal Register** any annual or inseason adjustments to the base annual commercial overall, regional, or sub-regional quotas. No quota will be available, and the fishery will not open, until any adjustments are published in the **Federal Register** and effective. Within a fishing year or at the start of a fishing year, NMFS may transfer quotas between regions and sub-regions of the same species or management group, as appropriate, based on the criteria in paragraph (b)(2)(iii) of this section.

(i) *Annual overharvest adjustments*—(A) *Adjustments of annual overall and regional base quotas.* Except as noted in this section, if any of the available commercial base or adjusted overall quotas or regional quotas, as described in this section, is exceeded in any fishing year, NMFS will deduct an amount equivalent to the overharvest(s) from the base overall or regional quota the following fishing year or, depending on the level of overharvest(s), NMFS may deduct from the overall or regional base quota an amount equivalent to the overharvest(s) spread over a number of subsequent fishing years to a maximum of five years. If the blue shark quota is exceeded, NMFS will reduce the annual commercial quota for pelagic sharks by the amount that the blue shark quota is exceeded prior to the start of the next fishing year or, depending on the level of overharvest(s), deduct an amount equivalent to the overharvest(s) spread over a number of subsequent fishing years to a maximum of five years.

(B) *Adjustments to sub-regional quotas.* If a sub-regional quota is exceeded but the regional quota is not, NMFS will not reduce the annual regional base quota the following year and sub-regional quotas will be determined as specified in paragraph (b)(1) of this section. If both a sub-regional quota(s) and the regional quota are exceeded, for each sub-region in which an overharvest occurred, NMFS will deduct an amount equivalent to that sub-region's overharvest from that sub-region's quota the following fishing year or, depending on the level of overharvest, NMFS may deduct from that sub-region's base quota an amount equivalent to the overharvest spread over a number of subsequent fishing years to a maximum of five years.

(C) *Adjustments to quotas when the species or management group is split into regions or sub-regions for management purposes and not as a result of a stock assessment.* If a regional quota for a species that is split into regions for management purposes only is exceeded but the overall quota is not, NMFS will not reduce the overall base quota for that species or management group the following year and the regional quota will be determined as specified in paragraph (b)(1) of this section. If both a regional quota(s) and the overall quota is exceeded, for each region in which an overharvest occurred, NMFS will deduct an amount equivalent to that region's overharvest from that region's quota the following fishing year or, depending on the level of overharvest(s), NMFS may deduct from that region's base quota an amount equivalent to the overharvest spread over a number of subsequent fishing years to a maximum of five years. If a sub-regional quota of a species or management group that is split into regions for management purposes only is exceeded, NMFS will follow the procedures specified in paragraph (b)(2)(i)(B) of this section.

(ii) *Annual underharvest adjustments.* Except as noted in this paragraph (b)(2)(ii), if any of the annual base or adjusted quotas, including regional quotas, as described in this section is not harvested, NMFS may adjust the annual base quota, including regional quotas, depending on the status of the stock or management group. If a species or a specific species within a management group is declared to be overfished, to have overfishing occurring, or to have an unknown status, NMFS may not adjust the following fishing year's base quota, including regional quota, for any underharvest, and the following fishing year's quota will be equal to the base annual quota. If the species or all species in a management group is not declared to be overfished, to have overfishing occurring, or to have an unknown status, NMFS may increase the following year's base annual quota, including regional quota, by an equivalent amount of the underharvest up to 50 percent above the base annual quota. Except as noted in paragraph (b)(2)(iii) of this section, underharvests are not transferable between regions, species, and/or management groups.

(iii) *Determination criteria for inseason and annual quota transfers between regions and sub-regions.* Inseason or annual quota transfers of quotas between regions or sub-regions may be conducted only for species or management groups where the species are the same between regions or sub-regions and the quota is split between regions or sub-regions for management purposes and not as a result of a stock assessment. Before making any inseason or annual quota transfer between regions or sub-regions, NMFS will consider the following criteria and other relevant factors:

* * * * *

(3) *Opening commercial fishing season criteria.* NMFS will file with the Office of the Federal Register for publication notification of the opening dates of the overall, regional, and sub-regional shark fisheries for each species and management group. Before making any decisions, NMFS would consider the following criteria and other relevant factors in establishing the opening dates:

* * * * *

■ 6. In § 635.28, revise paragraph (b) to read as follows:

§ 635.28 Fishery closures.

* * * * *

(b) *Sharks.* (1) A shark fishery that meets any of the following circumstances is closed and subject to the requirements of paragraph (b)(6) of this section:

(i) No overall, regional, and/or sub-regional quota, as applicable, is specified at § 635.27(b)(1);

(ii) The overall, regional, and/or sub-regional quota, as applicable, specified at § 635.27(b)(1) is zero;

(iii) After accounting for overharvests as specified at § 635.27(b)(2), the overall, regional, and/or sub-regional quota, as applicable, is determined to be

zero or close to zero and NMFS has closed the fishery by publication of a notice in the **Federal Register**;

(iv) The species is a prohibited species as listed under Table 1 of appendix A of this part; or

(v) Landings of the species and/or management group meet the requirements specified in § 635.28(b)(2) through (5) and NMFS has closed the fishery by publication of a notice in the **Federal Register**.

(2) *Non-linked quotas.* If the overall, regional, and/or sub-regional quota of a species or management group is not linked to another species or management group and that overall, regional, and/or sub-regional quota is available as specified by a publication in the **Federal Register**, then that overall, regional, and/or sub-regional commercial fishery for the shark species or management group will open as specified in § 635.27(b). When NMFS calculates that the overall, regional, and/or sub-regional landings for a shark species and/or management group, as specified in § 635.27(b)(1), has reached or is projected to reach 80 percent of the available overall, regional, and/or sub-regional quota as specified in § 635.27(b)(1), NMFS will file for publication with the Office of the Federal Register a notice of an overall, regional, and/or sub-regional closure, as applicable, for that shark species and/or shark management group that will be effective no fewer than 5 days from date of filing. From the effective date and time of the closure until NMFS announces, via the publication of a notice in the **Federal Register**, that additional overall, regional, and/or sub-regional quota is available and the season is reopened, the overall, regional, and/or sub-regional fisheries for that shark species or management group are closed, even across fishing years.

(3) *Linked quotas.* As specified in paragraph (b)(4) of this section, the overall, regional, and/or sub-regional quotas of some shark species and/or management groups are linked to the overall, regional, and/or sub-regional quotas of other shark species and/or management groups. For each pair of linked species and/or management groups, if the overall, regional, and/or sub-regional quota specified in § 635.27(b)(1) is available for both of the linked species and/or management groups as specified by a publication in the **Federal Register**, then the overall, regional, and/or sub-regional commercial fishery for both of the linked species and/or management groups will open as specified in § 635.27(b)(1). When NMFS calculates that the overall, regional, and/or sub-regional landings for any species and/or management group of a linked group has reached or is projected to reach 80 percent of the available overall, regional, and/or sub-regional quota as specified in § 635.27(b)(1), NMFS will file for publication with the Office of the Federal Register a notice of an overall, regional, and/or sub-regional closure for all of the species and/or management groups in that linked group that will be effective no fewer than 5 days from date of filing. From the effective date and time of the closure until NMFS announces, via the publication of a notice in the **Federal Register**, that additional overall, regional, and/or sub-regional quota is available and the season is reopened, the overall, regional, and/or sub-regional fishery for all species and/or management groups in that linked group is closed, even across fishing years.

(4) The quotas of the following species and/or management groups are linked:

(i) Atlantic hammerhead sharks and Atlantic aggregated LCS.

(ii) Eastern Gulf of Mexico hammerhead sharks and eastern Gulf of Mexico aggregated LCS.

(iii) Western Gulf of Mexico hammerhead sharks and western Gulf of Mexico aggregated LCS.

(iv) Atlantic blacknose sharks and Atlantic non-blacknose SCS south of 34°00′ N. lat.

(5) NMFS may close the regional or sub-regional Gulf of Mexico blacktip shark management group(s) before landings reach, or are expected to reach, 80 percent of the quota, after considering the following criteria and other relevant factors:

(i) Estimated Gulf of Mexico blacktip shark season length based on available sub-regional quotas and average sub-regional weekly catch rates during the current fishing year and from previous years;

(ii) Variations in regional and/or sub-regional seasonal distribution, abundance, or migratory patterns of blacktip sharks, hammerhead sharks, and aggregated LCS based on scientific and fishery information;

(iii) Effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments;

(iv) The amount of remaining shark quotas in the relevant sub-regions, to date, based on dealer or other reports; and,

(v) The regional and/or sub-regional catch rates of the relevant shark species or management group(s), to date, based on dealer or other reports.

(6) When the overall, regional, and/or sub-regional fishery for a shark species and/or management group is closed, a fishing vessel, issued a Federal Atlantic commercial shark permit pursuant to § 635.4, may not possess, retain, land, or sell a shark of that species and/or management group that was caught within the closed region or sub-region, except under the conditions specified in § 635.22(a) and (c) or if the vessel possesses a valid shark research permit under § 635.32, a NMFS-approved observer is onboard, and the sandbar and/or Research LCS fishery, as applicable, is open. A shark dealer, issued a permit pursuant to § 635.4, may not purchase or receive a shark of that species and/or management group that was caught within the closed region or sub-region from a vessel issued a Federal Atlantic commercial shark permit, except that a permitted shark dealer or processor may possess sharks that were caught in the closed region or sub-region that were harvested, off-loaded, and sold, traded, or bartered, prior to the effective date of the closure and were held in storage. Under a closure for a shark species or management group, a shark dealer, issued a permit pursuant to § 635.4 may, in accordance with State regulations, purchase or receive a shark of that species or management group if the shark was harvested, off-loaded, and sold, traded, or bartered from a vessel that fishes only in State waters and that has not been issued a Federal Atlantic commercial shark permit, HMS Angling permit, or HMS Charter/Headboat permit pursuant to § 635.4. Additionally, under an overall, a regional, or a sub-regional closure for a shark species and/or management group, a shark dealer, issued a permit pursuant to § 635.4, may purchase or receive a shark of that species group if the sandbar or Research LCS fishery, as applicable, is open and the shark was harvested, off-loaded, and sold, traded, or bartered from a vessel issued a valid shark research permit (per § 635.32) that had a NMFS-approved observer on board during the trip the shark was collected.

(7) If the Atlantic Tunas Longline category quota is closed as specified in paragraph (a)(4) of this section, vessels that have pelagic longline gear on board cannot possess, retain, land, or sell sharks.

* * * * *

■ 7. In § 635.31, revise paragraphs (c)(1) and (4) to read as follows:

§ 635.31 Restrictions on sale and purchase.

* * * * *

(c) * * *

(1) Persons that own or operate a vessel that possesses, retains, or lands a shark from the management unit may sell such shark only if the vessel has a valid commercial shark permit issued under this part. Persons may possess, retain, land, and sell a shark only to a federally-permitted dealer and only when the fishery for that species, management group, region, and/or sub-region has not been closed, as specified in § 635.28(b). Persons that own or operate a vessel that has pelagic longline gear onboard can possess, retain, land, and sell a shark only if the Atlantic Tunas Longline category has not been closed, as specified in § 635.28(a).

* * * * *

(4) Only dealers who have a valid Federal Atlantic shark dealer permit and who have submitted reports to NMFS according to reporting requirements of § 635.5(b)(1)(ii) may first receive a shark from an owner or operator of a vessel that has, or is required to have, a valid Federal Atlantic commercial shark permit issued under this part. Dealers may purchase a shark only from an owner or operator of a vessel who has a valid commercial shark permit issued under this part, except that dealers may purchase a shark from an owner or operator of a vessel who does not have a Federal Atlantic commercial shark permit if that vessel fishes exclusively in state waters and does not possess a HMS Angling permit or HMS Charter/Headboat permit pursuant to § 635.4. Atlantic shark dealers may purchase a sandbar shark only from an owner or operator of a vessel who has a valid shark research permit and who had a NMFS-approved observer onboard the vessel for the trip in which the sandbar shark was collected. Atlantic shark dealers may purchase a shark from an owner or operator of a fishing vessel who has a valid commercial shark permit issued under this part only when the fishery for that species, management group, region, and/or sub-region has not been closed, as specified in § 635.28(b). Atlantic shark dealers may first receive a shark from a vessel that has pelagic longline gear onboard only if the Atlantic Tunas Longline category has not been closed, as specified in § 635.28(a).

* * * * *

■ 8. In § 635.34, revise paragraphs (a) and (b) to read as follows:

§ 635.34 Adjustment of management measures.

(a) NMFS may adjust the IBQ shares or resultant allocations for bluefin tuna, as specified in § 635.15; catch limits for bluefin tuna, as specified in § 635.23; the overall, regional, and/or sub-regional quotas for bluefin tuna, sharks, swordfish, and northern albacore tuna as specified in § 635.27; the retention limits for sharks, as specified at § 635.24; the regional retention limits for Swordfish General Commercial permit holders, as specified at § 635.24; the marlin landing limit, as specified in § 635.27(d); and the minimum sizes for Atlantic blue marlin, white marlin, and roundscale spearfish as specified in § 635.20.

(b) In accordance with the framework procedures in the 2006 Consolidated HMS FMP, NMFS may establish or modify for species or species groups of Atlantic HMS the following management measures: Maximum sustainable yield or optimum yield based on the latest stock assessment or updates in the SAFE report; domestic quotas; recreational and commercial retention limits, including target catch requirements; size limits; fishing years or fishing seasons; shark fishing regions, or regional and/or sub-regional quotas; species in the management unit and the specification of the species groups to which they belong; species in the prohibited shark species group; classification system within shark species groups; permitting and reporting requirements; workshop requirements; the IBQ shares or resultant allocations for bluefin tuna; administration of the IBQ program (including but not limited to requirements pertaining to leasing of IBQ allocations, regional or minimum IBQ share requirements, IBQ share caps (individual or by category), permanent sale of shares, NED IBQ rules, etc.); time/area restrictions; allocations among user groups; gear prohibitions, modifications, or use restriction; effort restrictions; observer coverage requirements; EM requirements; essential fish habitat; and actions to implement ICCAT recommendations, as appropriate.

* * * * *

■ 9. In § 635.71, revise paragraphs (d)(3) and (4) to read as follows:

§ 635.71 Prohibitions.

* * * * *

(d) * * *

(3) Retain, possess, or land a shark of a species or management group when the fishery for that species, management group, region, and/or sub-region is closed, as specified in § 635.28(b).

(4) Sell or purchase a shark of a species or management group when the fishery for that species, management group, region, and/or sub-region is closed, as specified in § 635.28(b).

* * * * *

■ 10. In appendix A to part 635, revise Section B of Table 1 to read as follows:

Appendix A to Part 635—Species Tables

TABLE 1 OF APPENDIX A TO PART 635—OCEANIC SHARKS

*	* * * *
B. Small Coastal Sharks	
Atlantic and Gulf of Mexico Atlantic sharpnose, *Rhizoprionodon terraenovae*	
Atlantic and Gulf of Mexico blacknose, *Carcharhinus acronotus*	
Atlantic and Gulf of Mexico bonnethead, *Sphyrna tiburo*	
Finetooth, *Carcharhinus isodon*	
*	* * * *

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Part III

Securities and Exchange Commission

17 CFR Parts 229, 240, and 249
Pay Ratio Disclosure; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 240, and 249

[Release Nos. 33–9877; 34–75610; File No. S7–07–13]

RIN 3235–AL47

Pay Ratio Disclosure

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting amendments to Item 402 of Regulation S–K to implement Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Section 953(b) directs the Commission to amend Item 402 of Regulation S–K to require disclosure of the median of the annual total compensation of all employees of a registrant (excluding the chief executive officer), the annual total compensation of that registrant's chief executive officer, and the ratio of the median of the annual total compensation of all employees to the annual total compensation of the chief executive officer. The disclosure is required in any annual report, proxy or information statement, or registration statement that requires executive compensation disclosure pursuant to Item 402 of Regulation S–K. The disclosure requirement does not apply to emerging growth companies, smaller reporting companies, or foreign private issuers.

DATES: *Effective Date:* October 19, 2015.

Compliance Date: Registrants must comply with the final rule for the first fiscal year beginning on or after January 1, 2017.

FOR FURTHER INFORMATION CONTACT: John Fieldsend, Special Counsel in the Office of Rulemaking, at (202) 551–3430, in the Division of Corporation Finance; 100 F Street NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are adopting amendments to Item 402 [1] of Regulation S–K [2] and a conforming amendment to Form 8–K [3] under the Securities Exchange Act of 1934 (the ''Exchange Act'').[4]

Table of Contents

[1] 17 CFR 229.402.

[2] 17 CFR 229.10 *et seq.*

[3] 17 CFR 249.308.

[4] 15 U.S.C. 78a *et seq.*

I. Background

A. Section 953(b) of the Dodd-Frank Act

Section 953(b)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'') [5] directs us to amend Item 402 of Regulation S–K (''Item 402'') [6] to require each registrant, other than an emerging growth company, as that term is defined in Section 3(a) of the Exchange Act, to disclose in any filing of the registrant described in Item 10(a) of Regulation S–K (or any successor thereto): [7] (A) The median of the annual total compensation of all employees of the registrant, except the chief executive officer (''CEO'') (or any equivalent position) of the registrant; (B) the annual total compensation of the CEO (or any equivalent position) of the registrant; and (C) the ratio of the median of the total compensation of all employees of the registrant to the annual total compensation of the CEO of the registrant. Section 953(b)(2) specifies that, for purposes of Section 953(b), ''total compensation'' of an employee of a registrant shall be determined in accordance with Item 402(c)(2)(x) of Regulation S–K as in effect on the day before the date of enactment of the Dodd-Frank Act. As discussed in detail below, we are adopting amendments to Item 402 to implement Section 953(b).[8] We refer to this disclosure of the median of the annual total compensation of all employees of the registrant, the annual total compensation of the principal executive officer (''PEO'') of the registrant,[9] and the ratio of the two amounts as ''pay ratio'' disclosure.

Congress did not expressly state the specific objectives or intended benefits of Section 953(b), and the legislative history of the Dodd-Frank Act also does not expressly state the Congressional purpose underlying Section 953(b).[10] As discussed below, based on our analysis of the statute and comments received, we believe Section 953(b) was intended to provide shareholders with a company-specific metric that can assist in their evaluation of a registrant's executive compensation practices. Accordingly, we have sought to tailor the final rule to meet that purpose while avoiding unnecessary costs.

In informing our understanding of the Congressional purpose of Section 953(b), we have considered the surrounding provisions of the Dodd-Frank Act [11] as well as the comments that we received during this rulemaking. Subtitle E of Title IX of the Dodd-Frank Act, headed —''Accountability and Executive Compensation'' is, as explained in the Conference Report for the legislation, ''designed to address shareholder rights and executive compensation practices.'' [12] Its provisions, including Section 953(b), address various aspects of executive compensation with a focus on encouraging shareholder engagement in executive compensation matters by, among other things, increasing the transparency of compensation. In Section 951, for example, Congress required companies to provide for periodic shareholder votes on executive compensation. In implementing Congress's directive, we noted that a key function of the disclosures required incident to the new voting requirement was to ''provide shareholders and investors with timely information'' that was potentially useful to them ''as they

[5] Public Law 111–203, sec. 953(b), 124 Stat. 1376, 1904 (2010), as amended by Public Law 112–106, sec. 102(a)(3), 126 Stat. 306, 309 (2012). Section 102(a)(3) of the JOBS Act amended Section 953(b) of the Dodd-Frank Act to provide an exemption for registrants that are emerging growth companies as that term is defined in Section 3(a) of the Exchange Act.

[6] 17 CFR 229.402. As discussed in greater detail below, consistent with Section 953(b), the final rule requires a registrant to provide the pay ratio disclosure in any filing described in Item 10(a) of Regulation S–K that calls for executive compensation disclosure under Item 402, including annual reports on Form 10–K, registration statements under the Securities Act and Exchange Act, and proxy and information statements, to the same extent that these forms require compliance with Item 402. Therefore, any company that provides such a filing is subject to the final rule. Section 953(b) refers to any such company as an ''issuer.'' In this release, to be consistent with other releases, we generally refer to such a company as a ''registrant.'' For the purposes of this release, unless otherwise expressly specified, these terms are used interchangeably.

[7] 17 CFR 229.10(a).

[8] On September 18, 2013, we proposed amendments to implement Section 953(b). *See Pay Ratio Disclosure,* Release No. 33–9452 (Sept. 18, 2013) [78 FR 60560] (''Proposing Release'').

[9] The term ''CEO'' in the executive compensation rules was replaced by the term ''PEO'' as part of the 2006 amendments to Item 402 in order to maintain consistency with the nomenclature used in Item 5.02 of Form 8–K. *See Executive Compensation and Related Person Disclosure,* Release No. 33–8732A, n. 326 (Aug. 29, 2006) [71 FR 53158] (''2006 Adopting Release''). Consistent with the language of current Item 402, both the proposed rule and the final rule use the term ''PEO'' in lieu of ''CEO.''

[10] *See* letters from National Association of Manufacturers (Jul. 6, 2015) (''NAM II'') (stating that it concurs with our conclusion in the Proposing Release that neither the statute nor the related legislative history directly states the objectives or intended benefits of the provision) and WorldatWork (Jul. 6, 2015) (''WorldatWork II'').

[11] *See, e.g., Medtronic, Inc.* v. *Lohr,* 518 U.S. 470, 496 (1996) (''Congress' intent, of course, primarily is discerned from the language of the . . . statute and the 'statutory framework' surrounding it. Also relevant, however, is the 'structure and purpose of the statute as a whole,' as revealed not only in the text, but through . . . reasoned understanding of the way in which congress intended the statute and its surrounding regulatory scheme to affect business, consumers, and law.'') and *Maine Public Utilities Comm'n* v. *FERC,* 545 F.3d 278, 282 (D.C. Cir. 2006) (''This court applies the traditional tools of statutory interpretation in determining congressional intent, looking to the text, structure, purpose, and legislative history of a statute.'').

[12] Dodd-Frank Act, H.R. Rep. 111–517, at 872 (2010) (Conf. Rep.).

consider voting and investment decisions.'' [13] Section 952 requires, in turn, that both compensation committee members of registrants and their advisors be independent. We noted that the rules implementing Section 952 could serve an informational purpose that benefits ''investors to the extent they enable compensation committees to make better informed decisions regarding the amount or form of executive compensation.'' [14] Further, as we noted in the release proposing implementation of Section 953(a), that section is intended to provide shareholders with metrics that will help them assess executive compensation relative to the registrant's performance.[15] The Section 953(a) information is intended, among other things, to assist shareholders when exercising their say-on-pay voting rights under Section 951.

We believe that Section 953(b) should be interpreted consonant with Subtitle E's general purpose of further facilitating shareholder engagement with executive compensation. Thus, we believe that Congress intended Section 953(b) to supplement the executive compensation information available to shareholders. Particularly, Section 953(b) provides new data points that shareholders may find relevant and useful when exercising their voting rights under Section 951.[16] Several commenters stated affirmatively that they would find the new data points, including pay ratio disclosure, relevant and useful when making voting decisions.[17] Some commenters in the pre-proposing period [18] suggested specifically that shareholders of public companies could use the pay ratio information, together with pay-versus-performance disclosure, to help inform their say-on-pay votes, which could also be a tool for shareholders to hold companies accountable for their CEO compensation.[19] A significant consideration for us in fashioning a final rule implementing Section 953(b), then, is the extent to which elements of the final rule further Congress's apparent goal of giving shareholders additional executive compensation information to enhance the shareholder engagement envisioned by Section 951.[20]

Consistent with this understanding of the Congressional purpose of Section 953(b), we believe the final pay ratio rule should be designed to allow shareholders to better understand and assess a particular registrant's compensation practices and pay ratio disclosures rather than to facilitate a comparison of this information from one registrant to another.[21] As we noted in the Proposing Release, we do not believe that precise conformity or comparability of the pay ratio across companies is necessarily achievable given the variety of factors that could cause the ratio to differ. Consequently, we believe the primary benefit of the pay ratio disclosure is to provide shareholders with a company-specific metric that they can use to evaluate the PEO's compensation within the context of their company.

On the other hand, some commenters asserted that the pay ratio disclosure would not provide meaningful or material information to shareholders in making voting or investment decisions.[22] In support of this contention, some of these commenters cited studies demonstrating that shareholders are not interested in this information,[23] some commenters cited shareholder votes indicating a high level of support for executive pay and little support for shareholder proposals advocating for pay ratio disclosure,[24]

[13] *Shareholder Approval of Executive Compensation and Golden Parachute Compensation,* Release No. 33–9178 (Jan. 25, 2011) [76 FR 6010, 6037 (Feb. 2, 2011)].

[14] *Listing Standards for Compensation Committees,* Release No. 33–9330 (June 20, 2012) [77 FR 38422, 38447 (Jun. 27, 2012)].

[15] *Pay Versus Performance,* Release No. 34–74835 (Apr. 29, 2015) [80 FR 26329 (May 7, 2015)].

[16] We note that the say-on-pay votes extend to certain other senior officers at the registrant beyond the PEO while the pay ratio disclosure is solely focused on a comparison of the PEO's compensation to the median employee's compensation. However, we do not think that this diminishes the overall utility of the pay ratio disclosures to say-on-pay votes. The PEO will typically be the highest compensated officer at a registrant and, to the extent shareholders rely on the pay ratio disclosure to determine whether the PEO's compensation is appropriate or not, it also may inform shareholders' relative assessment of the compensation of the other senior officers whose compensation is subject to say-on-pay votes.

[17] *See, e.g.,* letters from AFL–CIO (Dec. 2, 2013) (''AFL–CIO I''); American Federation of State County and Municipal Employees (Nov. 27, 2013) (''AFSCME''); Amalgamated Bank (Nov. 25, 2013) (''Amalgamated''); Bricklayers & Trowel Trades International Pension Fund (Nov. 27, 2013) (''Bricklayers International''); California State Teachers' Retirement System (Dec. 2, 2013) (''CalSTRS''); Calvert Investments (Dec. 5, 2013) (''Calvert''); Chevy Chase Trust (Nov. 25, 2013) (''Chevy Chase Trust''); Corporate Governance (Nov. 25, 2013) (''CorpGov.net''); Form Letter C; Form Letter D; Form Letter E; Form Letter F; Laborers' International Union of North America (Oct. 10, 2013) (''LIUNA''); Local Authority Pension Fund Forum (Nov. 10, 2013) (''LAPFF''); New York State Comptroller (Nov. 27, 2013) (''NY State Comptroller''); Pax World Management LLC (Oct. 10, 2013) (''Pax World Funds''); Public Citizen (Nov. 26, 2013) (''Public Citizen I''); The Forum for Sustainable and Responsible Investment (Dec. 2, 2013) (''US SIF''); Trillium Asset Management, LLC (Dec. 2, 2013) (''Trillium I''); Trillium Asset Management, LLC (Jul. 31, 2014) (''Trillium II''); and UAW Retirement Medical Benefits Trust (Nov. 21, 2013) (''UAW Trust'').

[18] To facilitate public input on rulemaking required by the Dodd-Frank Act, we provided a series of email links, organized by topic, on our Web site at *http://www.sec.gov/spotlight/regreformcomments.shtml*, so that the public could provide comments before we proposed a rule. The comments relating to Section 953(b) are located at *http://www.sec.gov/comments/df-title-ix/executive-compensation/executive-compensation.shtml* (''Pre-Proposing Release Web site''). Comments that we received after we published the Proposing Release are located at *http://www.sec.gov/comments/s7-07-13/s70713.shtml*. Our references to comment letters refer to the comments on the proposal unless otherwise specified.

[19] *See, e.g.,* letters from CtW Investment Group (Jun. 20, 2011) (''CtW Investment Group pre-proposal letter) and Steven Towns (Feb. 6, 2012) (''S. Towns pre-proposal letter).

[20] We note that some commenters contended that the pay ratio disclosure is intended to publicly ''shame'' registrants concerning the size of the disparity between their CEO's compensation and their typical worker's compensation. *See, e.g.,* letters from The Honorable Carolos Cardozo Campbell, Former Assistant Secretary of Commerce for Economic Development (Nov. 27, 2013) (''Former Assistant Secretary Campbell''); Center on Executive Compensation (Jul. 6, 2015) (''COEC III''); Hyster-Yale Materials Handling, Inc. (Dec. 2, 2013) (''Hyster-Yale''); NACCO Industries, Inc. (Dec. 2, 2013) (''NACCO''); and U.S. Chamber of Commerce (Dec. 2, 2013) (''Chamber I''). As discussed above, we have reached a different conclusion based on principles of statutory construction and have taken no such objective into account in framing the rule. In crafting the final rule, we have sought to carefully tailor the pay ratio disclosure requirement so that it provides shareholders with a company-specific metric that is relevant and useful to their say-on-pay voting.

[21] *See, e.g.,* letters from CalSTRS, LAPFF, RPMI Railpen Investments (Dec. 2, 2013) (''RPMI''), Rep. Keith Ellison *et al.* (Dec. 2, 2013) (''Rep. Ellison *et al.* I''), Rep. Keith Ellison *et al.* (Mar. 17, 2015) (''Rep. Ellison *et al.* II''), and Sen. Robert Menendez *et al.* (Dec. 16, 2014) (''Sen. Menendez *et al.* II'').

[22] *See, e.g.,* letters from James J. Angel, Ph.D., CFA, Visiting Associate Professor, The Wharton School, University of Pennsylvania (Nov. 22, 2013) (''Prof. Angel''); Avery Dennison Corporation (Nov. 26, 2013) (''Avery Dennison''); Bill Barrett Corporation (Dec. 2, 2013) (''Bill Barrett Corp.''); Business Roundtable (Dec. 2, 2013) (''Business Roundtable I''); Center on Executive Compensation (Dec. 2, 2013) (''COEC I''); Center on Executive Compensation (Sep. 26, 2014) (''COEC II''); COEC III; Hyster-Yale; Mercer, Inc. (Dec. 2, 2013) (''Mercer I''); NACCO; and Pearl Meyer and Partners (Dec. 2, 2013) (''PM&P'').

[23] *See, e.g.,* letters from Chamber I (citing the Center for Audit Quality's 7th annual Main Street Investor Survey, which ranked CEO compensation last on the list of factors used by shareholders to make investment decisions, with only 16% saying it was essential to their decision); COEC I (acknowledging that, while some literature focuses on pay disparities among employees with comparable jobs, the study frequently cited for the impact of disparities on collaboration, ''Pay Disparities Within Top Management Groups: Evidence of Harmful Effects on Performance of High-Technology Firms'' by Phyllis Siegel and Donald C. Hambrick, concerns executive pay and pay disparities among top executives, it does not discuss pay disparities between the CEO and median employee), and International Bancshares Corporation (Nov. 25, 2013) (''IBC'') (citing a Wall Street Journal article that says only 10% of individuals polled believed pay ratio would have value to shareholders) .

[24] *See, e.g.,* letters from Chamber I (indicating that the average support for management compensation in public companies was 90.1%, and 97.6% of companies received majority shareholder support

and some commenters contended that pay ratio disclosure would confuse shareholders because they would rely on it without fully considering a company's detailed narrative disclosures.[25] Notwithstanding the disagreement among commenters on the value of the pay ratio disclosure, in adopting the final rule we have sought to implement Congress's apparent determination that the pay ratio disclosure would be useful to shareholders.

We also recognize that many commenters raised significant concerns about the costs of providing the required pay ratio disclosure. In implementing the statutory requirements, we have exercised our exemptive authority and provided flexibility in a manner that we expect will reduce costs and burdens for registrants, while preserving what we perceive to be the purpose and intended benefits of the disclosure required by Section 953(b).[26] The significant cost estimates of the pay ratio disclosure submitted by some commenters support our view that some accommodations are appropriate.[27] The final rule, therefore, both maintains the flexibility and accommodations from the proposal (such as permitting the use of statistical sampling and a consistent compensation measure to identify the median employee and reasonable estimates to calculate total compensation) and provides additional flexibility as follows: The final rule takes a flexible approach to the methodology a registrant can use to identify its median employee and calculate the median employee's annual total compensation; provides a *de minimis* exemption for non-U.S. employees and an exemption for registrants where, despite reasonable efforts to obtain or process the information necessary for compliance with the final rule, they are unable to do so without violating a foreign jurisdiction's laws or regulations governing data privacy; permits cost-of-living adjustments for the compensation of employees in jurisdictions other than the jurisdiction in which the PEO resides so that the compensation is adjusted to the cost of living in the jurisdiction in which the PEO resides; gives registrants the ability to make the median employee determination only once every three years and to choose as a determination date any date within the last three months of a registrant's fiscal year; and provides transition periods for new registrants, registrants engaging in business combinations or acquisitions, and registrants that cease to be smaller reporting companies or emerging growth companies.

Overall, we think the final rule will provide investors with information Congress intended them to have to assess the compensation and accountability of a company's PEO while seeking to limit the costs and practical difficulties of providing the disclosure.

Finally, we recognize the possibility that, based on the specific facts and circumstances of a registrant's work force and corporate operations, the pay ratio disclosure may warrant additional disclosures from a registrant to ensure that, in the registrant's view, the pay ratio disclosure is a meaningful data point for investors when making their say-on-pay votes. While Congress appears to have believed that the pay ratio disclosure would be a useful data point, we recognize that its relative usefulness—taken alone without accompanying disclosures to provide potentially important context—may vary considerably. Rather than prescribe a one-size-fits-all catalogue of additional disclosures that registrants should provide to put the pay ratio disclosure in context, we believe it is the better course to provide registrants the flexibility to provide additional disclosures that they believe will assist investors' understanding of the meaning of pay ratio disclosure when making say-on-pay votes. In this way, we believe we can best fulfill Congress's directive in Section 953(b) while avoiding unnecessary costs and complexities that might result from mandating additional disclosures.

B. Summary of the Proposed Rule

In September 2013, we proposed a new rule to implement Section 953(b) of the Dodd-Frank Act.[28] The proposal's goal was to implement the statutory directive, while minimizing costs. In response to public comments we received prior to the proposal about the significant potential costs of complying with this requirement, the proposed rule would allow registrants flexibility in developing the disclosure required by the statute. We recognized that a one-size-fits-all approach would not be appropriate, given the wide range of affected registrants and the disparate burdens that would be imposed on them based on such factors as their business types and the complexity of their payroll systems. We therefore proposed to implement Section 953(b) in a manner that we believed would lower the cost of compliance while remaining consistent with the requirements of Section 953(b).

The proposed rule would require companies to disclose the median of the annual total compensation of all its employees except the PEO, the annual total compensation of its PEO, and the ratio of the two amounts. The proposed rule would not have specified a single calculation methodology for identifying the median employee. Instead, it would permit registrants to select a methodology for identifying the median employee that was appropriate to the size and structure of their business and the way they compensate employees. Under the proposal, registrants could have chosen to identify the median employee by analyzing their full employee population or by using statistical sampling or another reasonable method. Also, to identify the median, registrants could have used ''total compensation,'' as defined in our existing rules, namely Item 402(c)(2)(x), or any consistently applied compensation measure, such as information derived from tax and/or payroll records. The proposed rule would not prescribe a particular methodology or specific computation parameters.

Once the median employee was identified, the proposed rule would require the registrant to calculate the annual total compensation for that median employee in accordance with the definition of ''total compensation'' set forth in Item 402(c)(2)(x), which requires companies to provide extensive compensation information for the PEO and other named executive officers. ''Total compensation'' under Item 402(c)(2)(x) is not ordinarily calculated for all employees. The proposed rule, therefore, would permit registrants to use reasonable estimates in calculating

for executive compensation) and COEC I (noting that, since 2010, there have been 14 shareholder proposals advocating that companies provide pay ratio disclosure, and those proposals averaged 93% opposition from shareholders, with none receiving at least 10% support from shareholders).

[25] *See, e.g.,* letters from Bill Barrett Corp., COEC I, National Investor Relations Institute (Oct. 17, 2013) (''NIRI''), and Semtech Corporation (Nov. 27, 2013) (''Semtech''). Two of these commenters suggested specifically that we should undertake an education effort to help shareholders understand the limits of pay ratio disclosure and remind them that they can find other information, such as an executive summary of the Compensation Discussion and Analysis section of a company's proxy statement, which can provide a more complete understanding of corporate pay practices. *See* letters from NIRI and Semtech.

[26] We are mindful of the principle that ''no legislation pursues its purposes at all costs,'' *Rodriguez* v. *United States,* 480 U.S. 522, 525–26 (1987), and we believe that the accommodations that we have included within the final rule reflect an appropriate balance.

[27] The potential costs arising from the requirements of Section 953(b), as well as the potential costs relating to the final rule, are discussed in detail below in Section III of this release under the heading ''Economic Analysis''.

[28] *See* Proposing Release.

any element of total compensation and in calculating the annual total compensation of the median employee. Also, the proposed rule would define ''annual total compensation'' to mean total compensation for the last completed fiscal year, which would be consistent with our existing executive compensation disclosure requirements.

Under the proposal, if a registrant used a compensation measure other than annual total compensation to identify the median employee, it would be required to disclose the compensation measure it used. Also, the registrant would be required to briefly describe and consistently apply any methodology it used to identify the median and any material assumptions, adjustments, or estimates used to identify the median employee or determine total compensation or any elements of total compensation for that employee or the PEO, and the registrant would need to clearly identify any amounts it estimated. Finally, registrants would be permitted, but not required, to supplement their disclosure with a narrative discussion or additional ratios if they chose to do so.

Section 953(b) does not define the term ''employee.'' The proposed rule would define that term, for purposes of pay ratio disclosure, to include any individual employed by the registrant or any of its subsidiaries as of the last day of the registrant's last completed fiscal year. The proposed definition would encompass any full-time, part-time, seasonal, or temporary employees of the registrant or any of its subsidiaries, including any non-U.S. employee. Also, a registrant would be permitted, but not required, to annualize the total compensation for a permanent employee who was employed at year-end but did not work for the entire year. In contrast, full-time equivalent adjustments for part-time employees, annualizing adjustments for temporary and seasonal employees, and cost-of-living adjustments for non-U.S. employees would not be permitted.

Also, under the proposal, registrants would be required to provide the proposed pay ratio disclosure in registration statements, proxy and information statements, and annual reports required to include executive compensation information as set forth under Item 402. Registrants, however, would not be required to provide their pay ratio information in reports that did not include Item 402 executive compensation information, such as current and quarterly reports. Additionally, registrants would not be required to update their annual pay ratio disclosure until they filed their annual report on Form 10–K for their last completed fiscal year or, if later, their definitive proxy or information statement for their next annual meeting of shareholders (or written consents in lieu of such a meeting). Registrants, however, would still be required to file their pay ratio information no later than 120 days after the end of the last fiscal year as provided in General Instruction G(3) of Form 10–K.[29]

The proposal would provide a transition period for newly public companies. For these companies, initial compliance would be required with respect to compensation for the first fiscal year commencing on or after the date the company became subject to the reporting requirements. Also, as provided by the Jumpstart Our Business Startups Act (''JOBS Act''),[30] the proposed rule would not apply to emerging growth companies. Finally, the proposed rule would not apply to smaller reporting companies or foreign private issuers.

C. Summary of the General Comments on the Proposed Rule

In the Proposing Release, we requested comment on many aspects of the proposed rule, including whether the proposed rule would address sufficiently the practical difficulties of data collection, whether other alternative approaches consistent with Section 953(b) could provide the potential benefits of pay ratio information at a lower cost, and whether the proposed flexible approach would appropriately implement Section 953(b). We received a large volume of comment letters from a variety of stakeholders. We received more than 287,400 comment letters, including over 1,540 individual letters that reflected a wide range of views concerning the proposed rule and the potential costs and benefits associated with its requirements. We received comments that addressed the proposed rule as a whole (including commenters that supported or opposed the rule in its entirety) as well as comments directed toward particular requirements of the rule, such as its application to foreign, part-time, temporary, and seasonal employees. In this section, we summarize the general comments on the proposal as a whole. Comments on particular provisions of the proposed rule are addressed as part of the discussion of each specific provision of the rule in Section II below.

Of the over 287,400 total comment letters we received, over 285,900 were form letters regarding the proposed rule. There were 12 types of form letters,[31] and these letters either supported our proposed rule or supported the idea of adopting a rule based on Section 953(b) without specifically referencing the proposal.

For example, one form letter asserted that the pay ratio disclosure is material to investors because high pay disparities can impair employee morale and productivity and have negative consequences on a company's overall performance and because investors will have a ''valuable additional'' measure for evaluating executive compensation, including when making say-on-pay voting decisions.[32] Also, the letter supported the proposed rule's inclusion of all employees, including non-U.S. and part-time employees, and its flexibility in identifying the median employee. Other form letters also indicated that the pay ratio disclosure is material to investors,[33] including some that noted that the disclosure would aid them in making voting decisions.[34]

Additionally, the vast majority of the over 1,500 unique comment letters were from individual commenters who, like those submitting the form letters, supported the proposed rule or supported the idea of adopting a rule based on Section 953(b) without specifically referencing the proposal. Most of these individuals supported the

[29] 17 CFR 249.310.

[30] 15 U.S.C. 78c(a).

[31] We have received 285,936 form letters. Form Letter A (19,965 letters) supporting a strong rule generally; Form Letter B (12,942 letters) supporting a strong rule generally; Form Letter C (20 letters) supporting the Proposed Rule; Form Letter D (5,428 letters) supporting the Proposed Rule; Form Letter E (1,688 letters) supporting the Proposed Rule; Form Letter F (1,167 letters) supporting the Proposed Rule; Form Letter G (15,304 letters) supporting the Proposed Rule; Form Letter H (70,338 letters) supporting a rule generally; Form Letter I (36,299 letters) supporting the adoption of a rule; Form Letter J (75,333 letters) supporting a strong rule; Form Letter K (15,247 letters) supporting a strong rule generally; and Form Letter L (32,275 letters) supporting a rule.

[32] *See* Form Letter C.

[33] *See* letters from Form Letter A, Form Letter B, Form Letter D, Form Letter E, Form Letter F, and Form Letter G.

[34] *See* letters from Form Letter D (''Pay ratio disclosure will help investors evaluate CEO pay levels when voting on executive compensation matters. The ratio of the CEO-to-worker pay is a valuable metric for investors, because it places CEO pay levels into a broader perspective.''), Form Letter E (''Pay ratio disclosure will help investors evaluate CEO pay levels when voting on executive compensation matters. The ratio of the CEO-to-worker pay is a valuable tool for investors in evaluating and voting on CEO pay; scrutinizing the performance of Boards of Directors; and, identifying possible investment risks.''), Form Letter F (''A pay ratio disclosure will help investors better evaluate CEO pay levels when voting on executive compensation matters. Compensation experts have found that there is a correlation between high CEO pay and poor performance. By mandating disclosure of the ratio of CEO to worker pay, inequities will be become more transparent.'').

proposed rule or the pay ratio disclosure because they believed it would:

- Inform shareholders about executive compensation matters, especially with regard to say-on-pay voting; [35]
- demonstrate a company's focus on its long-term health as opposed to short-term gains that benefit its executives at the expense of its shareholders; [36]
- discourage the pay practices that led to the 2008 financial crisis; [37]
- reduce the inequitable wealth distribution in the U.S.; [38] and
- highlight potential problems in a company due to the negative impact of a high pay ratio on employee morale and productivity.[39]

As discussed in greater detail below, many commenters supported the proposed rule's overall flexibility.[40] Some commenters asserted that the permitted flexibility would lessen the costs and burdens of the proposed rule without reducing the rule's benefits,[41] be consistent with the directives of Section 953(b),[42] and have minimal effect on the pay ratio disclosure.[43] Other commenters, however, opposed the proposed rule because they believed it provided too much flexibility, which they asserted would allow registrants to manipulate the ratio in their favor,[44] decrease the ratio's utility (especially for comparing the ratios of different companies),[45] and still lead to high costs.[46] One commenter suggested that the final rule consist of little more than ''a simple restatement'' of Section 953(b), doing ''little more than rearranging a few commas and adding a word or two to the statutory language.'' [47]

A number of commenters were critical of the proposed rule or particular aspects of it, as discussed in greater detail below. Some commenters stated specifically that they opposed the proposed rule or Section 953(b)'s requirement that we adopt any pay ratio rule. Some of these commenters asserted that the rule would not provide shareholders with material information.[48] Other commenters noted that the pay ratio disclosure would not allow for meaningful comparisons among registrants.[49] One commenter asserted that Section 953(b) and the proposed rule violate the First Amendment.[50]

[35] *See, e.g.,* letters from D.A. Alexander (Nov. 22, 2013) (''Alexander''), Jean M. Blair (Sep. 25, 2013) (''J. Blair''), Cathy Clemens (Sep. 25, 2013) (''Clemens''), Beth Finchler (Sep. 27, 2013) (''Finchler''), Amy Hevron (''Sep. 28, 2013) (''Hevron''), Emanuel Jacobowitz (Sep. 24, 2013) (''Jacobowitz''), Rachel LaBruyere (Oct. 17, 2013) (''LaBruyere''), Gabrielle Loperfido (Sep. 25, 2013) (''Loperfido''), Carol Nix (Sep. 24, 2013) (''Nix''), Bonnie Overcott (Jan. 4, 2014) (''Overcott''), Lynn Reilly (Sep. 22, 2013) (''Reilly''), Kendall Simmons (Sep. 24, 2013) (''Simmons''), Dory Storms (Sep. 24, 2013) (''Storms''), Amy Sullivan-Greiner (Sep. 24, 2013) (''Sullivan-Greiner''), Jackie Tortora (Oct. 21, 2013) (''Tortora''), and Bryan Taylor (Nov. 21, 2013) (''Taylor'').

[36] *See, e.g.,* letters from Anonymous (Dec. 1, 2013) (''Anonymous''), Eric C. Gade (Sep. 18, 2013) (''Gade''), Linda Kranen (Oct. 20, 2013) (''Kranen''), Alyce Lomax (Dec. 2, 2013) (''Lomax''), Holly Schroeder (Nov. 5, 2013) (''Schroeder''), Erika Skornia-Olsen (Nov. 5, 2013) (''Skornia-Olsen''), and Calvin Vu (Oct. 26, 2013) (''Vu'').

[37] *See, e.g.,* letters from Lisbeth Caccese (Sep. 25, 2013) (''Caccese''), Hope Carr (Sep. 24, 2013) (''Carr''), Sarah McKee (Sep. 24, 2013) (''McKee''), Thomas Motes (Sep. 24, 2013) (''Motes''), Karl David Reinhardt (Sep. 24, 2013) (''Reinhardt''), Cynthia Sommer (Sep. 24, 2013) (''Sommer''), Cody Spann (Sep. 24, 2013) (''Spann''), Kathy Van Dame (Sep. 24, 2013) (''Van Dame''), Marietta Whittlesey (Sep. 24, 2013) (''Whittlesey''), Susan Williams (Sep. 24, 2013) (''S. Williams''), Mary M. Williamson (Sep. 24, 2013) (''M. Williamson''), and Robin Wittrock (Sep. 24, 2013) (''Wittrock'').

[38] *See, e.g.,* letters from Paul Cohen (Oct. 3, 2013) (''Cohen''), Alan Harris (Sep. 19, 2013) (''Harris''), Liz A. King (Sep. 23, 2013) (''L. King''), Ben Leet (Oct. 27, 2013) (''Leet''), Laurie H. Norton (Sep. 18, 2013) (''Norton''), Debbie Notkin (Sep. 24, 2013) (''Notkin''), and Desmonde Printz (Sep. 19, 2013) (''Printz'').

[39] *See, e.g.,* letters from Daniel Grossman (Nov. 8, 2013) (''Grossman''), Peter Linton (Nov. 17, 2013) (''Linton''), Michael R.K. Mudd (Nov. 3, 2013) (''Mudd''), Vivian Rosati (Nov. 6, 2013) (''Rosati''), and Walden Asset Management (Nov. 15, 2013) (''Walden'').

[40] *See, e.g.,* letters from Prof. Angel; Aon Hewitt (Dec. 3, 2013) (''Aon Hewitt''); Bâtirente, Canada *et al.* (Nov. 28, 2013) (''Bâtirente *et al.*''); Best Buy Co., Inc., *et al.* (Dec. 17, 2013) (''Best Buy *et al.*''), CalSTRS; Marcia K. Campbell, Trustee, Illinois Teachers Retirement System (Nov. 21, 2013) (''Trustee Campbell''); Capital Strategies Consulting, Inc. (Dec. 2, 2013) (''Capital Strategies''); Center for Effective Government (Nov. 26, 2013) (''CEG''); Cummins Inc. (Dec. 2, 2013) (''Cummins Inc.''); CUPE Employees' Pension Plan (Nov. 21, 2013) (''CUPE''); Davis Polk & Wardwell LLP (Dec. 4, 2013) (''Davis Polk,''); Ernst & Young LLP (Dec. 2, 2013) (''E&Y''); First Affirmative Financial Network (Nov. 12, 2013) (''First Affirmative''); Fonds de solidarité FTQ (Nov. 27, 2013) (''FS FTQ''); Freeport-McMoRan Copper & Gold Inc. (Dec. 2, 2013) (''Freeport-McMoRan''); Interfaith Center on Corporate Responsibility (Oct. 17, 2013) (''ICCR''); International Brotherhood of Teamsters (Oct. 9, 2013) (''Teamsters''); International Union of Bricklayers and Allied Craftworkers, Administrative District Council 1 of Illinois (Nov. 15, 2013) (''IL Bricklayers and Craftworkers Union''); International Union of Bricklayers and Allied Craftworkers, Local 5 New York (Nov. 15, 2013) (''NY Bricklayers and Craftworkers Union''); Intel Corporation (Nov. 27, 2013) (''Intel''); Johnson and Johnson (Dec. 4, 2013) (''Johnson & Johnson''); Marco Consulting Group (Nov. 15, 2013) (''Marco Consulting''); McMorgan & Company LLC (Dec. 2, 2013) (''McMorgan & Co.''); Mercer, Inc. (Dec. 2, 2013) (''Mercer I''); Meridian Compensation Partners, LLC (Dec. 2, 2013) (''Meridian''); Microsoft Corporation (Dec. 4, 2013) (''Microsoft''); Nathan Cummings Foundation (Nov. 21, 2013) (''Cummings Foundation''); Network for Sustainable Financial Markets (Dec. 2, 2013) (''NSFM''); New York City Bar Association (Dec. 5, 2013) (''NYC Bar''); Novara Tesija, PLLC (Nov. 6, 2013) (''Novara Tesija''); Organizational Capital Partners (Nov. 24, 2013) (''OCP''); Oxfam America (Oct. 16, 2013) (''Oxfam''); PGGM (Dec. 2, 2013) (''PGGM''); Public Citizen I; Public School Teachers' Pension and Retirement Fund of Chicago (Nov. 25, 2013) (''Chicago Teachers Fund''); Quintave (Dec. 1, 2013) (''Quintave''); Rep. Ellison *et al.* II, SEIU Master Trust (Dec. 2, 2013) (''SEIU''); Sen. Menendez *et al.* II, Socially Responsive Financial Advisors/First Affirmative Financial Network (Oct. 11, 2013) (''Socially Responsive Financial Advisors''); Society of Corporate Secretaries and Governance Professionals (Dec. 16, 2013) (''Corporate Secretaries''); Trillium I, UAW Trust; Vectren Corporation (Dec. 2, 2013) (''Vectren Corp.''); Washington State Investment Board (Nov. 26, 2013) (''WA State Investment Board''); and WorldatWork (Dec. 2, 2013) (''WorldatWork I'').

[41] *See, e.g.,* letters from American Bar Association (Mar. 7, 2014 (''ABA''), AFSCME, Chris Barnard (Nov. 6, 2013) (''Barnard''), Bricklayers International, Council of Institutional Investors (Nov. 6, 2013) (''CII''), Kenneth Fowler (Nov. 3, 2013) (''Fowler''), LIUNA, Walter Mirczak (Oct. 21, 2013) (''Mirczak''), PNC Financial Services Group, Inc. (Dec. 2, 2013) (''PNC Financial Services''), Sen. Menendez *et al.* II, US SIF, Vivient Consulting LLC (Dec. 2, 2013) (''Vivient''), and Walden.

[42] *See, e.g.,* letters from Domini Social Investments LLC (Nov. 27, 2013) (''Domini'') and PM&P.

[43] *See, e.g.,* letters from Capital Strategies and WorldatWork I.

[44] *See, e.g.,* letters from Sherry Bupp (Oct. 4, 2013) (''Bupp''), Chris Corayer (Oct. 8, 2013) (''Corayer''), Russell J. Fedewa (Oct. 4, 2013) (''Fedewa''), Eleanor J. Fox (Oct. 3, 2013) (''Fox''), Gary G. Friend II (Oct. 3, 2013) (''Friend''), Charles Grotzke (Oct. 3, 2013) (''Grotzke''), Bruce Hlodnicki (Sep. 19, 2013) (''Hlodnicki''), Karla Kizzort (Oct. 4, 2013) (''Kizzort''), Christine Maly (Sep. 25, 2013) (''Maly''), B. A. Petricoin (Oct. 3, 2013) (''Petricoin''), and Jasmine Van Pelt (Oct. 4, 2013) (''Van Pelt'').

[45] *See, e.g.,* letters from Amundi Asset Management (Nov. 28, 2013) (''Amundi''); British Columbia Investment Management Corporation (Dec. 2, 2013) (''BCIMC''); Paul Ciatto (Sep. 26, 2013) (''Ciatto''); Paul Glenn (Oct. 3, 2013) (''Glenn''); IBC; Karl T. Muth, Lecturer in Economics and Public Policy, Northwestern University (Sep. 24, 2013) (''Prof. Muth''); and NIRI.

[46] *See, e.g.,* letters from ABA (stating that registrants will still incur significant costs even with the ability to select a methodology) and Financial Services Roundtable (Dec. 2, 2013) (''FSR'').

[47] *See* letter from Public Citizen (Jul. 6, 2015) (''Public Citizen II'').

[48] *See, e.g.,* letters from American Benefits Council (Jan. 9, 2014) (''American Benefits Council''); Mark Appleby (Oct. 10, 2013) (''Appleby''); Avery Dennison; Sean Bearly (Nov. 7, 2013) (''Bearly''); Joe Beltran (Nov. 21, 2013) (''Beltran''); Renato Berzolla (Nov. 21, 2013) (''Berzolla''); Former Assistant Secretary Campbell; Jonnie Dodge (Nov. 7, 2013) (''Dodge''); FSR; Hyster-Yale; IBC (supporting Congressional efforts to repeal of Section 953(b)); Jim Meyer (Oct. 18, 2013) (''Meyer''); NACCO; National Association of Manufacturers (Dec. 2, 2013) (''NAM I'') (supporting Congressional efforts to repeal of Section 953(b)); NAM II (same); National Retail Federation (Nov. 26, 2013) (''NRF'') (expressing ''concern'' with the Proposed Rule); Elaine St. Miller (Nov. 21, 2013) (''St. Miller''); Towers Watson (Dec. 2, 2013) (''Towers Watson'') (discussing ''reservations'' about a pay ratio rule); and WorldatWork I.

[49] *See, e.g.,* letters from ABA (stating that ''the required disclosure will have little utility to investors other than to enable them to see the ratio of principal executive to employee compensation for a specific registrant from year to year'') and COEC I.

[50] *See* letter from COEC I. We do not believe that the pay ratio disclosure that Congress has mandated is inconsistent with the First Amendment. We believe that, in passing Section 953(b), Congress

Continued

A few commenters stated that we should not adopt a final rule until we demonstrate that the rule is consistent with our mission and fully explain the benefits and costs of the rule.[51] In this regard, one of these commenters criticized us for not making a statement about our precise goals or objectives for the rule, especially when Congress failed to hold hearings on Section 953(b).[52] The commenter also stated that, without this statement and further explanations as to why we rejected less costly options, commenters cannot be fully informed and provide constructive comments. Several commenters argued that the proposed rule would be very costly to implement though many of these did not provide specific cost estimates.[53] A majority of these commenters indicated that navigating their payroll systems and creating a single database of all their employees' compensation would be the most costly aspect of the proposed rule—especially with respect to non-U.S. employees.[54] Commenters also mentioned other activities that would contribute to the costs, including data privacy compliance, foreign exchange calculations, data testing, establishing corporate guidelines, obtaining legal services, auditing results, public relations tasks, and litigation risk.[55] As discussed below, some commenters provided specific cost and burden estimates about the proposed rule to demonstrate generally that it would impose high costs and burdens on registrants.[56] In addition, some commenters argued that the pay ratio disclosure would impose a burden on competition or would cause competitive disadvantages for particular types of companies.[57] Our analysis of the costs of the final rule, as well as an assessment of its impact on competition, is contained in the Economic Analysis section below.

A number of commenters recommended that we take additional preliminary steps before adopting a final rule. Some commenters requested that we extend the proposed rule's comment period.[58] Another commenter suggested that we re-solicit comments after publishing the concerns it expressed.[59] A few commenters advocated that we involve stakeholders in the rulemaking process by holding a roundtable, engaging in negotiated rulemaking, and/or conducting pilot programs.[60] One of these commenters also recommended submitting the proposed rule to the Office of Information and Regulatory Affairs for an enhanced regulatory review.[61] A few commenters suggested that we defer adopting a final rule under Section 953(b) until we adopt other rules required under the Dodd-Frank Act, particularly the pay-versus-performance rule mandated by Section 953(a).[62]

As discussed above, members of the public interested in making their views known were invited to submit comment letters in advance of the official comment period for the proposed rule. In addition, we have continued to review and consider all comment letters submitted during and after the end of the comment period. Also, as discussed further in the Economic Analysis section below, we have considered and analyzed the numerous comments received regarding the costs and complexities of the mandated disclosure and have taken them into account in the final rule. Finally, we added to this rulemaking's public comment file additional analyses by the Commission's Division of Economic and Risk Analysis staff on the potential effects of excluding different percentages of employees from the pay ratio calculation, and commenters were expressly invited to comment on the analyses.

This robust and public debate has informed us in developing our final rule. Overall, we believe interested parties have had sufficient opportunity to review the proposed rule, as well as the comment letters submitted, and to provide views on the proposal and on the other comment letters and data to inform our consideration of the final rule. Accordingly, we do not believe it is necessary to solicit additional public input before adopting the final rule.

D. Summary of Changes in the Final Rule

The final rule we are adopting generally is consistent with the proposed rule. After considering all of the comments received on the proposal, however, and in particular, after considering specific suggestions from commenters on alternatives that could help to mitigate compliance costs and practical difficulties associated with the proposed rule, we are adopting a number of revisions in the final rule. We believe these revisions generally will preserve Congress's intent to require the disclosure of information that reflects the ratio of the PEO's compensation to the median employee's compensation while helping to minimize the expected costs and unintended consequences of the required disclosure. We summarize some of these changes here and discuss them in greater detail in Section II, below.

1. Non-U.S. Employee Exemptions and Additional Permitted Disclosure

We proposed that an ''employee'' would include any U.S. and non-U.S. employee of a registrant. We acknowledged in the Proposing Release that the inclusion of non-U.S. employees would raise compliance costs for multinational companies, would introduce cross-border compliance issues, could raise additional comparability concerns, and could have an adverse impact on competition. We indicated, however, that the inclusion of non-U.S. employees in the calculation of the median is consistent with the ''all employees'' language of the statute.

determined that the disclosure advances an important government interest, and we have carefully tailored the disclosure through this rulemaking to further that interest. Moreover, consistent with Congress's apparent purpose, commenters have stated that the pay ratio disclosure would be useful to shareholders in making say-on-pay votes. Accordingly, we believe the disclosure fits comfortably within the class of securities law disclosures that have been deemed to be consistent with the First Amendment. *See Dun & Bradstreet, Inc.* v. *Greenmoss Builders, Inc.,* 472 U.S. 749, 758, n.5 (1985) (citing *Ohralik* v. *Ohio State Bar Ass'n,* 436 U.S. 447, 456 (1978)). *See also SEC* v. *Wall Street Publ'g Inst.,* 851 F.2d 365, 373 (D.C. Cir. 1988).

[51] *See, e.g.,* letters from Chamber I and Technical Compensation Advisors (Dec. 2, 2013) (''TCA.'').

[52] *See* letter from Chamber I.

[53] *See, e.g.,* letters from Aon Hewitt; Business Roundtable I; Chesapeake Utilities Corporation (Dec. 17, 2013) (''Chesapeake Utilities''); Garmin, Ltd. (Nov. 11, 2013) (''Garmin''); IBC; KBR, Inc. (Nov. 26, 2013) (''KBR''); McGuireWoods LLP (Nov. 7, 2013) (''McGuireWoods''); National Association of Corporate Dealers (Dec. 1, 2013) (''NACD''); NAM I; NAM II; NIRI; PNC Financial Services; and Semtech.

[54] *See, e.g.,* letters from Aon Hewitt: Avery Dennison; Business Roundtable I; Chamber I; COEC I; Corporate Secretaries; Eaton (Dec. 2, 2013) (''Eaton''); FEI Company (Oct. 16, 2013) (''FEI''); FuelCell Energy, Inc. (Nov. 8, 2013) (''FuelCell Energy''); IBC; KBR; NACCO; NAM I; NAM II; and NIRI.

[55] *See, e.g.,* letters from Aon Hewitt, Corporate Secretaries, and McGuireWoods.

[56] *See, e.g.,* letters from ASA; Avery Dennison; COEC I; COEC II; Corporate Secretaries; Dover Corporation (Nov. 26, 2013) (''Dover Corp.''); Eaton; Exxon Mobil Corporation (Dec. 2, 2013) (''ExxonMobil''); FEI; FuelCell Energy; General Mills, Inc. (Dec. 2, 2013) (''General Mills''); Hyster-Yale; Intel; NACCO; NRF; and U.S. Chamber of Commerce (May 22, 2014) (''Chamber II'').

[57] *See, e.g.,* letters from ABA; Prof. Angel; Former Assistant Secretary Campbell; Chamber I; COEC I; Corporate Secretaries; IBC; NAM I; NAM II; and Korok Ray, Assistant Professor of Accounting, The George Washington University (Dec. 2, 2013) (''Prof. Ray'').

[58] *See, e.g.,* letters from American Insurance Association, *et al.* (Oct. 9, 2013) (''AIA *et al.*''); Bill Barrett Corp.; COEC I; IBC; NIRI; and WorldatWork I.

[59] *See* letter from Chamber I.

[60] *See, e.g.,* letters from Chamber I, Chamber II, IBC, and NIRI.

[61] *See* letter from Chamber II.

[62] *See, e.g.,* letters from Chamber I and WorldatWork I.

The final rule defines the term ''employee'' to include U.S. employees and employees located in a jurisdiction outside the United States (''non-U.S. employees'') of a registrant, as proposed. We continue to believe that this is most consistent with the statutory language of Section 953(b) and with the purpose of providing a company-specific metric that shareholders can use to evaluate a registrant's executive compensation. Including both U.S. and non-U.S. employees will result in pay ratio disclosure that reflects the actual composition of the registrant's workforce. Even assuming the statutory language could be viewed as ambiguous on this issue, we also believe that this approach is most consistent with the general nature of our disclosure regime, which does not limit registrants' disclosure obligations only to factors, events, or circumstances that exist in or take place within the United States. For example, a registrant must disclose the PEO's compensation whether or not the PEO actually works within the United States.

To help address concerns about compliance costs, and consistent with the commenters' suggestions, the final rule provides two tailored exemptions from the definition of ''employee,'' which otherwise includes all of a registrant's U.S. and non-U.S. employees in the median employee determination. First, the final rule provides an exemption for circumstances in which foreign data privacy laws or regulations make registrants unable to comply with the final rule. Second, the final rule permits registrants to exempt non-U.S. employees where these employees account for 5% or less of the registrant's total U.S. and non-U.S. employees, with certain limitations.

The Proposing Release acknowledged that data privacy laws or regulations in various foreign jurisdictions could affect a registrant's ability to gather the necessary data to identify its median employee. We did not propose any accommodation to address this concern, however, because we believed the flexibility of the proposed rule would permit registrants to manage any potential costs arising from these laws. In response to significant concerns expressed by a number of commenters over cross-border compliance issues that may arise from the pay ratio disclosure requirement, and consistent with commenters' suggestions, the final rule permits registrants to exclude from their determination of the median employee an employee who is employed in a foreign jurisdiction in which the laws or regulations governing data privacy are such that, despite its reasonable efforts to obtain or process the information necessary for compliance with the final rule, the registrant is unable to do so without violating such data privacy laws or regulations.

The registrant's reasonable efforts must include using or seeking an exemption or other relief under any governing data privacy laws or regulations. If a registrant excludes any non-U.S. employees in a particular jurisdiction under this exemption, it must exclude all non-U.S. employees in that jurisdiction, list the excluded jurisdictions, identify the specific data privacy law or regulation, explain how complying with the final rule violates such data privacy law or regulation (including the efforts made by the registrant to use or seek an exemption or other relief under such law or regulation), and provide the approximate number of employees exempted from each jurisdiction based on this exemption. In addition, the registrant must obtain a legal opinion from counsel that opines on the inability of the registrant to obtain or process the information necessary for compliance with the final rule without violating that jurisdiction's data privacy laws or regulations, including the registrant's inability to obtain an exemption or other relief under any governing laws or provisions.

In addition to the data privacy exemption for non-U.S. employees, the final rule includes a *de minimis* exemption for non-U.S. employees. Under the final rule, if a registrant's non-U.S. employees account for 5% or less of its total employees, it may exclude all of those employees when making its pay ratio calculations. In this circumstance, however, if the registrant chooses to exclude any non-U.S. employees, it must exclude all of them. If a registrant's non-U.S. employees exceed 5% of the registrant's total U.S. and non-U.S. employees, it may exclude up to 5% of its total employees who are non-U.S. employees. If a registrant excludes any non-U.S. employees in a particular jurisdiction, it must exclude all non-U.S. employees in that jurisdiction. The registrant must also disclose the jurisdictions from which its non-U.S. employees are being excluded, the approximate number of employees excluded from each jurisdiction under the *de minimis* exemption, the total number of its U.S. and non-U.S. employees irrespective of any exemption (*de minimis* or data privacy), and the total number of its U.S. and non-U.S. employees used for its *de minimis* calculation.

In calculating the number of non-U.S. employees that may be excluded under the *de minimis* exemption, a registrant must count any non-U.S. employee exempted under the data privacy exemption against the availability. A registrant may exclude any non-U.S. employee that meets the data privacy exemption, even if the number of excluded employees exceeds 5% of the registrant's total employees. If, however, the number of employees excluded under the data privacy exemption equals or exceeds 5% of the registrant's total employees, the *de minimis* exemption will not be available. Additionally, if the number of employees excluded under the data privacy exemption is less than 5% of the registrant's total employees, the registrant may use the *de minimis* exemption to exclude no more than the number of non-U.S. employees that, combined with the data privacy exemption, equals 5% of the registrant's total employees.

Finally, the final rule permits registrants to make cost-of-living adjustments for the compensation of employees in jurisdictions other than the jurisdiction in which the PEO resides to identify the median and calculate annual total compensation. In identifying the median employee, whether using annual total compensation or any other compensation measure that is consistently applied to all employees included in the calculation, the registrant may, but is not required to, make cost-of-living adjustments for the compensation of employees in jurisdictions other than the jurisdiction in which the PEO resides so that the compensation is adjusted to the cost of living in the jurisdiction in which the PEO resides. If the registrant uses a cost-of-living adjustment to identify the median employee, and the median employee identified is an employee who does not reside in the same jurisdiction as the PEO, the registrant must use the same cost-of-living adjustment in calculating the median employee's annual total compensation and disclose the country in which the median employee is located. The registrant is also required to briefly describe the cost-of-living adjustments it used to identify the median employee and briefly describe the cost-of-living adjustments it used to calculate the median employee's annual total compensation, including the measure used as the basis for the cost-of-living

adjustment.[63] To provide context for the Item 402(u)(1)(iii) disclosure, a registrant electing to present the pay ratio in this manner must also disclose the median employee's annual total compensation and pay ratio without the cost-of-living adjustments. To calculate this pay ratio, the registrant will need to identify the median employee without using any cost-of-living adjustments.

In the Proposing Release, we noted that some comments received prior to the proposal requested that the rule allow registrants to present separate pay ratios covering U.S. and non-U.S. employees to mitigate concerns that the comparison of the PEO to non-U.S. employees could substantially affect the pay ratio disclosure. The proposal did not prohibit such disclosure but did not expressly state it was permitted. For clarification, therefore, the final rule states that registrants are permitted, but not required, to provide additional pay ratios as long as any additional pay ratios are not misleading and are not presented with greater prominence than the required ratio.

2. Employees of Consolidated Subsidiaries

We proposed requiring a registrant's pay ratio disclosure to include the employees of any of its subsidiaries (including officers other than the PEO), in addition to its direct employees, in its pay ratio disclosure. Unlike the proposed rule, however, the final rule defines ''employee'' to include only the employees of the registrant's consolidated subsidiaries. As discussed in greater detail below, defining a ''subsidiary'' based on whether a registrant consolidates a company in its financial statements will likely decrease the costs and burdens on a registrant without significantly affecting the pay ratio because most registrants consolidate based on their ownership of over 50% of the outstanding voting shares of their subsidiaries and guidance is readily available on when consolidation is appropriate.

[63] For example, registrants may use cost-of-living adjustments based on purchasing power parity (''PPP'') conversion factors. A PPP conversion factor is the ratio of PPP exchange rate to the nominal exchange rate. For example, conversion factors for the US dollar are available at *http://data.worldbank.org/indicator/PA.NUS.PPPC.RF*. This ratio provides the number of units of a country's currency required to buy the same amount of goods and services in the domestic market as a U.S. dollar would buy in the United States.

3. Employed on Any Date Within Three Months of the Last Completed Fiscal Year

The proposed rule would define ''employee'' as an individual employed as of the last day of the registrant's last completed fiscal year because this calculation date would be consistent with the one used for the determination of the three most highly compensated executive officers under existing Item 402(a)(3)(iii). In the Proposing Release, we also noted our preliminary view that a bright line calculation date for determining who is an employee would ease compliance for registrants by eliminating the need to monitor changes in workforce composition during the year. Further, we assumed the potential benefits of the pay ratio disclosure would not be significantly diminished by covering only individuals employed at year-end, although we acknowledged that this approach could be costlier to registrants with seasonal or temporary employees who are employed at year end as opposed to other times during the year.

Taking into consideration concerns raised by commenters about the desire for flexibility in choosing the calculation date, the final rule permits registrants to use any date within three months prior to the last day of their last completed fiscal year to identify the median employee. If in subsequent years the registrant changes the date it uses to identify the median employee, it must disclose this change and provide a brief explanation about the reason or reasons for the change. This provision provides consistency for individual registrants from year to year while also providing registrants with flexibility to choose the determination date. To provide additional transparency about how the pay ratio disclosure has been calculated, the final rule requires registrants to disclose the date used to identify the median employee.

4. Identifying the Median Employee Once Every Three Years

The proposed rule would require registrants to identify the median employee every year. To help minimize compliance costs, we are revising the rule, as suggested by commenters, to allow registrants to identify the median employee every three years unless there has been a change in its employee population or employee compensation arrangements that the registrant reasonably believes would result in a significant change in the pay ratio disclosure. However, the registrant must still calculate the identified median employee's annual total compensation and use that figure in calculating its pay ratio every year. If there have been no changes that the registrant reasonably believes would significantly affect its pay ratio disclosure, the registrant must disclose that it is using the same median employee in its pay ratio calculation and describe briefly the basis for its reasonable belief. For example, the registrant could disclose that there has been no change in its employee population or employee compensation arrangements that it believes would significantly impact the pay ratio disclosure. If there has been such a change, the registrant must re-identify the median employee for that fiscal year.

Under the final rule's approach, the registrant will identify its median employee for year one and then be permitted to use that employee or one who is similarly compensated (if, for example, the median employee is no longer in the same position or is no longer employed by the registrant) in the following two years for calculating the median employee's annual total compensation and the registrant's pay ratio. The registrant must calculate the median employee's annual total compensation in year one and then re-calculate the annual total compensation for that employee in year two and again in year three. If the median employee identified in year one is no longer in the same position or no longer employed by the registrant on the median employee determination date in year two or three, the final rule permits the registrant to replace its median employee with an employee in a similarly compensated position.

5. Initial Compliance Date

We proposed that a registrant's first reporting period would begin in its first fiscal year commencing on or after the effective date of the final rule. Therefore, under the proposed rule, the registrant's initial pay ratio disclosure would be included in its first annual report on Form 10–K or proxy or information statement for its annual meeting of shareholders following the end of such year. Unlike the proposal, the compliance date set forth in this adopting release provides that the registrant's first reporting period for the pay ratio disclosure is its first full fiscal year beginning on or after January 1, 2017 (instead of on or after the effective date of the final rule).

6. Transition Period for New Registrants

The proposed rule would not have required pay ratio disclosure by new registrants subject to the rule in a registration statement on Form S–1 or

Form S–11 for an initial public offering or registration statement on Form 10. Consistent with the revised transition period for existing registrants, the final rule provides that the first pay ratio reporting period begins for new registrants with their first fiscal year commencing on or after January 1, 2017 that is after the date they first become subject to the requirements of Section 13(a) or 15(d) of the Exchange Act. In this way, new registrants will not become subject to the final rule sooner than existing registrants. Such registrants are also permitted to omit their initial pay ratio disclosure from their registration statements (or any other filing) made before their first annual report or proxy or information statement following the end of that reporting period, but not later than 120 days after the end of the fiscal year.

7. Additional Transition Periods

We did not propose a transition period for registrants that cease to be smaller reporting companies or emerging growth companies, nor did we provide any special rules for registrants that engage in business combinations and/or acquisitions. We did, however, request comment on whether there should be transition periods in these situations and, if so, the appropriate length of time for any such transition period. One commenter requested that we include such a transition period.[64]

The final rule provides that registrants that cease to be smaller reporting companies or emerging growth companies are not required to provide pay ratio disclosure until they file a report for the first fiscal year commencing on or after they cease to be a smaller reporting company or emerging growth company. The final rule also permits registrants that engage in business combinations and/or acquisitions to omit the employees of a newly-acquired entity from their pay ratio calculation for the fiscal year in which the business combination or acquisition occurs. In these cases, a registrant does not have to include these individual employees in its median employee calculation until the first full fiscal year following the acquisition. Registrants that exclude employees as a result of a business combination must disclose the relevant acquired business and the approximate number of employees that are excluded from the pay ratio calculation.

II. Discussion

A. Scope of Final Rule

1. Pay Ratio Disclosure Requirements Under New Paragraph (u) to Item 402 of Regulation S–K

a. Proposed Rule

We proposed new paragraph (u) of Item 402 to require disclosure of: (A) the median of the annual total compensation of all employees of the registrant, (except the registrant's PEO); (B) the annual total compensation of the registrant's PEO; and (C) the ratio of the amount in (A) to the amount in (B), presented as a ratio in which the amount in (A) equaled one, or, alternatively, expressed narratively in terms of the multiple that the amount in (B) bears to the amount in (A).

Although Section 953(b) calls for a ratio showing the median of the annual total compensation of all employees *to* the PEO's annual total compensation, it does not specify how the ratio should be expressed. To promote consistent presentation and address the potential for confusion, therefore, the proposed rule specified that registrants must express the ratio as one in which the median of the annual total compensation of all employees is equal to one.

b. Comments on the Proposed Rule

No commenters objected to use of the term PEO or including the pay ratio disclosure requirements in new paragraph (u) to Item 402, and commenters discussing other aspects of the proposal did so on the assumption that we would include the pay ratio disclosure requirements in Item 402(u). Several commenters agreed that the pay ratio should show the PEO's compensation divided by the median employee's compensation because it would be easier to understand.[65]

c. Final Rule

After considering the comments, we are adopting the final rule as proposed. The final rule adds new paragraph (u) to Item 402 and requires disclosure of: (A) The median of the annual total compensation of all employees of the registrant (except the registrant's PEO); (B) the annual total compensation of the registrant's PEO; and (C) the ratio of the amount in (B) to the amount in (A), presented as a ratio in which the amount in (A) equals one, or, alternatively, expressed narratively in terms of the multiple that the amount in (B) bears to the amount in (A).[66]

Consistent with the proposal, the final rule also requires registrants to disclose the ratio such that the PEO's annual total compensation is always compared to the median employee's annual total compensation. Registrants may not present the median employee's annual total compensation as a percentage of the PEO's compensation. We believe expressing the ratio as ''a factor rather than a fraction'' makes the ratio easier to understand because allowing the inverse may be confusing.[67] In other words, the ratio must always show how much larger or smaller the PEO's annual total compensation is as compared to the median employee's annual total compensation. We believe that requiring registrants to present the ratio in this manner will make it easier for shareholders to comprehend and allow them to use it in making voting decisions on executive compensation.[68]

The final rule permits registrants to choose one of two options to express the ratio. Registrants may disclose the pay ratio with the median of the annual total compensation of all employees equal to one and the PEO's compensation as the number compared to one.[69] For

[64] *See* letter from ABA (recommending a transition period for issuers that cease to be smaller reporting companies in which such registrants would not be required to provide their pay ratio disclosure until the first full fiscal year commencing on or after the first anniversary of the end of the fiscal year in which the issuer is no longer a smaller reporting company).

[65] *See, e.g.,* letters from FEI and Dr. Sue Ravenscroft, Professor of Accounting, Iowa State University (Sep. 20, 2013) (''Prof. Ravenscroft I'').

[66] We did not propose to require that the pay ratio disclosure be provided in interactive data format, and are not adopting such a requirement for this disclosure. To the extent that we consider more generally the tagging of disclosures in XBRL format in our rules, we may consider revisiting the format in which the pay ratio disclosure is provided.

[67] *See* letter from FEI. *See also* letter from Prof. Ravenscroft I (stating that ''the ratio of CEO compensation to median worker would be easier for most people to grasp than the ratio of median worker compensation to CEO compensation, a switch that I would see as not changing the intent of the law'').

[68] In the rare cases in which the PEO's yearly compensation is nominal (or is otherwise less than the median employee's compensation), the resulting ratio will be a number smaller than one. Despite this anomalous result, we believe that in the vast majority of cases setting the median compensation equal to one will result in a ratio that is easier to understand than the inverse. *See generally Illinois Commerce Comm'n* v. *I.C.C.,* 776 F.2d 355, 359 (D.C. Cir. 1985) (''General rules need not work perfectly in all their applications''). We also note that registrants are permitted to provide additional narrative discussion in cases where they feel the disclosed pay ratio may be confusing or incomplete without further explanation.

[69] We note that some commenters recommended that the final rule include a safe harbor or simplified reporting method such that a registrant may stipulate that its pay ratio exceeds 300-to-1. *See* letters from Hyster-Yale and NACCO. Under this suggestion, registrants would be permitted to forgo calculating and disclosing their company-specific pay ratio and would instead be permitted to simply disclose that the ratio exceeds the stipulated 300-to-1 statistic. We have not adopted the suggestion to allow a registrant to disclose that its pay ratio exceeds a stipulated statistic, such as 300-to-1, because we do not believe that it would

Continued

example, if a registrant's median annual total compensation for employees is $50,000 and the annual total compensation of the PEO is $2,500,000, the PEO's compensation is 50 times larger than the median employee's compensation. The registrant may describe the pay ratio as 50 to 1 or 50:1. Alternatively, registrants may disclose the pay ratio narratively by stating how many times higher (or lower) the PEO's annual total compensation is than that of the median employee. For example, the registrant may state that ''the PEO's annual total compensation is 50 times that of the median of the annual total compensation of all employees.''

2. Pay Ratio Disclosure in Filings That Require Item 402 of Regulation S–K Information

a. Proposed Rule

The proposed rule required registrants to include their pay ratio disclosure in any filing described in Item 10(a) that requires executive compensation disclosure under Item 402, including annual reports on Form 10–K,[70] Securities Act and Exchange Act registration statements, and proxy and information statements, to the same extent that these forms require compliance with Item 402. Section 953(b) does not direct us to amend any of our forms to add the pay ratio disclosure requirements to filings that do not already require disclosure of Item 402 information, and we did not propose to do so. Additionally, we proposed not to require registrants to update their pay ratio disclosure for the most recently completed fiscal year until they file their annual reports on Form 10–K, or, if later, their proxy or information statements for their next annual meeting of shareholders (or written consents in lieu of such a meeting) but, in any event, not later than 120 days after the end of such fiscal year.

b. Comments on the Proposed Rule

All of the commenters discussing the issue agreed that we should limit pay ratio disclosure to the filings described in Item 10(a) that require executive compensation disclosure under Item 402, as proposed.[71] One commenter suggested, however, that the final rule should allow registrants to include their pay ratio disclosure in other filings if they choose to do so.[72]

c. Final Rule

We are adopting the final rule as proposed. It requires registrants to include their pay ratio disclosure in any filing described in Item 10(a) that calls for executive compensation disclosure under Item 402, including annual reports on Form 10–K, registration statements under the Securities Act and Exchange Act, and proxy and information statements to the same extent that these forms require compliance with Item 402, consistent with the statutory directive. Registrants must follow the instructions in each form to determine whether Item 402 information is required, including any instructions that allow for the omission of Item 402 information.[73] The final rule does not require registrants to include the pay ratio disclosure in any filings that are not required to include Item 402 information, but registrants can voluntarily include non-mandated information in any of their filings if they choose to do so and the information is not misleading in the context of that filing. Further, registrants do not need to update their pay ratio disclosure for their most recently completed fiscal year until they file their annual report on Form 10–K, or, if later, their proxy or information statement for their next annual meeting of shareholders (or written consents in lieu of such a meeting) but, in any event, not later than 120 days after the end of such fiscal year.

We do not read Section 953(b) to require pay ratio disclosure in filings that do not contain other executive compensation information. In our view, the most meaningful way to present pay ratio disclosure is in context with other executive compensation disclosure, such as the Summary Compensation Table required by Item 402(c) and the Compensation Discussion and Analysis required by Item 402(b), rather than provided on a stand-alone basis. In this manner, the pay ratio information will be presented in the same context as other information that shareholders can use in making their voting decisions on executive compensation. Finally, although we understand the primary purpose of the pay ratio disclosure to be to inform shareholder's say-on-pay votes under Section 951, we acknowledge that some commenters indicated the disclosure could be useful to investors in making investment decisions. For that reason, and in light of the statutory language of Section 953(b), the final rule retains the requirement to include this disclosure in registration statements under the Securities Act.[74]

3. Excluded Registrants—Smaller Reporting Companies, Foreign Private Issuers, MJDS Filers, and Emerging Growth Companies

a. Proposed Rule

In the Proposing Release, we noted that the reference to ''each issuer'' in Section 953(b) could be read to apply to all registrants, including smaller reporting companies,[75] foreign private issuers,[76] U.S.-Canadian Multijurisdictional Disclosure System filers,[77] and emerging growth companies. Because Section 953(b) refers specifically to the definition of total compensation in Item 402(c)(2)(x), and is silent on whether pay ratio disclosure should be required for registrants not previously subject to Item 402(c) requirements, however, we proposed to limit the pay ratio disclosure requirement to registrants required to provide Item 402(c) disclosure. As a result, the proposed rule stated that smaller reporting companies, foreign private issuers, and MJDS filers did not have to provide pay ratio disclosure in any of their filings.

Also, the JOBS Act,[78] which was passed by Congress subsequent to the

be consistent with Congress's apparent intent to provide a useful, relevant, company-specific pay ratio disclosure for investors to utilize when undertaking their say-on-pay votes.

[70] 17 CFR 249.310.

[71] *See, e.g.,* letters from ABA, AFL–CIO I, California Public Employees' Retirement System (Dec. 2, 2013) (''CalPERS''), Calvert, Capital Strategies, CII, Connecticut State Treasurer (Dec. 2, 2013) (''CT State Treasurer''), Davis Polk, Intel, Johnson & Johnson, McGuireWoods, NIRI, NRF, Pax World Funds, PM&P, Prof. Ray, and WorldatWork I.

[72] *See* letter from Capital Strategies.

[73] *See, e.g.,* General Instructions I(2)(c) and J(1)(m) to Form 10–K containing special provisions for the omission of Item 402 information by wholly-owned subsidiaries and asset-backed registrants.

[74] Although the final rule requires registrants to include the pay ratio disclosure in registration statements under the Securities Act, as discussed below, the final rule permits new registrants to delay compliance so that the pay ratio requirement is not required in a registration statement on Form S–1 or Form S–11 for an initial public offering or registration statement on Form 10.

[75] A ''smaller reporting company'' is an issuer that had a public float of less than $75 million as of the last business day of its most recently completed second fiscal quarter or had annual revenues of less than $50 million during the most recently completed fiscal year for which audited financial statements are available. 17 CFR 229.10(f)(1).

[76] A ''foreign private issuer'' is any foreign issuer other than a foreign government, except for a registrant that, as of the last business day of its most recent fiscal year, has more than 50% of its outstanding voting securities held of record by United States residents and any of the following: a majority of its officers and directors are citizens or residents of the United States, more than 50% of its assets are located in the United States, or its business is principally administered in the United States. 17 CFR 240.3b–4(c).

[77] A U.S.-Canadian Multijurisdictional Disclosure System (''MJDS'') filer is a registrant that files reports and registration statements with us in accordance with the requirements of the MJDS.

[78] *See* Section 102(a)(3) of the JOBS Act.

Dodd-Frank Act but prior to publication of the Proposing Release, specifically excluded registrants that qualify as emerging growth companies, as that term is defined in Section 3(a) of the Exchange Act,[79] from the requirements of Section 953(b). To give effect to the statutory exemption, we proposed an instruction to Item 402(u) providing that a registrant that is an emerging growth company is not required to comply with Item 402(u).

b. Comments on the Proposed Rule

Most commenters concurred with the proposed rule's exclusion of emerging growth companies, consistent with the JOBS Act.[80] One commenter noted specifically that, while it ''believes all registrants accessing U.S. capital markets should be subject to comparable financial regulation,'' including smaller reporting companies, foreign private issuers, and MJDS filers, the pay ratio information ''is best viewed in the context of other compensation disclosures and the pay ratio disclosure should be limited to those registrants required to provide a summary compensation disclosure.'' [81]

Additionally, most of the commenters who addressed the issue agreed that we should exclude smaller reporting companies from the pay ratio requirements.[82] One commenter reasoned that, by excluding emerging growth companies, Congress demonstrated its intent to relieve this category of registrants from the costs and burdens of compliance, and because both emerging growth companies and smaller reporting companies are subject to scaled executive compensation disclosure, it would be consistent with Congressional intent to exclude smaller reporting companies.[83] Another commenter recommended that the final rule exempt any business with revenues of less than $500 million or a market capitalization of less than $1 billion.[84]

By contrast, a few commenters asserted that the final rule should include smaller reporting companies.[85] One of these commenters asserted that Congress did not expressly exclude smaller reporting companies because the phrase ''each issuer'' in Section 953(b)(1) signals its intent that there should be no exemption for any particular registrant and that excluding certain registrants from the disclosure would defeat the purpose and policy of Section 953(b).[86]

Finally, some commenters agreed that the proposed rule should exclude foreign private issuers and MJDS filers,[87] while a few other commenters disagreed with excluding them.[88] One commenter noted that, in ''view of the Commission's long-standing rules allowing foreign private issuers and MJDS filers to provide information about their executive compensation programs based on the applicable disclosure requirements of their home jurisdiction, we would find it anomalous to single out this specific Item 402-based disclosure requirement for mandatory application to these registrants without regard to important policy considerations that have led the Commission for decades to permit disclosure in this area based on home-country law.'' [89]

c. Final Rule

After considering the comments, we are adopting the final rule as proposed. The final rule, therefore, does not require pay ratio disclosure by smaller reporting companies, foreign private issuers, MJDS filers, and emerging growth companies.[90]

As stated above, Congress explicitly excluded emerging growth companies from the pay ratio disclosure requirement. Regarding smaller reporting companies, Section 953(b)(2) requires total compensation to be calculated in accordance with Item 402(c)(2)(x). Smaller reporting companies, however, are permitted to follow the scaled disclosure requirements set forth in Items 402(m)–(r),[91] and therefore are not required to calculate compensation in accordance with Item 402(c)(2)(x). Also, the requirement set forth in Item 402(n) for disclosure of Summary Compensation Table information, which includes disclosure of ''total compensation,'' does not require smaller reporting companies to include the same types of compensation required to be included in total compensation for other registrants under Item 402(c)(2).[92] Congress's express reference to Item 402(c)(2)(x) to calculate total compensation (without mentioning Item 402(n)(2)(x)) is consistent with the exclusion of smaller reporting companies from the pay ratio disclosure requirement.

Requiring smaller reporting companies to provide the pay ratio disclosure would compel them to collect data and calculate compensation for the PEO in ways that they otherwise are not required to do. Nothing in the statute indicates that was Congress's intent, and no commenters indicated that they believed there was such an intent. To clarify further that smaller reporting companies are excluded from the final rule, we are making a technical amendment to paragraph (l) of Item 402 to add Item 402(u), as proposed, to the list of items that are not required for smaller reporting companies.[93]

The final rule similarly does not apply to foreign private issuers and MJDS filers, which we believe is consistent with excluding registrants that are not currently required to provide Summary Compensation Table disclosure pursuant to Item 402(c). Foreign private issuers file annual reports and registration statements on Form 20–F [94] and MJDS filers file annual reports and registration

[79] An ''emerging growth company'' is an issuer that had total annual gross revenues of less than $1 billion during its most recently completed fiscal year, has not reached the fifth anniversary of the date of the first sale of its common equity securities pursuant to an effective registration statement under the Securities Act, had not issued $1 billion in non-convertible debt during the previous 3-year period, or is deemed to be a ''large accelerated filer.'' 15 U.S.C. 78c(a).

[80] *See, e.g.,* letters from CalPERS; Davis Polk; Hay Group, Inc. (Dec. 2, 2013) (''Hay Group''); NY State Comptroller; PM&P; and US SIF. Some commenters, however, disagreed or were uncomfortable with this exclusion. *See* letters from CII and Andrew Kushner (Nov. 12, 2013) (''Kushner'').

[81] *See* letter from CalPERS.

[82] *See, e.g.,* letters from ABA, Prof. Angel, CalPERS, Capital Strategies, Davis Polk, Hay Group, NIRI, NY State Comptroller, PM&P, Vivient, and WorldatWork I.

[83] *See* letter from ABA.

[84] *See* letter from Hay Group.

[85] *See, e.g.,* letters from CII; Ashley Ray, University of Idaho College of Law (Nov. 13, 2013) (''Ray''); and US SIF.

[86] *See* letter from Ray.

[87] *See, e.g.,* letters from ABA, CalPERS, Capital Strategies, Davis Polk, Hay Group, and PM&P.

[88] *See, e.g.,* letters from CII, Ray, and US SIF.

[89] *See* letter from ABA.

[90] Registered investment companies will also not be required to provide Item 402(u) disclosure. Business development companies are a category of closed-end investment company that are not registered under the Investment Company Act [15 U.S.C. 80a–2(a)(48) and 80a–53–64]. Business development companies will be treated in the same manner as issuers other than registered investment companies and therefore will be subject to the pay ratio disclosure requirement.

[91] *See* Item 402(*l*).

[92] *See* Item 402(n)(2)(viii) (indicating that smaller reporting companies are not required to include the aggregate change in the actuarial present value of pension benefits that is required for companies subject to Item 402(c)(2)(viii)).

[93] Smaller reporting companies are permitted to choose whether they want to comply with either the scaled disclosure requirements or the larger company disclosure requirements on an ''a la carte'' basis. As we discussed in the scaled disclosure adopting release, the staff evaluates compliance by smaller reporting companies with only the Regulation S–K requirements applicable to smaller reporting companies, even if the company chooses to comply with the larger company requirements. *See Smaller Reporting Company Regulatory Relief and Simplification,* Release No. 33–8876 (Dec. 19, 2007) [73 FR 934], at 941.

[94] 17 CFR 249.220f.

statements on Form 40–F.[95] Neither of these forms requires Item 402 disclosure. As with smaller reporting companies, requiring foreign private issuers and MJDS filers to provide the pay ratio disclosure would require these registrants to collect data and calculate compensation for the PEO in ways they otherwise would not be required to do. The final rule, therefore, does not apply to foreign private issuers or MJDS filers.

Finally, for the same reasons, the final rule, consistent with the proposal, does not change existing Item 402(a)(1) with respect to foreign private issuers. Item 402(a)(1) states that a ''foreign private issuer will be deemed to comply with Item 402 if it provides the information required by Items 6.B and 6.E.2 of Form 20–F, with more detailed information provided if otherwise made publicly available or required to be disclosed by the registrant's home jurisdiction or a market in which its securities are listed or traded.'' Foreign private issuers that file annual reports on Form 10–K, therefore, are still able to satisfy Item 402 requirements by following Items 6.B and 6.E.2 of Form 20–F and are not required to provide the pay ratio disclosure mandated by Section 953(b).

B. Requirements of Final Rule

1. ''All Employees'' Covered Under the Rule

The final rule defines ''employee'' to include a registrant's U.S. and non-U.S. employees, as well as its part-time, seasonal, and temporary employees, as proposed. We believe that the ''all employees of the issuer'' language in Section 953(b) is best implemented by including rather than excluding broad categories of employees. Further, even assuming there was any ambiguity in the statutory language, we believe that a more inclusive approach better serves Section 953(b)'s purpose of providing shareholders with additional information about a registrant's compensation practices that can be used in making voting decisions on executive compensation because it results in a pay ratio that is more reflective of the actual composition of the registrant's workforce.[96] As discussed in greater detail below, however, in response to particular issues and concerns raised by comments, we have provided two tailored exemptions from the general requirement to include all employees. In particular, for the reasons discussed below, we have provided an exemption for employees in foreign jurisdictions in which it is not possible for a registrant to obtain or process information necessary to comply with the rule without violating the data privacy laws or regulations of that jurisdiction and a *de minimis* exemption for non-U.S. employees.

a. Types of Employees

i. Proposed Rule

The proposed rule included in the definition of ''employee'' all of a registrant's full-time, part-time, seasonal, and temporary workers, including officers other than the PEO. In the Proposing Release, we reasoned that these individuals should be included in the rule because Section 953(b)(1)(A) expressly requires disclosure of the median of the annual total compensation of ''all employees,'' which would encompass full-time, part-time, seasonal, and temporary workers. Also, we proposed to include all of a registrant's officers other than the PEO in the definition of ''employee.''

Workers not employed by a registrant (or its subsidiaries), however, such as independent contractors, ''leased'' workers, or other workers who are employed by a third party, were not covered by our proposed definition of ''employee.'' As an example, we noted that, if a registrant pays a fee to another company (such as a management company or an employee leasing agency) that supplies workers to the registrant, and those workers receive compensation from that other company, these workers should not be considered employees of the registrant for purposes of the disclosures required by Section 953(b) of the Dodd-Frank Act.

ii. Comments on the Proposed Rule

A number of commenters supported the proposed rule's requirement that registrants include their part-time, temporary, and seasonal employees in addition to their full-time employees in their median employee determination.[97] Some commenters asserted that the reference in Section 953(b) to ''all employees'' demonstrates Congress's intent was not to limit the pay ratio to only full-time employees.[98] Some commenters contended that including temporary employees would cost registrants very little because they routinely develop that information for their own internal use.[99] Commenters supporting the proposed rule also contended that, if part-time, temporary, and seasonal employees were excluded from the pay ratio, the disclosure would be incomplete, inaccurate, and/or misleading.[100] One commenter suggested that the exclusion of part-time, seasonal, and temporary employees would not reduce the regulatory burdens on registrants because registrants with such employees would have substantial flexibility in identifying the median employee.[101]

Other commenters contended that the final rule should include only full-time employees.[102] Many of these commenters claimed that applying the rule to part-time, temporary, and seasonal employees would make the pay ratio disclosure less meaningful because the compensation of these different types of employees are not comparable to each other or to the PEO's compensation.[103] Some commenters

[95] 17 CFR 249.240f.

[96] As discussed below, commenters have made competing arguments that the pay ratio disclosure would be ''distorted'' in one way or another if the final rule included (or excluded) various categories of employees. *See, e.g.,* letter from Prof. Ray (asserting that the pay ratio will be distorted depending on whether the final rule includes non-U.S. employees). We appreciate that a particular registrant's pay ratio information may vary—perhaps, in some cases, significantly—depending on whether the final rule includes or excludes these employee categories (*e.g.,* non-U.S. employees; part-time, temporary and seasonal employees; and leased workers). We do not, however, view the choices made on these issues as involving a ''distortion'' of the pay ratio disclosure that Congress directed should be provided to investors. As noted elsewhere in this release, we have been guided by our general view that Section 953(b) reflects Congress's intention that the pay ratio disclosure should be broadly inclusive of all types of a registrant's employees; thus, absent a reason that takes into account the statutory objective, we have declined to make choices in the final rule that would exclude broad categories of employees from the process of identifying the median employee. At the same time, however, in an effort to mitigate the potential costs and burdens of the final rule, we have built in some flexibility and provided several other accommodations to elements of the final rule, where we have concluded that these measures would not result in any undue impact on the required pay ratio disclosure.

[97] *See, e.g.,* letters from AFSCME, CalPERS, Calvert, Chicago Teachers Fund, Cummings Foundation, CUPE, Domini, Susan A. Estep (Nov. 15, 2013) (''Estep''), Frank Gould (Oct. 4, 2013) (''Gould''), ICCR, IL Bricklayers and Craftworkers Union, Marco Consulting, McMorgan & Co., Novara Tesija, NY State Comptroller, Oxfam, Pax World Funds, Sen. Robert Menendez *et al.* (Nov. 26, 2013) (''Sen. Menendez *et al.* I''), Sen. Menendez *et al.* II, Socially Responsive Financial Advisors, Teamsters, Trillium I, Trustee Campbell, US SIF, and Walden.

[98] *See* letters from AFL–CIO (Jul. 6, 2015) (''AFL–CIO II''), Institute for Policy Studies (Oct. 30, 2013) (''IPS''), and Sen. Menendez *et al. II.*

[99] *See, e.g.,* letters from Virginia Fischer (Oct. 3, 2013) (''Fischer'') and Public Citizen II.

[100] *See, e.g.,* letters from AFL–CIO I, AFL–CIO II, Americans for Financial Reform (Dec. 2, 2013) (''AFR''), Bâtirente *et al.,* Bricklayers International, CII, CT State Treasurer, FS FTQ, Public Citizen I, Public Citizen II, and John Theodore (Nov. 5, 2013) (''Theodore'').

[101] *See* letter from AFL–CIO II.

[102] *See, e.g.,* letters from Best Buy *et al.,* Brian Foley & Company, Inc. (Dec. 2, 2013) (''Brian Foley & Co.''), Chamber I, FuelCell Energy, Garmin, Hyster-Yale, Mercer I, NACCO, PM&P, Semtech, Steven Hall and Partners (Dec. 2, 2013) (''SH&P''), Vectren Corp., WorldatWork I, and WorldatWork II.

[103] *See, e.g.,* letters from American Apparel & Footwear Association (Dec. 2, 2013) (''AAFA I''), American Apparel & Footwear Association (Dec. 23,

also asserted that including employees other than full-time employees would be burdensome and increase costs.[104] One commenter noted that, according to a survey it conducted of companies with more than 10,000 employees, ''86 percent of the average employer's employees are full-time, with the median employer having 95 percent of its workforce as full-time employees.'' This commenter asserted that the incremental information that would be obtained from including part-time or seasonal employees does not justify the effort to collect it and could provide a distorted picture of the employee's annual income.[105]

Another commenter asserted that the final rule should exclude part-time, seasonal, and temporary employees unless a majority of a registrant's employees work on a part-time, temporary, and/or seasonal basis.[106] A few commenters recommended that the rule should allow registrants to exclude any employee who was not employed for at least four months during the calendar year.[107] Other commenters indicated that, if the rule is not limited to full-time employees, registrants should be able to annualize or make full-time equivalent adjustments to the compensation of part-time, seasonal, and/or temporary employees.[108] One commenter suggested, in the alternative, that if the rule includes part-time, seasonal, and temporary employees, it should only include such employees who have been employed during the 90-day period ending on the last day of the registrant's fiscal year.[109] Finally, another commenter suggested, in the alternative, that the rule should require a ''primary disclosure'' that compares only full-time employees to the PEO's compensation.[110]

Some commenters noted that neither Section 953(b) nor its legislative history states explicitly that Congress intended for the ''all employees'' term to include part-time, seasonal, and temporary employees. These commenters contended we could thus interpret the ''all employees'' language to exclude such employees from the final rule.[111] Some commenters believed that the minimal effect these employees would have on the pay ratio would not justify the high costs required to include those employees in determining the pay ratio.[112] Conversely, commenters in support of including part-time, seasonal, and temporary employees in the pay ratio contended that failing to do so would distort registrants' pay ratios because many of their employees would not be included in the median calculation.[113]

Several commenters agreed that a registrant's pay ratio should exclude ''leased'' workers.[114] One of these commenters noted that including ''leased'' workers would add significant costs and distort the pay ratio.[115] Also, according to this commenter, such workers are not ''statutory'' employees and the third parties employing these workers may be unwilling to provide the information. A few commenters recommended that the final rule require a registrant to include such workers in its pay ratio.[116] One commenter asserted that a registrant should be required to clearly describe its reliance on ''leased'' workers if they comprise more than 40% of its workforce.[117]

iii. Final Rule

After considering the public comments, we have concluded that the final rule's definition of ''employee'' should include the full-time, part-time, seasonal, and temporary employees employed by the registrant or any of its consolidated subsidiaries. Because this definition refers to workers ''employed by the registrant,'' workers who provide services to the registrant or its consolidated subsidiaries as independent contractors or ''leased'' workers are excluded from the definition as long as they are employed, and their compensation is determined, by an unaffiliated third party. The final rule includes in the definition of ''employee'' all of a registrant's officers other than the PEO, as proposed. Section 953(b)(1)(A) expressly directs disclosure of the median of the annual total compensation of ''all employees of the issuer, except the chief executive officer (or any other equivalent position) of the issuer.''

We believe this statutory language indicates that Congress intended the final rule to include all types of a registrant's employees, including part-time, seasonal, and temporary workers, and we do not think it is appropriate to provide a wholesale exemption for those broad categories of employees that are not employed full-time.[118] Any such exemption would risk producing pay ratio disclosure that is significantly different than the pay ratio disclosure that Congress expressly directed us to require when it said ''all employees.'' Further, as noted above, we have generally limited our use of discretionary or exemptive authority to those items that would not have an appreciable effect on the information that Congress intended that shareholders have when they make their say-on-pay votes. To the extent there is any statutory ambiguity, we would still elect this inclusive approach because we believe that it is more reflective of the actual composition of the registrant's workforce and thus furthers the purpose of providing shareholders with useful information about a registrant's overall compensation practices. While we are sensitive to

2013) (''AAFA II''), American Benefits Council, COEC I, Corporate Secretaries, Davis Polk, Dover Corp., ExxonMobil, FSR, General Mills, Hay Group, IBC, KBR, Meridian, NACD, NIRI, NRF, NYC Bar, Retail Industry Leaders Association (Dec. 2, 2013) (''RILA''), and WorldatWork I.

[104] *See, e.g.,* letters from American Benefits Council, COEC I, Corporate Secretaries, Davis Polk, and General Mills.

[105] *See* letter from COEC I.

[106] *See* letter from ABA.

[107] *See, e.g.,* letters from Hyster-Yale and NACCO (stating that such a provision could contain a consistency requirement to prevent companies from selectively choosing which employees to include or exclude).

[108] *See, e.g.,* letters from AAFA II, American Benefits Council, Brian Foley & Co., Corporate Secretaries, Hay Group, KBR, NIRI, and NYC Bar.

[109] *See* letter from Meridian.

[110] *See* letter from NRF.

[111] *See, e.g.,* letter from ABA.

[112] *See, e.g.,* letters from COEC I (stating that two-thirds of respondents to a survey it conducted indicated that limiting the application of the rule to full-time employees would reduce their costs, that the ''average savings for these respondents would be approximately 20 percent,'' and that the burden imposed by including ''global, full-time, part-time and seasonal employees'' is not offset by other benefits) and General Mills (''We would expect moderate cost savings from limiting the analysis to full-time employees, versus covering our entire workforce, but the savings could be significant for registrants in other industries. . . Conversely, there has been little or no evidence to suggest that the benefits of the Proposed Rule would be diminished as a result of limiting its scope to full-time employees.'').

[113] *See, e.g.,* letters from AFL–CIO I, AFR, Bâtirente *et al.,* Bricklayers International, CII, CT State Treasurer, FS FTQ, Public Citizen I, and Theodore.

[114] *See, e.g.,* letters from ABA; American Staffing Association (Nov. 21, 2013) (''ASA''); CalPERS; CII; Corporate Secretaries; Emergent BioSolutions, Inc. (Nov. 27, 2013) (''Emergent''); ExxonMobil; Hyster-Yale; Intel; McGuireWoods, NACCO; and WorldatWork I.

[115] *See* letter from ABA.

[116] *See, e.g.,* letters from Demos (Nov. 22, 2013) (''Demos I''), Fischer (referring to ''independent contractors''), and Vectren Corp. (arguing that the rule should include full-time, U.S.-based contractors if they make up a significant portion of the registrant's workforce).

[117] *See* letter from LAPFF.

[118] *See, e.g., County of Oakland* v. *Federal Housing Finance Agency,* 716 F.3d 935, 940 (6th Cir. 2013) (explaining that ''a straightforward reading of the statute leads to the unremarkable conclusion that when Congress said 'all taxation,' it meant *all* taxation'') (emphasis in original); *Marie O.* v. *Edgar,* 131 F.3d 610, 620 (7th Cir. 1997) (interpreting the phrase ''all infants and toddlers'' and explaining that ''[a]ll is unambiguous; it means every eligible child''); *cf. GEICO* v. *Fetisoff,* 958 F.2d 1137, 1142 (D.C. Cir. 1992) (describing ''the word 'all'''' as ''one of the least ambiguous words in the English language'').

concerns raised by some commenters that inclusion of these broad categories of employees means that compliance with the final rule will be more costly than if we adopted a broad exemption, we note that the final rule provides other types of flexibility and accommodations designed to reduce compliance costs while remaining faithful to our understanding of the statutory directive and purpose of Section 953(b).

A registrant can supplement its pay ratio disclosure or provide additional pay ratios for its shareholders to consider if it wants to explain the effect of including part-time, seasonal and temporary employees on its pay ratio disclosure. While we do not believe a purpose of the rule is to facilitate comparisons among registrants, the opportunity to supplement the pay ratio disclosure and to provide additional pay ratios should help mitigate some concerns that shareholders may draw unwarranted conclusions from comparing one registrant's disclosed ratio to the ratio of others. In addition, our change to the proposed rule to allow a registrant some flexibility in selecting the date for identifying the median employee may enable registrants that employ temporary or seasonal employees only during a very limited period at the end of their fiscal year to choose a date that allows them to exclude these employees.

One commenter pointed out that Item 402 does not contain a reference to hourly or overtime compensation and contended, therefore, that the rule should not apply to non-salaried employees who receive ''wages plus overtime,'' rather than salary.[119] We believe that the ''all employees'' language is not limited to salaried employees. Moreover, we are concerned that a contrary reading would be arbitrary and would eliminate an entire category of employees from the pay ratio disclosure, potentially depriving shareholders of a more complete understanding of the median employee's compensation when making their say-on-pay votes. Thus, we believe that it is appropriate to include these employees as part of a registrant's pay ratio disclosure to reflect the manner in which the registrant establishes its workforce.

The final rule excludes from the definition of ''employee'' those workers who are employed, and whose compensation is determined, by an unaffiliated third party but who provide services to the registrant or its consolidated subsidiaries as independent contractors or ''leased'' workers. Although it is unclear whether Congress intended to include these workers as ''employees of the issuer,'' or even considered the issue, we believe, as a matter of policy, these workers should not be included as ''employees of the issuer.''

While one commenter stated that ''leased employees and other workers employed by a third party are not ''statutory'' employees of a registrant,'' [120] some definitions of ''employee'' may include workers who are not employed directly by the registrant or its consolidated subsidiaries, such as independent contractors or ''leased'' or ''borrowed'' workers, if they are employed by a third party.[121] We note that the statute specifies employees ''of the issuer,'' and in light of this, to the extent there is any ambiguity on this point, we believe that the better reading of the statute is to exclude from the final rule's definition of ''employee'' workers who are not employed by the registrant or its consolidated subsidiaries, such as independent contractors or ''leased'' workers, if they are employed, and their compensation is determined, by an unaffiliated third party.

We believe excluding such workers is appropriate because registrants generally do not control the level of compensation that these workers are paid. Instead, the registrant provides a payment for their services to an unaffiliated third party, which determines the compensation for the employees. As one commenter noted, there can be no assurance, therefore, that the registrant even has access to the workers' compensation information, which could make it difficult or impossible to obtain the information.[122]

We do not believe it is appropriate for registrants to voluntarily include workers employed by third parties in their required pay ratio disclosure ''if such persons make up a significant portion of the workforce,'' as one commenter suggested, even if doing so may add to the ''flexibility'' of the final rule.[123] For the reasons described above, we have not included these workers within the definition of employee, and we are concerned that allowing registrants the option to elect to include them in their required disclosures would introduce the potential for registrants to manipulate the pay ratio disclosure. Registrants, however, may discuss their reliance on ''leased'' workers, as suggested by another commenter, in their narrative disclosure.[124] Also, they may provide additional ratios that factor in those workers, as long as any additional ratios are not misleading and are not more prominently displayed than the required ratio.

b. Employed on Any Date Within Three Months of the Last Completed Fiscal Year

i. Proposed Rule

The proposed rule would define ''employee'' as an individual employed as of the last day of the registrant's last completed fiscal year. We proposed this calculation date for determining who is an employee because it is consistent with the one used for the determination of PEO and principal financial officer and the other three most highly compensated executive officers under Item 402(a)(3)(iii). In the Proposing Release, we noted that the composition of a company's workforce typically changes throughout the fiscal year, and in some industries and businesses, it can change constantly. Although Section 953(b) requires the median calculation to cover ''all employees,'' it does not prescribe a particular calculation date for the determination of who should be treated as an employee for that purpose.

We reasoned in the Proposing Release that a single date for determining who is an employee would ease compliance for registrants by eliminating the need to monitor changing workforce composition during the year, while providing a recent snapshot of the registrant's entire workforce. Also, we indicated that a requirement to track which employees have been continuously employed for the entire annual period could increase costs for registrants, and suggested that the most appropriate calculation date would be one that is consistent with the calculation date for determining the named executive officers under current Item 402 requirements.

In proposing this approach, we assumed that the potential benefits of the disclosure mandated by Section 953(b) would not be significantly diminished by covering only individuals employed on a specific date

[119] *See* letter from Chamber I.

[120] *See, e.g.,* letter from ABA.

[121] *See, e.g., Black's Law Dictionary* 602 (9th ed. 2009) (defining ''employee'' as a ''person who works in the service of another person (the employer) under an express or implied contract of hire, under which the employer has the right to control the details of work performance,'' and defines a ''borrowed employee'' as an ''employee whose services are, with the employee's consent, lent to another employer who temporarily assumes control over the employee's work'').

[122] *See* letter from ABA.

[123] *See* letter from Vectren Corp.

[124] *See* letter from LAPFF.

at calendar year-end, rather than covering every individual who was employed at any time during the year. Although this approach could help limit compliance costs for registrants, we acknowledged that it could have other costs. For example, this approach would not capture seasonal or temporary employees who are not employed at year end, with the result that a registrant with a significant number of such workers might identify a median employee from a pool that does not fully reflect the workforce that it requires to run its business. This approach might also cause the disclosure to be costlier for, and thereby have an anti-competitive impact on, registrants whose temporary or seasonal workers are employed at calendar year-end as opposed to other times during the year because registrants with temporary or seasonal employees at calendar year-end would have to include them in their median calculations but other registrants with temporary or seasonal employees at other times of the year would not have to do so. Finally, we noted that it would be possible, but unlikely, that registrants could try to structure their employment arrangements to reduce the number of lower paid employees employed on the determination date.

ii. Comments on the Proposed Rule

Most commenters that discussed the issue agreed that registrants should be permitted to identify the median employee based on the composition of their workforce on a particular day of the year as opposed to the workforce employed throughout the year.[125] Only a few commenters, however, supported using the last day of the fiscal year calculation date.[126] It seems that these commenters supported this provision more to limit the calculation to a particular day of the year, thereby limiting the need to monitor a changing workforce during the year, than because they believed the appropriate date should be the last day of the registrant's last fiscal year.[127] A number of commenters contended that the final rule should allow registrants the flexibility to choose a calculation date within the registrant's last fiscal year.[128] As some of these commenters noted, requiring registrants to use the last day of the fiscal year could adversely affect retailers,[129] may not allow enough time for registrants to collect and report on their pay ratio information,[130] and could make it difficult for registrants that are not calendar year-end companies to use information derived from its tax and/or payroll records to calculate the ratio.[131] Some commenters suggested that, if the final rule permits registrants to choose a determination date other than a registrant's fiscal year end, it should also require registrants to be consistent from year to year and/or briefly explain the reasons for not using the fiscal year-end date.[132]

One commenter suggested that the rule could allow registrants to choose a calculation date within a designated time window, ''such as a date occurring during the 90-day period preceding the fiscal year end.'' [133] Regarding the concern that allowing registrants to select the calculation date would create the potential for manipulation of the pay ratio, this commenter stated that the concern ''is unwarranted, particularly if the choice is restricted to a limited time period (such as the last fiscal quarter), since in general the employee population of a registrant would not vary significantly over such a period.'' [134]

Another commenter proposed that registrants should be required to calculate the median annual compensation of all employees employed at any time over the preceding 365 days to ensure accurate disclosure for registrants that employ a high number of seasonal employees.[135]

One commenter recommended that the final rule permit registrants to use different determination dates for different segments of their workforce based on tax, payroll, and/or other established recordkeeping systems, accompanied by a brief statement of the basis for the different disclosure dates because a number of companies maintain their human resource/payroll systems for U.S. employees on a calendar-year basis, but do so for their foreign employees on a fiscal-year basis.[136] The commenter also noted that using the end of the second or third fiscal quarter as a determination date would not be feasible because most payroll systems are set up to collect information on fiscal year-end or calendar year-end bases.

Some commenters responded to the Proposing Release's request for comment on whether the rule's definition of ''employee'' would cause a registrant to change its corporate structure. Most of the commenters that responded said that the definition would not cause registrants to alter their corporate structure or employment arrangements,[137] although one commenter disagreed.[138]

iii. Final Rule

After considering commenters' desire for flexibility in choosing the median employee determination date, we are revising the final rule from the proposal. Unlike the proposed rule, which would define ''employee'' as an individual employed as of the last day of the registrant's last completed fiscal year, the final rule defines ''employee'' as an individual employed on any date of the registrant's choosing within the last three months of the registrant's last completed fiscal year. The final rule also requires registrants to disclose the date used to identify the median employee.

Some commenters recommended that the final rule require registrants to explain the reason they selected a determination date other than the last day of the fiscal year.[139] We do not believe such an explanation would lead to useful disclosure, as registrants would likely state that they chose any date other than the end of the fiscal year to provide more time to take the steps necessary to identify the median employee. If, however, a registrant changes the determination date from the prior year, we believe it should disclose the reason for the change. Under the final rule, therefore, if a registrant changes the date it uses to identify the median employee, the registrant must disclose the change and provide a brief explanation about the reason or reasons for the change.

We note that allowing registrants to choose a determination date within a defined window, rather than be required to use the last day of the fiscal year, is a change from the proposal and differs from the approach in determining the

[125] *See* letters from ABA, Capital Strategies, FEI, Hyster-Yale, Johnson & Johnson, and NACCO.

[126] *See, e.g.,* letters from CII and Vectren.

[127] *Id.*

[128] *See, e.g.,* letters from ABA, Best Buy *et al.,* Capital Strategies, COEC I, COEC II, Corporate Secretaries, Davis Polk, FEI, Hyster-Yale, Johnson & Johnson, Microsoft, NACCO, NAM I, PM&P, RILA, SH&P, and WorldatWork I. *See also* letter from Brianne H. McCoy, University of Idaho College of Law (Nov. 28, 2013) (''McCoy'') (stating that a registrant should be required to choose a date that ''corresponds with the month in which the registrant had its highest gross operating revenues from the previous year'').

[129] *See* letter from PM&P.

[130] *See, e.g.,* letters from COEC I, Corporate Secretaries, Davis Polk, Microsoft, and NAM I.

[131] *See, e.g.,* letters COEC I, Microsoft, NAM I, and NAM II.

[132] *See, e.g.,* letters from Capital Strategies, Microsoft, and SH&P.

[133] *See* letter from Davis Polk.

[134] *Id.*

[135] *See* letter from AFL–CIO II.

[136] *See* letter from ABA.

[137] *See, e.g.,* letters from ABA, Capital Strategies, and WorldatWork I.

[138] *See* letter from Prof. Ray.

[139] *See, e.g.,* letters from Microsoft and SH&P.

three most highly compensated executive officers under existing Item 402(a)(3)(iii).[140] We believe permitting registrants to choose a date within the last three months of their last completed fiscal year, as suggested by a commenter, is appropriate because it will provide registrants with some flexibility and could permit them additional time to identify their median employee in advance of their fiscal year end.[141] At the same time, establishing a particular date certain will provide some consistency from year to year. We also note that this change may help to avoid some of the unintended consequences identified by commenters, such as anti-competitive effects on retailers with a significant number of employees at year end or inefficient changes in corporate structure made simply to avoid employing workers on the last day of the fiscal year. Finally, as discussed in the Proposing Release, we continue to believe that requiring the determination of the employee to be made as of a specific date, rather than over the course of the year, will ease compliance for registrants by eliminating the need to monitor changes in their workforce composition throughout the year.

c. Employees Located Outside the United States

i. Proposed Rule

We proposed a definition of ''employee'' that would include any U.S. and non-U.S. employee of a registrant. In the Proposing Release, we acknowledged that the inclusion of non-U.S. employees raises compliance costs for multinational companies, introduces cross-border compliance issues, and could raise concerns about the impact of non-U.S. pay structures on the comparability of the data to companies without off-shore operations. We also recognized that differences in relative compliance costs could have an adverse impact on competition. We weighed these considerations and proposed that the disclosure requirements would nonetheless cover all employees without exemptions for specific categories of employees, including non-U.S. employees.

Additionally, we were cognizant that data privacy laws in various jurisdictions could have an impact on gathering and verifying the data needed to identify the median of the annual total compensation of all employees. Commenters in the pre-proposal period expressed concern that, in some cases, data privacy laws of foreign countries could prohibit a registrant's collection and transfer of personally identifiable compensation data that would be needed to identify the median employee. We also noted that some data privacy laws may make the collection or transfer of the underlying data more burdensome, but do not actually prohibit transfer of compensation data.

For example, we indicated that multinational companies based in the United States might need to ensure compliance with data privacy regulations when taking certain actions to comply with the proposal, such as transmitting personally identifiable human resources data (''personal data'') of European Union (''E.U.'') employees onto global human resource information system networks in the United States; sending personal data in hard copy from the E.U. to the United States; or making personal data ''onward transfers'' to third-party payroll, pension, and benefits processors outside of the E.U.[142] In some E.U. countries, employee consent is required, while in other countries consent may not be sufficient. We noted that other jurisdictions, such as Peru, Argentina, Canada, and Japan also have data privacy laws that could be implicated by the gathering of data for purposes of the proposed pay ratio disclosure.

Although we did not propose any specific accommodation to address this concern, we stated our belief that the flexibility afforded to all registrants under the proposed rule could permit registrants to manage any potential costs arising from applicable data privacy laws. For example, the proposed rule would permit registrants in this situation to estimate the compensation of affected employees. We requested comment on whether the proposed flexibility afforded to registrants in selecting a method to identify the median, such as the use of statistical sampling or other reasonable estimation techniques and the use of consistently applied compensation measures to identify the median employee, could enable registrants to better manage any potential costs and burdens arising from local data privacy regulations or if there are other alternatives that would be consistent with Section 953(b).

ii. Comments on the Proposed Rule

Many commenters agreed that non-U.S. employees should be included in a registrant's pay ratio disclosure.[143] Some commenters contended that failing to include non-U.S. employees would cause the pay ratio disclosure to be incomplete, less informative, and misleading.[144] Some commenters stressed that Congress intended to include non-U.S. employees because Section 953(b) refers specifically to ''all employees.'' [145] One commenter suggested that the exclusion of non-U.S. employees would not reduce the regulatory burdens on registrants because registrants with such employees would have substantial flexibility in identifying the median employee.[146]

Many commenters, however, disagreed with the proposed rule and contended that the final rule should include only the registrant's U.S. employees because including non-U.S. employees would be very costly and/or distort the pay ratio.[147] A number of commenters asserted that the costs to registrants of including non-U.S. employees would outweigh any benefits of the disclosure to shareholders,[148] and offered a variety of different estimates of how greatly the inclusion of non-U.S. employees would affect costs.[149]

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[140] 17 CFR 230.402(a)(3)(iii).

[141] *See* letter from Davis Polk (noting that a ''90-day period preceding the fiscal year end'' would permit ''a registrant [to] begin the task of identifying its median employee in advance of its fiscal year end, which is the most costly and time-consuming part of the pay ratio calculation'').

[142] The E.U. Directive 95/46/EC, 1995 O.J. L 281 (European Union Directive on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data) sets forth the regulatory framework governing the transfer of personal data from an E.U. Member State to a non-E.U. country.

[143] *See, e.g.,* letters from AFL–CIO I, AFL–CIO II, AFSCME, Bricklayers International, CalPERS, Calvert, Chicago Teachers Fund, Corayer, CT State Treasurer, Cummings Foundation, CUPE, Estep, Fedewa, First Affirmative, Form Letter C, Gould, Douglas J. Matteson (Oct. 5, 2013) (''Matteson''), ICCR, IL Bricklayers and Craftworkers Union, Marco Consulting, McMorgan & Co., Novara Tesija, NY Bricklayers and Craftworkers Union, NY State Comptroller, Oxfam, Pax World Funds, Charmaine M. Phillips (Oct. 16, 2013) (''C. Phillips''), Public Citizen I, Public Citizen II, Douglas C. Rand (Sep. 26, 2013) (''Rand''), Sen. Menendez *et al.* I, Sen. Menendez *et al.* II, Socially Responsive Financial Advisors, Stephen Spofford (Sep. 24, 2013) (''S. Spofford''), Teamsters, Trillium I, Trustee Campbell, US SIF, and Walden.

[144] *See, e.g.,* letters from AFR, Bâtirente *et al.,* CII, Domini, and FS FTQ.

[145] *See, e.g.,* letters from AFL–CIO II, IPS, and Sen. Menendez *et al.* II.

[146] *See* letter from AFL–CIO II.

[147] *See, e.g.,* letters from Appleby, Avery Dennison, Chamber I, Chesapeake Utilities, Dover Corp., FuelCell Energy, Garmin, Hay Group, Meridian, NACD, PM&P, SH&P, Vectren Corp., Vivient, WorldatWork I, and WorldatWork II.

[148] *See, e.g.,* letters from ABA, American Benefits Council, Business Roundtable I, Chamber I, Corporate Secretaries, ExxonMobil, Frederic W. Cook & Co., Inc. (Nov. 29, 2013) (''Frederic W. Cook & Co.''), RILA, Semtech, and Society for Human Resource Management (Dec. 30, 2013) (''SHRM'').

[149] *See, e.g.,* letters from American Benefits Council (stating that costs could be 20 to 30 times higher if non-U.S. employees are included and also that some of its ''member companies have estimated that the annual cost to make the median employee determination on a worldwide basis could be hundreds of thousands of dollars''), Business Roundtable I (stating that costs could decrease by over 50% in some cases if non-U.S. employees are

Additionally, commenters noted that companies with international operations almost always have multiple payroll systems and databases for their employees' compensation that are difficult, if not impossible, to reconcile,[150] with some of the commenters providing the following examples:

- One commenter indicated that it has 15 payroll systems that are not integrated, and those systems would have to be manually reconciled with ''substantial costs'' and ''extensive staff hours;'' [151]
- one commenter stated that it has 30 payroll systems that do not interface; [152]
- one commenter cited a Human Resource Policy Association survey concluding that 84% of respondents could not easily calculate worldwide enterprise cash compensation for all their employees; [153]
- one commenter cited its own survey finding that a registrant on average maintains 46 different payroll systems in 34 different countries; [154] and
- one commenter stated that it does not have a single payroll system.[155]

Several commenters stated that many countries have data privacy and other laws that prevent registrants from transferring payroll data outside that country's borders (even if the transfer would be within the same company), which would make compiling the information necessary for the pay ratio problematic or even illegal.[156] One of these commenters recommended that, if the final rule did not exclude all non-U.S. employees, it should permit registrants to exclude from their methodology for identifying the median employee the data for any employees in a jurisdiction where such collection, analysis, and transmission would violate a registrant's existing data privacy obligations.[157] A few commenters stated that the proposed rule's flexibility afforded to all registrants could permit registrants to manage any potential costs arising from applicable data privacy laws.[158]

One commenter contended that any data privacy concerns can be addressed easily by anonymizing payroll data sets or conducting statistical sampling.[159] If, however, these privacy safeguards proved insufficient, the commenter recommended that registrants be permitted to exclude employees in such countries only if they disclose the number of employees in the excluded countries and obtain and file as an exhibit to the periodic report in which the pay ratio disclosure appears a legal opinion by qualified outside counsel demonstrating that the privacy safeguards are inadequate under local law.

Additionally, a number of commenters contended that including non-U.S. employees in the final rule would distort the pay ratio because of (1) differences in local pay practices,[160] with some of these comment letters stating that, unlike many U.S. companies, companies in other countries include as ''compensation'' transportation, food, housing, wedding, birth, education, and phone expenses, as well as profit-sharing arrangements and government provided benefits; [161] (2) the exchange rates of foreign currencies; [162] and (3) cost-of-living differences among countries.[163]

A few commenters argued that excluding non-U.S. employees was supported by statutory construction. They contended that, despite Section 953(b)'s reference to ''all employees,'' this statutory reference does not require the final rule to include non-U.S. employees.[164] Some of these commenters asserted that excluding non-U.S. employees would be consistent with Section 953(b) because the statute is silent as to whether ''all employees'' means non-U.S. employees.[165] Others insisted that interpreting ''all employees'' to exclude non-U.S. employees would be appropriate because of a presumption against the extraterritoriality of U.S. laws.[166]

Some commenters advocated for a *de minimis* exemption for non-U.S. employees [167] because, as one of these commenters stated, excluding a small number of employees is unlikely to affect ''in a material way'' the pay ratio and the nominal differences in ratios would be outweighed by the cost savings to registrants.[168] Commenters provided a number of suggestions for a *de minimis* exemption. One commenter suggested that, if non-U.S. employees make up less than 20% of all a registrant's employees, the registrant should be permitted to exclude all non-U.S. employees.[169] Another commenter stated that registrants should be permitted to exclude non-U.S. employees in any foreign country that comprises less than 5% of the registrant's aggregate global workforce.[170]

A different commenter recommended that a registrant be permitted to exclude non-U.S. employees if they account for less than 5% of the registrant's total workforce because they would represent a *de minimis* number of employees.[171] Also, according to that commenter, if the registrant's foreign employees account for more than 5% of all employees, this commenter recommended that the registrant should be permitted to exclude employees in any single foreign jurisdiction if they comprise less than 2% of total

excluded), ExxonMobil, and FEI (stating that costs would decrease by 90% if the final rule excluded non-U.S. employees).

[150] *See, e.g.,* letters from American Benefits Council, Aon Hewitt, BCIMC, Business Roundtable I, COEC I, COEC II, COEC III, Cummins Inc., Eaton, ExxonMobil, Freeport-McMoRan, MVC Associates International (Nov. 28, 2013) (''MVC Associates''), NIRI, Semtech, SHRM, and Tesoro Corporation (Nov. 21, 2013) (''Tesoro Corp'').

[151] *See* letter from Freeport-McMoRan.

[152] *See* letter from Cummins Inc.

[153] *See* letter from MVC Associates.

[154] *See* letter from COEC I.

[155] *See* letter from Tesoro Corp.

[156] *See, e.g.,* letters from AAFA II, ABA, American Benefits Council, BCIMC, Business Roundtable I, Chamber I, COEC I, COEC II, Corporate Secretaries, Cummins Inc., Eaton, ExxonMobil, Freeport-McMoRan, Hyster-Yale, IBC, NACCO, NAM I, NAM II, NIRI, RILA, Semtech, SHRM, and WorldatWork I.

[157] *See* letter from ABA.

[158] *See, e.g.,* letters from Capital Strategies (stating that data privacy laws would not affect registrants because U.S. firms must know their employee expenses and can use sampling techniques to negate any data privacy effects) and WorldatWork I (stating that, while data privacy laws will have a negative effect on some registrants, others may be able to gather the required information under existing waivers granted to them by the EU, and some registrants can estimate total compensation of their employees in countries with data privacy laws by placing employees in ''bands'' of similar compensation and benefits levels, and estimating total compensation using those bands).

[159] *See* letter from AFL–CIO II.

[160] *See, e.g.,* letters from AAFA I, ABA, Aon Hewitt, American Benefits Council, Business Roundtable I, COEC I, Cummins Inc., Eaton, ExxonMobil, FEI, Freeport-McMoRan, Hyster-Yale, IBC, KBR, NACCO, NYC Bar, Prof. Ray, RILA, Semtech, and SHRM.

[161] *See, e.g.,* letters from Eaton, Freeport-McMoRan, and SHRM.

[162] *See, e.g.,* letters from American Benefits Council, BCIMC, Business Roundtable I, Cummins Inc., ExxonMobil, FEI, Freeport-McMoRan, Prof. Ray, IBC, NAM I, NAM II, NYC Bar, Semtech, and SHRM.

[163] *See, e.g.,* letters from AAFA I, American Benefits Council, BCIMC, COEC I, Corporate Secretaries, Cummins Inc., ExxonMobil FEI, Freeport-McMoRan, IBC, NAM I, NAM II, NYC Bar, and RILA.

[164] *See, e.g.,* letters from COEC I, ExxonMobil, Frederic W. Cook & Co., Freeport-McMoRan, NIRI, and NYC Bar.

[165] *See, e.g.,* letters from Freeport-McMoRan, and NIRI.

[166] *See, e.g.,* letters from COEC I and ExxonMobil.

[167] *See, e.g.,* letters from American Benefits Council (arguing in the alternative to excluding non-U.S. employees), Corporate Secretaries, ExxonMobil, Financial Services Institute (Dec. 2, 2013) (''FSI''), FSR, NACCO (arguing in the alternative to excluding non-U.S. employees), NYC Bar (arguing in the alternative to excluding non-U.S. employees), and PNC Financial Services.

[168] *See* letter from PNC Financial Services.

[169] *See* letter from NACCO.

[170] *See* letter from American Benefits Council.

[171] *See* letter from FSR.

employees, with an aggregate cap of 5%, and that the registrant be allowed to choose which country's employees to exclude.[172] Another commenter noted that a registrant should be permitted to exclude non-U.S. employees in a foreign country if the number of employees in that country is less than 1% of the registrant's total workforce.[173]

One commenter recommended that a registrant be able to exclude non-U.S. employees if its CEO is based in the United States and more than 50% of the registrant's employees also are based in the United States.[174] Conversely, a different commenter contended that we should use our discretion to limit the scope of the term ''all employees'' to only U.S. employees if ''most of the registrant's employees'' and its principal executive officer ''work primarily outside the United States.'' [175] Alternatively, the commenter suggested that, if the final rule includes non-U.S. employees, the rule should not include as ''compensation'' the value of pension accruals, employer matching contributions for 401(k)s, and non-cash benefits. The commenter also advocated that, if non-U.S. employees are included, the final rule should exclude from the median identification employees who work in any E.U. jurisdiction that has strict data privacy rules and employs fewer than 50 people.

Another commenter contended that the final rule should include a principles-based exclusion that would permit companies the flexibility to exclude substantial percentages of employees if their compensation data is difficult to obtain and the impact would not be significant.[176] The commenter cited the two memoranda analyzing the potential effects of excluding different percentages of employees on the pay ratio calculation that the staff from the Division of Economic and Risk Analysis (''DERA'').[177] According to the commenter, these memoranda concluded that excluding a ''large share'' of employees from the pay ratio calculation would ''not have a significant impact'' on the ratio. As an example, the commenter noted that the June 30 Memorandum states that excluding 40% of a registrant's employee population could reduce the pay ratio by 10.77% or increase it by 12.08%. The commenter asserted these amounts would be ''negligible,'' and therefore registrants should be permitted to exclude these employees from their pay ratio calculations under the principles-based exclusionary approach advocated by the commenter. Additionally, the commenter noted that the average respondent to a survey it conducted indicated that 40% of its employees are located overseas and excluding these employees would decrease the compliance costs of the rule by 47%.

iii. Final Rule

(a) Non-U.S. Employees Generally

After considering the comments, we have determined to include in the final rule's definition of ''employee'' a registrant's U.S. and non-U.S. employees, as proposed. We believe that the inclusion of non-U.S. employees is the policy choice that most closely captures what Congress directed us to do in stating that the ratio should reflect ''all employees.'' As noted above, we believe that the use of the word ''all'' provides a general direction in favor of inclusion rather than exclusion of broad categories of employees. Although we recognize that our reading may impose more costs on registrants than if we excluded non-U.S. employees, given that Congress is undoubtedly aware that many U.S. registrants operate globally, we think Congress's use of ''all employees'' without any territorial limitation is a strong indication that Congress did not want us to categorically exclude non-U.S. employees. Further supporting our conclusion is the fact that, historically, the disclosures that are required of registrants under the securities laws apply to events, assets, conduct, or persons irrespective of whether those are located in the United States or abroad, and there is no indication that Congress intended to depart from this historical approach. However, as discussed below, we are adopting several tailored exemptions to address specific concerns raised by commenters.

With respect to the assertion by some commenters that the rule should exclude non-U.S. employees because there is a presumption against the extraterritoriality of U.S. laws,[178] we do not believe that including foreign employees within the ''employee'' definition constitutes an extraterritorial application of the statute. Generally, whether a particular application of a statute is ''extraterritorial'' turns on an analysis of whether the conduct that is the Congressional focus of the statute occurs here or abroad.[179] The Congressional focus of Section 953(b) is disclosure by registrants that avail themselves of the U.S. public markets and thereby submit to U.S. law.[180] As discussed above, Section 953(b)(1) directs us to amend Item 402, ''to require each issuer to disclose'' the pay ratio information ''in any filing'' described in Item 10(a). Companies are only required to provide a ''filing'' with us if they offer and/or sell securities in the United States and become subject to the our registration and filing requirements. Therefore, the final rule affects only registrants that come under the umbrella of United States laws.

Our exemptive authority under Section 36 of the Exchange Act and Section 28 of the Securities Act would allow us to exempt registrants from including non-U.S. employees in the median employee determination required by Section 953(b).[181] However,

[172] *See id.*

[173] *See* letter from ExxonMobil.

[174] *See* letter from NYC Bar.

[175] *See* letter from ABA. *See also* letter from NACCO (suggesting that, if non-U.S. employees make up more than 80% of a registrant's employees, the registrant should be exempt from the rule entirely).

[176] *See* letter from COEC III.

[177] *See* Memorandum of the Division of Economic and Risk Analysis regarding the potential effect on pay ratio disclosure of exclusion of different percentages of employees at a range of thresholds (Jun. 4, 2015) (''June 4 Memorandum'') available at *http://www.sec.gov/comments/s7-07-13/s70713-1556.pdf* and Memorandum from the Division of Economic and Risk Analysis regarding an extension of the analysis of the potential effect on pay ratio disclosure of exclusion of different percentages of employees at a range of thresholds (Jun. 30, 2015) (''June 30 Memorandum'') available at *http://www.sec.gov/comments/s7-07-13/s70713-1559.pdf*. When the June 4 Memorandum was placed in the public comment file, we provided a press release announcing it was issued and an electronic alert through our RSS feed. The press release expressly advised that additional staff analyses might be placed in the comment file.

[178] *See, e.g.,* letters from COEC I and ExxonMobil.

[179] *See Morrison* v. *Nat'l Australia Bank Ltd.,* 561 U.S. 247 (2010).

[180] In this regard, we note that it is important that shareholders have access to information about both the domestic and foreign operations of a registrant given that a shareholder's investment in a U.S. registrant is typically exposed to the risks of, and the returns generated by, the global operations of the registrant.

[181] Section 36(a) of the Exchange Act and Section 28 of the Securities Act afford us general exemptive authority to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this title (*i.e.,* the Exchange Act and the Securities Act, respectively) or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors. Although Section 953(b) was not expressly incorporated into either Act, our view is that, to the extent that the statutory criteria for invoking exemptive authority under these sections are met, the exemptive authorities afforded by Section 36(a) and Section 28 are available here. We construe Section 953(b) as a Congressional directive to us to rely on our Exchange Act and Securities Act rulemaking authorities to amend § 229.402 of title 17, Code of Federal Regulations to require the pay ratio disclosure. The pay ratio amendments that we are adopting, therefore, are rules or regulations under the Exchange Act and the Securities Act and, thus, fall within the express terms of Section 36(a) and Section 28.

after careful consideration, we decline to exercise our discretion to grant a wholesale exemption for non-U.S. employees. As we understand Section 953(b), Congress thought that it was important for shareholders to have pay ratio disclosure that reflects ''all employees'' of a registrant when making their say-on-pay votes. We do not believe it would be appropriate to second-guess Congress by granting a wholesale exemption for non-U.S. employees in a manner that we believe could fundamentally change the pay ratio information that Congress directed be provided to shareholders.[182]

While the final rule does not exclude non-U.S. employees, in response to concerns that the inclusion of non-U.S. employees could raise compliance costs for multinational companies, introduce cross-border compliance issues, and have an adverse impact on competition, we are exercising our exemptive authority to provide two tailored exemptions that we believe will alleviate some of these concerns: (1) an exemption that applies when a foreign jurisdiction's data privacy laws or regulations are such that, despite its reasonable efforts to obtain or process information necessary to comply with the rule, a registrant is unable to do so without violating those laws or regulations, and (2) a *de minimis* exemption. These exemptions are discussed in detail below.

(b) Foreign Data Privacy Law Exemption

The first instance in which we believe it is appropriate to provide an exemption to the general requirement that non-U.S. employees be included in the pay ratio disclosure is when a jurisdiction's data privacy laws or regulations are such that, despite a registrant's reasonable efforts to obtain or process information necessary to comply with the rule, it is unable to do so without violating those laws or regulations. A number of commenters noted that many countries have data privacy and other laws that prevent registrants from transferring payroll data outside that country's borders (even if the transfer would be within the same company), which would make compiling the information necessary for the pay ratio disclosure illegal.[183] For example, commenters noted that the E.U. prohibits the transfer of personal data to a third country that does not ensure an adequate level of privacy protections (the United States is considered not to ensure adequate privacy protections) and that China, Japan, Mexico, Canada, Peru, Australia, Russia, Switzerland, Argentina, and Singapore have adopted or are considering similar rules.[184]

One of these commenters acknowledged, however, that ''it would be reasonable to expect that registrants which employ workers abroad already have an understanding of their obligations under the data privacy laws of each jurisdiction in which they operate, and have undertaken to comply with those laws,'' but the commenter was concerned that existing actions taken by registrants to comply with those laws may not be sufficiently flexible to facilitate compliance with the rule.[185] In this regard, the commenter noted that, under the E.U. Directive, data may be exempt from the dictates of the Directive if it is truly anonymous such that the data cannot be attributed to any identifiable person. It would seem, therefore, that a registrant employing hundreds or thousands of employees in an E.U. jurisdiction could collect compensation data for purposes of complying with Section 953(b) in a way that would preserve employee anonymity while a registrant that employs only a handful of employees in an E.U. jurisdiction may not be able to collect the data in such a manner.[186] The commenter therefore recommended that, if the final rule did not exclude all non-U.S. employees, it should permit registrants to exclude from the definition of ''employee'' any employee in a jurisdiction where such collection, analysis, and transmission would violate a registrant's existing data privacy obligations.[187]

After considering the comments received, we are persuaded that a tailored exemption from the definition of ''employee'' is appropriate where a foreign country's data privacy laws or regulations are such that a registrant is not able to comply with the rule without violating those laws or regulations in spite of its reasonable efforts to obtain or process the necessary information.[188]

Although, as noted above, we believe the inclusion of non-U.S. employees is consistent with the Congressional directive and is important for providing pay ratio information that reflects a registrant's overall employment practices, we do not have any indication that Congress intended that a registrant should have to choose between complying with our disclosure rules and violating the laws of a foreign jurisdiction. We believe that, on balance, providing an accommodation in such situations would not substantially affect the utility of the Section 953(b) disclosures for shareholder say-on-pay votes.

To prevent any potential manipulation, the rule requires the registrant to exercise reasonable efforts to obtain or process the information necessary for compliance with the final rule. As part of its reasonable efforts, the registrant must seek an exemption or other relief under the applicable jurisdiction's governing data privacy laws or regulations and use the exemption if granted.

If a registrant excludes any non-U.S. employees in a particular jurisdiction under the data privacy exemption, it must exclude all non-U.S. employees in that jurisdiction. Additionally, the registrant must list the excluded jurisdictions, identify the specific data privacy law or regulation, explain how complying with the final rule violates the law or regulation (including the efforts made by the registrant to use or seek an exemption or other relief under such law or regulation), and provide the approximate number of employees exempted from each jurisdiction based on this exemption.

Also, the registrant must obtain a legal opinion that opines on the inability of the registrant to obtain or process the information necessary for compliance with the final rule without violating that jurisdiction's laws or regulations governing data privacy, including the registrant's inability to obtain an exemption or other relief under any

[182] Our use of exemptive authority where foreign data privacy laws are involved (as discussed below) may result in different pay ratio disclosure in certain instances, but we believe the use of exemptive authority is appropriate because it reflects a carefully tailored accommodation necessary to address a situation (*i.e.,* foreign data privacy laws) that Congress may not have contemplated.

[183] *See, e.g.,* letters from AAFA II, ABA, American Benefits Council, BCIMC, Business Roundtable I, Chamber I, COEC I, Corporate Secretaries, Cummins Inc., Eaton, ExxonMobil, Freeport-McMoRan, Hyster-Yale, IBC, NACCO, NAM I, NAM II, NIRI, RILA, Semtech, SHRM, and WorldatWork I.

[184] *See, e.g.,* letters from ABA, American Benefits Council, Business Roundtable I, COEC I, Cummins Inc., NAM I, NAM II, RILA, and WorldatWork I.

[185] *See* letter from ABA.

[186] In such situations, we recognize that the *de minimis* exemption may be available.

[187] *See* letter from ABA (recommending that we consider permitting registrants to exclude from the identification of the median employee those employees who work in an E.U. jurisdiction that maintains strict data privacy laws and in which the registrant employs fewer than 50 employees).

[188] As required by Section 28 of the Securities Act and Section 36 of the Exchange Act, we find that the exemption here is consistent with investor protection and is necessary or appropriate in the public interest. We make these findings based on the fact that, without the exemption, registrants operating in countries with applicable privacy laws could be forced into the difficult situation of violating either that country's laws or U.S. law, and we believe that because of the limited and tailored nature of the exemption, it will not materially impact the pay ratio disclosure.

governing laws or regulations. The legal opinion must be filed as an exhibit with the filing in which the pay ratio disclosure is included. For filings other than proxy or information statements, the legal opinion must be filed as an exhibit under Exhibit 99.[189]

(c) *De Minimis* Exemption

The second instance in which we believe it is appropriate to provide an exemption from the general requirement to include non-U.S. employees in identifying the median employee is when a *de minimis* number of a registrant's employees work outside the United States. The *de minimis* exemption is a change from the proposed rule. Under this exemption, registrants whose non-U.S. employees make up 5% or less of their total U.S. and non-U.S. employees may exclude all of them when identifying their median employee. If such a registrant chooses to exclude any non-U.S. employees under this exemption, it must exclude all of them. A registrant with more than 5% non-U.S. employees may also exclude non-U.S. employees up to the 5% threshold; provided that, if such a registrant excludes any non-U.S. employees in a particular foreign jurisdiction, it must exclude all the employees in that jurisdiction. The registrant may not pick and choose which employees to exclude in any one jurisdiction.

We believe a *de minimis* exemption provides flexibility in a manner that will not meaningfully alter the pay ratio disclosure. We are persuaded that a *de minimis* exemption is appropriate after considering the potential cost savings to registrants and the small effect it would have on the pay ratio, as discussed below. The final rule establishes the *de minimis* threshold at 5%. The commenters that suggested specific *de minimis* thresholds did not provide reasons why the particular thresholds they suggested were suitable, but several of these commenters suggested a threshold of 5%.[190] We believe the 5% threshold will both limit the exemption to an amount that is, in fact, *de minimis* and help address the payroll or other data challenges that may arise for registrants with a small percentage of non-U.S. employees.

Although commenters did not provide data about the effect on the pay ratio of potential *de minimis* thresholds, staff in DERA performed an analysis of the potential effect on pay ratio disclosure of excluding different percentages of employees at a range of thresholds and posted to the comment file two memoranda containing the analysis.[191] As discussed in further detail both in the memoranda and in the Economic Analysis section below, under such analysis and based on the assumptions set forth in the analysis, the exclusion of 5% of employees may cause the pay ratio calculation to decrease by up to 3.4% or to increase by up to 3.5%. We believe such analysis confirms that the effect of the 5% threshold on the pay ratio disclosure will be *de minimis.* We note that one commenter observed that under one of the scenarios analyzed in the June 30 Memorandum, excluding 40% of a registrant's employees may cause the pay ratio calculation to decrease by up to 10.77% or to increase by up to 12.08%.[192] The commenter called this impact ''not significant'' and ''negligible'' and, based on this impact, contended that the final rule should permit registrants to exclude up to 40% of their non-U.S. employees. We are not adopting this suggestion. We believe that the exclusion of 40% of employees would be a fundamentally different type of exclusion than the one we adopting here—that is, a *de minimis* exclusion designed to allow companies to exclude employees in jurisdictions where there are only a limited number of employees and where the costs of including such employees may be disproportionately greater than the incremental information they would add to the disclosure. The exclusion of 40% of employees is not a *de minimis* amount of employees, and, in contrast to the assertions of the commenter, we believe that a decrease in the pay ratio calculation of up to 10.77% or increase by up to 12.08% is significant and more than negligible, and we do not believe that it is *de minimis.* Additionally, as the commenter acknowledges, under other scenarios in the memorandum, exclusion of up to 40% of a registrant's employees could have an even greater effect on the pay ratio (*e.g.,* by causing it to decrease by up to 25.06% or to increase by up to 33.43%). In contrast, the 5% *de minimis* threshold both results in the exclusion of a de minimis number of employees and has a *de minimis* effect on the pay ratio, regardless of which scenario is considered. Accordingly, the final rule's *de minimis* threshold for non-U.S. employees does not exceed 5%.

As one commenter warned, there is a possibility for intentional manipulation in identifying the median employee when a *de minimis* exemption is provided and a registrant is permitted to choose which jurisdictions to exclude.[193] To provide safeguards against any potential manipulation, the final rule requires that, if a registrant with 5% or fewer non-U.S. employees chooses to exclude those employees from the calculation of its median employee, it may not pick and choose which of the 5% to exclude and must exclude all of its non-U.S. employees. Similarly, if a registrant with more than 5% non-U.S. employees excludes any employees in any jurisdiction, it must exclude all the employees in that jurisdiction. In this regard, we recognize that this requirement could prevent some registrants with more than 5% non-U.S. employees from excluding any of its foreign employees. A purpose of the *de minimis* exemption is to provide relief from the need to determine how to integrate payroll systems and compensation arrangements in jurisdictions where the number of employees may not justify the effort, and we believe that setting the threshold at 5% establishes an appropriate measure of relief.

The final rule also requires a registrant using the *de minimis* exemption to provide certain disclosures. If the registrant excludes any non-U.S. employees under the *de minimis* exemption, it must disclose the jurisdiction or jurisdictions from which employees are being excluded, the approximate number of employees excluded from each jurisdiction under the *de minimis* exemption, the total number of its U.S. and non-U.S. employees irrespective of any exemption (data privacy or *de minimis*) and the total number of its U.S. and non-U.S. employees used for its *de minimis* calculation.

In calculating the number of non-U.S. employees that may be excluded under the de minimis exemption, a registrant must count any non-U.S. employee exempted under the data privacy exemption against the availability. A registrant may exclude any non-U.S. employee that meets the data privacy exemption, even if the number of excluded employees exceeds 5% of the registrant's total employees. If, however,

[189] *See* Item 601(b)(99) of Regulation S–K [17 CFR 229.601(b)(99)]. The exhibit must be filed with proxy or information statements pursuant to Item 25 of Schedule 14A.

[190] *See* letters from PNC Financial Services (suggesting 5% as the *de minimis* threshold) and FSR (recommending a registrant be permitted to exclude non-U.S. employees if they account for less than 5% of the registrant's employees, but, if the registrant's foreign employees account for more than 5% of all employees, the registrant may exclude employees in any single foreign jurisdiction if they comprise less than 2% of total employees, with an aggregate cap of 5%).

[191] *See* the June 4 Memorandum and the June 30 Memorandum. *See also,* Section III.D.2.c.vi below.

[192] *See* letter from COEC III.

[193] *See* letter from FSR.

the number of employees excluded under the data privacy exemption equals or exceeds 5% of the registrant's total employees, the registrant may not use the *de minimis* exemption to exclude additional non-U.S. employees.

For example, a registrant has non-U.S. employees located in two foreign jurisdictions. One of the jurisdictions has 10% of the registrant's total employees who are non-U.S. employees and has data privacy laws that, despite its reasonable efforts to obtain or process the information necessary for compliance with the final rule, the registrant is unable to do so without violating those data privacy laws or regulations. The other jurisdiction has an additional 5% of the registrant's total employees who are non-U.S. employees and has no such data privacy laws or regulations. The registrant may exclude all the non-U.S. employees in the first jurisdiction, which has 10% of the registrant's total employees. In that situation, however, the registrant may not exclude the non-U.S. employees in the second jurisdiction, which has the additional 5% of the total employees, even though the 5% would otherwise constitute a *de minimis* amount of non-U.S. employees, because the registrant is already excluding over 5% of its employees under the data privacy exemption.[194]

Moreover, if the number of non-U.S. employees excluded under the data privacy exemption is less than 5% of the registrant's total employees, the registrant may use the *de minimis* exemption to exclude no more than the number of non-U.S. employees that, combined with the data privacy exemption, equals 5% of the registrant's total employees.

For example, a registrant has non-U.S. employees located in two foreign jurisdictions. One of the jurisdictions has 2.5% of the registrant's total employees who are non-U.S. employees and has data privacy laws that, despite its reasonable efforts to obtain or process the information necessary for compliance with the final rule, the registrant is unable to do so without violating those data privacy laws or regulations. The other jurisdiction has an additional 2.5% of the registrant's total employees who are non-U.S. employees and has no such data privacy laws or regulations. The registrant may exclude the 2.5% of total employees who are non-U.S. employees in the first jurisdiction under the data privacy exemption. The registrant may also exclude the additional 2.5% of the registrant's total employees who are non-U.S. employees from the second jurisdiction because the total number of exempted non-U.S. employees under both the data privacy and the *de minimis* exemptions equal only 5% of the registrant's total employees.

Alternatively, in the above example, if the number of non-U.S. employees in the second jurisdiction was 3% of the registrant's total employees, the registrant could not exclude the non-U.S. employees in that jurisdiction because the registrant's number of excluded non-U.S. employees in both jurisdictions would be over 5% of its total employees.

(d) Cost-of-Living Adjustment

In the Proposing Release, we requested comment on whether we should permit cost-of-living adjustments for employees in different countries. A number of commenters who addressed this issue contended that unadjusted cost of living differences between countries would cause the inclusion of non-U.S. employees to render the pay ratio disclosure misleading.[195] Accordingly, some of these commenters suggested that the pay ratio disclosure could be more meaningful for some registrants if the final rule permitted cost-of-living adjustments.[196] However, other commenters objected to permitting cost-of living-adjustments,[197] asserting that the compensation of a non-U.S. employee ''is more directly comparable to the total compensation of a registrant's [PEO] without a cost-of-living adjustment,'' [198] and that permitting cost-of-living adjustments could add a level of subjectivity to the pay ratio disclosure.[199]

We acknowledge that differences in the underlying economic conditions of the countries in which registrants operate likely have an effect on the compensation paid to employees in those jurisdictions. As a result, requiring registrants to determine their median employee and calculate the pay ratio without permitting them to adjust for these different underlying economic conditions could result in what some would consider a statistic that does not appropriately reflect the value of the compensation paid to individuals in those countries. The final rule, therefore, allows registrants the option to make cost-of-living adjustments to the compensation of their employees in jurisdictions other than the jurisdiction in which the PEO resides when identifying the median employee (whether using annual total compensation or any other consistently applied compensation measure), provided that the adjustment is applied to all such employees included in the calculation.[200] If the registrant chooses this option, the compensation of such employees will have to be adjusted to the cost of living in the jurisdiction in which the PEO resides. Further, if the registrant uses a cost-of-living adjustment to identify the median employee, and the median employee identified is an employee in a jurisdiction other than the one in which the PEO resides, the registrant must use the same cost-of-living adjustment in calculating the median employee's annual total compensation and disclose the median employee's jurisdiction. If a registrant does not make cost-of-living-adjustments to its employees when identifying the median employee, the registrant is not permitted to make cost-of-living adjustments to the median employee's annual total compensation if the median employee is an employee in

[194] We do not envision a scenario in which a registrant can forgo the data privacy exemption in favor of the *de minimis* exemption in the above or similar situations. The data privacy exemption is permitted only for circumstances in which a foreign jurisdiction's laws or regulations governing data privacy are such that a registrant is unable to comply with the final rule without violating the that jurisdiction's laws or regulations. If a registrant is in a position to forgo the data privacy exemption, it would not be considered eligible for the exemption.

[195] *See, e.g.,* letters from AAFA I, American Benefits Council, BCIMC, Corporate Secretaries, Cummins Inc., ExxonMobil, NAM I, NAM II, and SH&P.

[196] *See* letter from ExxonMobil (''Example 2: Differences in cost of living. Two employees hold similar jobs in two different countries, C and D. The employee in Country C receives total annual compensation of $100,000 and the employee in Country D receives total annual compensation of *$75,000.* The cost of living in Country D is approximately 50% of the cost of living in Country C. In real economic *terms,* the employee in Country D enjoys significantly higher pay than the employee in Country C. However, under the rules as proposed the appearance is reversed.'') (Emphasis in original.). *See also,* letters from NAM I, NAM II, and SH&P.

[197] *See* letters from ABA, Prof. Ray, and WorldatWork I.

[198] *See* letter from ABA (''We believe that the Commission should not allow registrants to make cost-of-living adjustments for non-U.S.-based employees (should the agency determine to include them), other than the annualization and full-time equivalent adjustments discussed above in our responses to Questions 23 and 24. We believe the total compensation of such full-time employees is more directly comparable to the total compensation of a registrant's principal executive officer without a cost-of-living adjustment than with it.'').

[199] *See* letter from Prof. Ray.

[200] We are utilizing our authority under Section 28 of the Securities Act and Section 36 of the Exchange Act to permit registrants to elect to identify the median employee by first adjusting the compensation of employees in jurisdictions other than the jurisdiction in which the PEO resides to the cost of living in the CEO's jurisdiction of residence. Moreover, for the reasons described above, we believe that this conditional exemption is consistent with the public interest and investor protection.

a jurisdiction other than the jurisdiction in which the PEO resides.

In the Proposing Release, we said that we preliminarily believed that certain adjustments, including cost-of-living adjustments, ''could distort an understanding of the registrant's compensation practices.'' Based on our fuller understanding of the Congressional purpose underlying the pay ratio disclosure and the comments received on the proposal, however, we are persuaded that allowing registrants the option of a cost-of-living adjustment for employees in jurisdictions other than the jurisdiction in which the PEO resides could be useful to investors as they make their say-on-pay votes. Put simply, a cost-of-living adjustment could provide a more meaningful comparison of the PEO's compensation to the actual value of the median employee's compensation by effectively filtering out that part of the difference in compensation that results from differences in the cost of living between the PEO's place of residence (typically, the United States) and the median employee's jurisdiction. For some shareholders making their say-on-pay votes, we believe that what may matter is the value of compensation received by the median employee, rather than the dollar amount of the compensation paid. Although we are not mandating that registrants adjust for these cost-of-living considerations, we believe that it is appropriate to give them the option to make such adjustments where they determine that doing so would provide more useful information to their shareholders as they vote on executive compensation.[201]

We recognize that providing registrants the flexibility to make cost-of-living adjustments could add a level of subjectivity to the pay ratio disclosure, make compliance with the rule more burdensome, or permit registrants to alter the reported ratio to achieve a particular objective with the ratio disclosure.[202] Registrants with a significant number of employees in countries with higher cost-of-living than the jurisdiction in which the PEO resides may be unlikely to adjust those compensation figures downward, while registrants with a sizable work force in countries with a lower cost-of-living may be likely to adjust the compensation figures upward.

We believe, however, that the final rule mitigates these concerns by requiring registrants to briefly describe any cost-of-living adjustments they used to identify the median employee or to calculate annual total compensation, including the measure used as the basis for the cost-of-living adjustment, and disclose the country in which the median employee is located. Additionally, the final rule requires that any registrant electing to present the pay ratio using a cost-of-living adjustment must also disclose the median employee's annual total compensation and pay ratio without the cost-of-living adjustments. To calculate this pay ratio, the registrant will need to identify the median employee without using any cost-of-living adjustments. In this way, shareholders would have pay ratio information both in terms of the value of compensation received by the employee and in terms of the compensation paid by the registrant.[203]

For registrants who choose to present the pay ratio using a cost-of-living adjustment, the pay ratio required by Item 402(u)(1)(iii) will be the cost-of-living adjusted pay ratio. Disclosure of the unadjusted pay ratio will be available to provide context for the registrant's required pay ratio. Because the cost-of-living adjustment will be optional for registrants, we assume they will choose to avail themselves of this option only to the extent they believe the benefits of doing so will justify any additional costs to make the adjustment.

d. Employees of Consolidated Subsidiaries

i. Proposed Rule

The proposed rule would cover employees of both a registrant and its subsidiaries, which is similar to the approach taken for other Item 402 information.[204] In the context of Item 402, a subsidiary of a registrant is an affiliate controlled by the registrant directly or indirectly through one or more intermediaries, as set forth in the definition of ''subsidiary'' under both Securities Act Rule 405 and Exchange Act Rule 12b–2. Therefore, the proposal would cover an employee if he or she was employed by the registrant or a subsidiary of the registrant as defined in Rule 405 and Rule 12b–2.

ii. Comments on the Proposed Rule

The majority of commenters that discussed this issue recommended that the rule only require parent registrants to incorporate into their pay ratio disclosure the employees of their consolidated subsidiaries.[205] One of the commenters claimed that there would be a 91% increase in compliance costs if the final rule included minority-owned subsidiaries and joint ventures because registrants would otherwise be required to ''engage in an extensive information gathering process'' without ''access to the payroll and human resources information needed for the pay ratio from subsidiaries or other entities with a more tenuous connection, such as joint ventures.'' [206] Another commenter claimed that registrants do not exercise much influence on the compensation policies and practices of entities in which they have only a minority or nominal interest.[207] Only one commenter asserted that the final rule should exclude compensation information from all subsidiaries and be limited to only the compensation of employees directly employed by the registrant.[208]

Some commenters suggested that the final rule require registrants to incorporate only employees of their wholly-owned subsidiaries and not employees of their joint ventures.[209] Other commenters stated that the final rule should allow a subsidiary to exclude its pay ratio disclosure in its filings if the subsidiary's employees are incorporated into its parent registrant's

[201] Although the final rule gives registrants the option to make cost-of-living adjustments for employees in jurisdictions other than the jurisdiction in which the PEO resides, we are not giving registrants the option of adjusting part-time or seasonal employees' compensation as though they were full time employees. For U.S. part-time or seasonal employees, the unadjusted compensation reflects the actual relative value of the compensation received by that employee, unlike non-U.S. employees who may be working in countries with a significantly lower cost of living. Moreover, adjusting the compensation of part-time or seasonal employees to what they would have received if they had been full time employees would cause the median to not be reasonably representative of the registrant's actual employment arrangements for its workforce during the period.

[202] *See* letters from Prof. Ray (stating that permitting cost-of-living adjustments ''will only make the pay ratio more subjective,'' because they ''add subjectivity'' to the disclosure) and WorldatWork I (''Cost-of-living adjustments and full-time compensation adjustments would make compliance more burdensome by requiring more context in the explanation of how the ratio was calculated.'').

[203] We believe that requiring this disclosure of the unadjusted pay ratio for those registrants who choose to include a cost-of-living adjustment will help to mitigate the concerns noted in the Proposing Release about the impact that a cost-of-living adjustment could have on an understanding of a registrant's compensation practices.

[204] *See* Item 402(a)(2) and Instruction 2 to Item 402(a)(3).

[205] *See, e.g.,* letters from ABA (limiting the requirement only to employees of the registrant's wholly-owned or majority-owned subsidiaries with consolidated financial statements, but not subsidiaries that are portfolio companies of business development companies), Best Buy *et al.,* Business Roundtable I, COEC I, COEC II, Corporate Secretaries, CT State Treasurer, Davis Polk, Eaton, ExxonMobil, Mercer I, Meridian, NACCO, NAM I, and NAM II.

[206] *See* letter from COEC I.

[207] *See* letter from ABA.

[208] *See* letter from WorldatWork I.

[209] *See, e.g.,* letters from AAFA I, Business Roundtable I, Corporate Secretaries, NACCO, NAM I, NAM II, and PM&P.

pay ratio disclosure.[210] One commenter asserted that the final rule should require a registrant to include the compensation information of its subsidiary only if the issuer has ''control'' over the subsidiary (as ''control'' is defined in our rules).[211] Another commenter maintained that the final rule should require a registrant to include its subsidiary only if the registrant has ''actual control'' over the compensation decisions made at the subsidiary level.[212] Finally, a few commenters contended that the final rule should require registrants to include the employees of their subsidiaries in their pay ratio generally without specifying the types of subsidiaries.[213]

iii. Final Rule

After considering these comments, we are revising the final rule from the proposal. Unlike the proposed rule, the final rule defines ''employee'' to include only the employees of the registrant and its consolidated subsidiaries rather than employees of subsidiaries that were affiliates it controlled directly or indirectly through one or more intermediaries, as set forth in the definition of ''subsidiary'' under both Securities Act Rule 405 and Exchange Act Rule 12b–2. This change should reduce costs and burdens for registrants, while maintaining the benefits of the pay ratio rule, as discussed below.

Rule 12b–2 and Rule 405 define a ''subsidiary'' as ''an affiliate controlled by [an entity] directly, or indirectly through one or more intermediaries,'' while an ''affiliate'' is defined as ''a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.'' [214] The term ''control'' (including the terms ''controlling,'' ''controlled by'' and ''under common control with'') means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.[215] One commenter described this definition of ''subsidiary'' as ''very expansive'' because it includes not just affiliates controlled directly by the registrant, but also those controlled indirectly by the registrant through one or more intermediaries or that are under common control with the registrant.[216] In the Section 16 context, we have noted that many practitioners believe that individuals or entities holding as little as 10% or more of the voting equity securities of a registrant may likely be considered an affiliate or control person.[217] Further, whether an affiliate is controlled by an entity is based on the facts and circumstances of each situation, so whether a company should be considered a ''subsidiary'' of a registrant is not always clear.[218] Therefore, depending on the specific facts and circumstances of the situation, if the rule used the term ''subsidiary'' as defined under Rules 12b–2 and 405, a registrant could potentially be required to include the employees of a company in which it holds as little as a 10% ownership stake. As commenters noted, obtaining compensation and payroll data from unconsolidated entities could be costly, burdensome, or potentially impossible.[219] Additionally, one commenter suggested that, because compensation disclosure is designed to facilitate the comparison of the PEO's pay to the performance of the company based on its consolidated financial statements, the pay ratio should relate to the same consolidated financial performance of the company and not to non-consolidated entities and other factors if the purpose of the rule is to enhance compensation disclosure.[220]

In contrast, defining a ''subsidiary'' based on whether a registrant consolidates a company in its financial statements likely will decrease the costs and burdens on a registrant compared with the proposal because most registrants consolidate based on their ownership of over 50% of the outstanding voting shares of their subsidiaries and more guidance is readily available on when consolidating subsidiaries is appropriate than when an entity should be considered a ''subsidiary'' based on the concept of control. For example, the United States generally accepted accounting principles (''U.S. GAAP'') traditionally has required a company holding the ''controlling financial interest'' of another company to consolidate that company.[221] The usual condition for consolidation is a controlling financial interest through majority ownership of over 50% of the outstanding voting shares.[222] Determining whether a company is a ''subsidiary'' under the consolidated financial statement method, as opposed to the using the definition of ''subsidiary'' under Rules 405 and 12b–2, generally will provide a higher quantitative threshold and thus a smaller pool of employees to include in the median employee determination, which should help to reduce costs associated with making such a determination. Overall, the standard for consolidation and the definition of ''control'' under Rules 405 and 12b–2 are both driven by very similar concepts of control. Use of a consolidated subsidiary standard will typically exclude employees of entities where a company holds between a 10% to 50% voting interest in such entity.

Although this change from the proposal generally will result in a smaller pool of employees being used for the median employee determination, we do not believe it will undermine the usefulness of the required disclosures or conflict with the purposes of Section 953(b). As one commenter indicated, ''registrants do not exercise much, if any, influence on the compensation policies and practices of entities in which they have only a minority or nominal interest (unless the employees of such entities provide services directly to the registrant).'' [223] According to the commenter, limiting the final rule to employees of a registrant's consolidated subsidiaries, therefore, ''would not deprive investors of useful information or important insights into a registrant's compensation structure.'' We believe that requiring registrants to consider only their employees and the employees of their consolidated subsidiaries in identifying their median employee should not limit the usefulness of the pay ratio disclosure as a data point for shareholders to use in making their

[210] *See, e.g.,* letters from FSI and FSR.

[211] *See* letter from Capital Strategies.

[212] *See* letter from Cummins Inc.

[213] *See, e.g.,* letters from AFL–CIO I, Domini, and US SIF.

[214] 17 CFR 240.12b–2 and 17 CFR 230.405.

[215] *Id.*

[216] *See* letter from ABA.

[217] *See Revision of Rule 144, Rule 145 and Form 144,* Release No. 33–7391, Section III.B (Jun. 27, 1995) (''Under the proposal [to make revisions to Rule 144, 145, and Form 144], the same criteria used to determine those persons that are not 'insiders' under Exchange Act Section 16 would be used for Rule 144. Many practitioners already used Section 16 criteria as a guide. The Commission believes it is likely that most persons who are not officers, directors, or 10% holders are not in a 'control' position.'').

[218] *See, e.g.,* letters from ABA, Best Buy *et al.,* Business Roundtable I, COEC I, and Davis Polk.

[219] *See, e.g.,* letters from ABA, Best Buy *et al.,* Business Roundtable I, COEC I, Corporate Secretaries, Davis Polk, Eaton, ExxonMobil, NACCO, and NAM I.

[220] *See* letter from NAM II.

[221] *See* Volume I, Section 1160.1.12 of PWC 2010 Accounting and Reporting Manual.

[222] *See* ASC 810–10–15–8 (''The usual condition for a controlling financial interest is ownership of a majority voting interest, and, therefore, as a general rule ownership by one reporting entity, directly or indirectly, of more than 50 percent of the outstanding voting shares of another entity is a condition pointing toward consolidation. The power to control may also exist with a lesser percentage of ownership, for example, by contract, lease, agreement with other stockholders, or by court decree.'').

[223] *See* letter from ABA.

voting decisions on executive compensation under Section 951 of the Dodd-Frank Act in any significant way.

e. Any PEO Compensation in the Last Full Fiscal Year

i. Proposed Rule

The Proposing Release did not discuss the compensation information that would be required if one or more of a registrant's PEOs served only part of a fiscal year.

ii. Comments on the Proposed Rule

Some commenters suggested that a registrant should be required to disclose the compensation information only for the PEO holding the position at the end of the last completed fiscal year.[224] One commenter suggested an exception where the PEO has served for most of a fiscal year but departs before the last day, in which case the commenter recommended that we require compensation information disclosure for the person who served as PEO for the majority of the fiscal year.[225] Another commenter suggested the use of the PEO as of the last day of the most recently completed fiscal year and noted that the issue of that person's annual total compensation representing less than a full year's compensation ''could be addressed by requiring registrants to annualize the annual total compensation for the chief executive officer serving at fiscal year end.'' [226]

iii. Final Rule

The final rule allows a registrant a choice of two options in calculating the annual total compensation for its PEO in situations in which the registrant replaces its PEO with another PEO during its fiscal year. In these situations, the registrant must disclose which option it chose and how it calculated its PEO's annual total compensation. First, a registrant may take the total compensation calculated pursuant to Item 402(c)(2)(x), and reflected in the Summary Compensation Table, provided to each person who served as PEO during the year and combine those figures. This figure would constitute the registrant's annual total PEO compensation.

Alternatively, a registrant may look to the PEO serving in that position on the date it selects to identify the median employee and annualize that PEO's compensation. For example, if the registrant chooses October 15 as the date to determine its median employee, the registrant would calculate the compensation of the person serving as PEO on that date and annualize that PEO's compensation. If the person was PEO for six months and received $100,000 of total compensation, the registrant would use $200,000 as the annual total compensation of its PEO. This approach is consistent with annualizing the total compensation of permanent employees, discussed below, which is permitted under the final rule. It is also similar to the approach suggested by one commenter.[227]

We are not adopting the approach advocated by some commenters of disclosing compensation information for the PEO holding that position at the end of the fiscal year. Section 953(b) requires the disclosure of the ''annual total compensation of the chief executive officer (or any equivalent position) of the issuer,'' and we think the better interpretation of that language is that it is intended to capture the annual compensation paid for that position (regardless of the individual who holds the position). Also, we believe that allowing the disclosure of only partial year compensation would fundamentally alter the pay ratio disclosure and would not capture the ratio of PEO compensation to median employee compensation.

f. Additional Information Is Permissible

i. Proposed Rule

In the Proposing Release, we noted that we received some comments prior to the proposal suggesting that the rule should allow registrants to present separate pay ratios covering U.S. and non-U.S. employees to mitigate concerns that the comparison of the PEO to non-U.S. employees could distort the disclosure.[228]

The Proposing Release stated that we did not believe that it was necessary to include instructions in the new rule expressly permitting registrants to add disclosure to accompany the pay ratio. We indicated, that, as with other mandated disclosure under our rules, registrants would be permitted to supplement their required disclosure with a narrative discussion or additional ratios if they chose to do so. We indicated also that, as with other disclosure under our rules,[229] any additional ratios should not be presented with greater prominence than the required pay ratio. We requested comment on whether the final rule should permit or require registrants to include two separate pay ratios covering U.S. employees and non-U.S. employees.

ii. Comments on the Proposed Rule

Some commenters opposed any requirement for two separate ratios.[230] Other commenters also opposed a requirement for two separate ratios, but indicated that the final rule should permit registrants to provide separate ratios if they chose to do so.[231] One commenter acknowledged that the Proposing Release permitted additional ratios but suggested that we should indicate that any additional ratios should not be misleading and not presented with greater prominence than the required ratio.[232]

iii. Final Rule

After considering the comments, we have added an instruction to the final rule stating expressly that registrants may present additional ratios or other information to supplement the required ratio, but are not required to do so. The instruction states also that, if a registrant includes any additional ratios, the ratios must be clearly identified, not misleading, and not presented with greater prominence than the required ratio. Additional pay ratios are not limited to any particular information, such as pay ratios covering U.S. and non-U.S. employees.

g. Annualizing Permanent Employees is Permissible, but Other Compensation Adjustments are Prohibited

i. Proposed Rule

The proposed rule included an instruction permitting, but not requiring, registrants to annualize the total compensation for permanent ''employees'' who did not work for the entire year, such as new hires, employees on leave under the Family and Medical Leave Act of 1993,[233] employees called for active military duty, or employees who took an unpaid

[224] *See, e.g.,* letters from ABA, Corporate Secretaries, Davis Polk, McGuireWoods, and PM&P.

[225] *See* letter from ABA.

[226] *See* letter from Davis Polk.

[227] *See id.*

[228] *See, e.g.,* letters from AFL–CIO (Dec. 13, 2010) (''AFL–CIO pre-proposal letter''), Americans for Financial Reform (Mar. 23, 2011) (''AFR pre-proposal letter''), Walden Asset Management (Apr. 29, 2011) (''Walden pre-proposal letter''), and Social Investment Forum (Apr. 21, 2011) (''SIF pre-proposal letter'').

[229] *See, e.g.,* Exchange Act Rule 12b–20 and *Commission Guidance Regarding Management's Discussion and Analysis or Financial Condition and Results of Operations,* Release No. 33–8350 (Dec. 19, 2003) [68 FR 75056], at 75060.

[230] *See, e.g.,* letters from American Benefits Council, Aon Hewitt, Frederic W. Cook & Co., and WorldatWork I.

[231] *See, e.g.,* letters from ABA, Capital Strategies, CII, COEC I, CT State Treasurer, Cummings Foundation, Emergent, Hyster-Yale, Johnson & Johnson, NACCO, Comptroller of the City of New York (Nov. 27, 2013) (''NYC Comptroller''), US SIF, and Vivient.

[232] *See* letter from E&Y.

[233] 29 U.S.C. 2601 *et seq.*

leave of absence during the period for another reason. We did not propose to require registrants to perform this type of adjustment, however, because we did not believe that the costs of requiring companies to make this extra calculation would be justified. The proposed rule applied to individuals who were employed on the last day of the fiscal year because it referred specifically to an ''employee.''

In addition, the proposed instruction would prohibit a registrant from annualizing some eligible employees and not others, and the instruction prohibited adjustments that would cause the ratio to not reflect the actual composition of the workforce, such as annualizing the compensation of seasonal or temporary employees. A registrant could annualize the compensation for a permanent part-time employee who had only worked a portion of the year (such as an employee who is permanently employed for three days a week and who took an unpaid leave of absence under the Family and Medical Leave Act for a portion of the year). In such a case, we explained that the adjustment should reflect compensation for the employee's part-time schedule over the entire year, but should not adjust the part-time schedule to a full-time equivalent schedule.

Although we proposed to permit the annualizing adjustments described above, the proposed rule would not have permitted certain other adjustments or assumptions, such as full-time equivalent adjustments for part-time employees or annualizing adjustments for temporary or seasonal employees. We believed such adjustments would cause the median to not be reasonably representative of the registrant's actual employment and compensation arrangements for its workforce during the period and could diminish the potential usefulness of the disclosure.

ii. Comments on the Proposed Rule

Some commenters concurred that registrants should be permitted to annualize the total compensation for all permanent employees (which would exclude temporary and seasonal positions) that were employed by the registrant for less than the full fiscal year.[234] Some commenters also agreed that registrants should not be permitted to adjust the salaries of part-time, temporary, and seasonal employees to the equivalent of full-time status contending that it would be misleading to do so.[235]

Many commenters, however, contended that the final rule should permit registrants to provide full-time equivalent adjustments for the salaries of part-time, temporary, and seasonal employees.[236] Some of these commenters asserted that not doing so would distort the pay ratio.[237] One of these commenters asserted that permitting full-time equivalent adjustments would not undermine disclosure or make it less accurate because any potential concern about shareholders' understanding of the pay ratio would be mitigated by requiring registrants to disclose their full-time equivalency and the approximate number of part-time, seasonal, and temporary employees for which it made the calculation.[238] Another commenter indicated that, if the final rule requires disclosure of any adjustment calculations, the disclosure should be limited to brief statements.[239]

iii. Final Rule

After considering the comments, we are adopting the final rule as proposed. Annualization and full-time equivalent adjustments are separate concepts. Annualization involves taking the compensation of an employee who worked for only part of the registrant's fiscal year and projecting that compensation as if the employee worked the full fiscal year at the schedule that the employee worked for the portion of the year the employee worked. Annualization is allowed under the rule for full-time and part-time employees who did not work for the registrant's full fiscal year for some reason, such as they were employees who were newly hired, on leave under the Family and Medical Leave Act of 1993, called for active military duty, or took an unpaid leave of absence during the period. Annualization is only allowed for permanent employees; it is not allowed under the final rule for seasonal or temporary employees. A full-time equivalent adjustment involves taking the compensation of a part-time employee and projecting what the employee would have made if the employee were employed on a full-time basis. Full-time equivalent adjustments are prohibited under the final rule under all circumstances.

We are taking this approach in the final rule because we believe it most accurately captures the workforce and compensation practices that the registrant has chosen to employ. The limited ability to annualize a permanent full-time or part-time employee reflects the fact that these employees are a permanent part of the registrant's workforce despite having only worked for part of that particular year. In contrast, a temporary or seasonal employee is not a permanent part of the registrant's workforce. Full-time equivalent adjustments of these employees' compensation would reflect a different workforce composition and compensation structure than used by the registrant. To the extent a registrant believes that not making full-time equivalent adjustments for temporary or seasonal employees might not provide shareholders a complete understanding of the registrant's compensation practices as they exercise their say-on-pay votes, the registrant is permitted under the final rule to provide additional disclosure.

2. Identifying the Median Employee and Calculating Annual Total Compensation

a. Identifying the Median Employee

i. Once Every Three Years

(a) Proposed Rule

The proposed rule required registrants to disclose the ''median of the annual total compensation of all employees of the registrant.'' [240] The proposed rule defined ''annual total compensation'' to mean ''total compensation for the registrant's last completed fiscal year,'' [241] and ''employee'' to mean ''an individual employed by the registrant or any of its subsidiaries as of the last day of the registrant's last completed fiscal year.'' [242] Therefore, the proposed rule suggested that registrants would need to undertake the full process of identifying anew the median employee for each completed fiscal year.

(b) Comments on the Proposed Rule

A few commenters suggested that the final rule should allow registrants to undertake the full process of identifying the median employee periodically (such as once every three years) and use the

[234] *See, e.g.,* letters from ABA, Intel, NACCO, PM&P, SH&P, and WorldatWork I.

[235] *See, e.g.,* letters from Domini, Capital Strategies, and CT State Treasurer (stating that substantial reliance on non-full-time employees is important for shareholders' understanding of a company's workforce and pay structure).

[236] *See, e.g.,* letters from ABA, ASA, Business Roundtable I, Chesapeake Utilities, COEC I, COEC II, Dover Corp., ExxonMobil, Fedewa, FEI, Frederic W. Cook & Co., Johnson & Johnson, LAPFF, McCoy, PM&P, SH&P, SHRM, TCA, and Vectren Corp.

[237] *See, e.g.,* letters from ABA, ASA, Chesapeake Utilities, COEC I, and COEC II.

[238] *See* letter from ABA.

[239] *See* letter from Corporate Secretaries.

[240] *See* proposed Item 402(u)(1)(i) of Regulation S–K.

[241] *See* proposed Item 402(u)(2)(ii) of Regulation S–K.

[242] *See* proposed Item 402(u)(3) of Regulation S–K.

compensation of that same or a similarly situated employee during the intervening two years as long as no material or substantial changes to the workforce had occurred.[243] These commenters indicated that, to remain consistent with Section 953(b), a registrant should be required to undertake the process to re-identify the median employee for any year in which it has experienced a change in its employee population which the registrant reasonably believes would result in a significant change in the pay ratio disclosure. One of these commenters suggested that the registrant should exercise ''requisite diligence'' annually to determine whether such a material change had occurred.[244]

(c) Final Rule

The final rule allows a registrant to identify the median employee whose compensation will be used for the annual total compensation calculation once every three years unless there has been a change in its employee population or employee compensation arrangements that it reasonably believes would result in a significant change in the pay ratio disclosure. If there have been no changes that the registrant reasonably believes would significantly affect its pay ratio disclosure, the registrant must disclose that it is using the same median employee in its pay ratio calculation and describe briefly the basis for its reasonable belief. For example, the registrant could disclose that there has been no change in its employee population or employee compensation arrangements that it believes would significantly affect the pay ratio disclosure. If the registrant is using the same median employee, it must calculate that median employee's annual total compensation each year and use that figure to update its pay ratio disclosure each year.

For example, the registrant is required to identify the median employee and calculate that median employee's annual total compensation in year one. In years two and three, however, the registrant may use that same median employee (or an employee whose compensation is substantially similar to the original median employee based on the compensation measure used to select that median employee, as discussed below) to re-calculate the annual total compensation for that employee without re-identifying the median employee as would otherwise be required under the final rule if it satisfies the above conditions.

We believe this approach is appropriate because, as commenters noted, it is consistent with the requirements of Section 953(b) to provide annual pay ratio disclosure, while at the same time reducing registrants' costs and burdens of re-calculating the median employee more than once every three years unless there has been a change in the registrant's employee population or employee compensation arrangements that it reasonably believes would result in a significant change in the pay ratio disclosure.[245] Also, we note that the final rule permits reasonable estimates in identifying the median employee. Permitting registrants to identify the median employee once every three years, absent a change in the registrant's employee population or employee compensation arrangements that it reasonably believes would result in a significant change in its pay ratio disclosure, is another way of allowing an estimate of the median employee in a situation where it is unlikely to result in a significant change to the pay ratio disclosure. Therefore, this provision will help to minimize burdens and costs while not significantly affecting registrants' pay ratios. We do not believe that allowing this flexibility will limit the usefulness of the pay ratio for shareholders as a data point in making their voting decisions on executive compensation under Section 951 of the Dodd-Frank Act.

Further, we note that allowing a registrant in appropriate circumstances to go up to three years without engaging in the full process to re-identify the median employee is consistent with the outer limit established by Section 951 for a registrant's say-on-pay vote. In our view, just as registrants must have a new say-on-pay vote three years after the previous vote, we think it is reasonable and appropriate that they engage in the process of re-identifying the median employee no less frequently than every three years.

Also, there may be situations in which there has been no change in a registrant's employee population or employee compensation arrangements but it is no longer appropriate for the registrant to use the median employee identified in year one as the median employee in years two or three because of a change in that employee's circumstances. In such a situation, the registrant may use another employee whose compensation is substantially similar to the original median employee based on the compensation measure used to select the median employee in year one. For example, if the median employee identified in year one is no longer employed by the registrant in years two or three or that employee's compensation significantly changed in years two and three (for example, a promotion that significantly increased his or her compensation), the registrant is permitted to identify its median employee in each of the following two years from among employees that had similar compensation to the median employee in year one. If no other employee has similar compensation, however, the registrant must re-identify the median employee as required under the final rule.

ii. Using Annual Total Compensation, Another Consistently Applied Compensation Measure, Statistical Sampling, Reasonable Estimates, or Other Reasonable Methods

(a) Proposed Rule

In the Proposing Release, we noted that Congress specifically chose the ''median'' as the point of comparison for Section 953(b), rather than the average or some other measure. Therefore, the proposed rule required the median. Section 953(b) does not prescribe a methodology that must be used to identify the median. To allow the greatest degree of flexibility while remaining consistent with the statutory provision, the proposed rule did not specify any required calculation methodologies for identifying the median. Instead, we provided instructions and guidance designed to allow registrants to choose from several alternative methods to identify the median, so that they would be able to use the method that worked best for their own facts and circumstances.

For instance, registrants would be able to provide the proposed disclosure using total compensation for each employee under Item 402(c)(2)(x), statistical sampling, reasonable estimates, or the use of any consistently applied compensation measures to identify the median. Once the registrant identified the median employee based on the selected compensation measure applied to each employee in the sample, the registrant would calculate that employee's annual total compensation in accordance with Item 402(c)(2)(x) and disclose that amount as part of the pay ratio disclosure. The proposal did not prescribe what a reasonable estimate would entail because that would necessarily depend on the registrant's particular facts and circumstances. In addition, the proposed rule did not

[243] *See, e.g.,* letters from ABA, COEC I, and COEC II.

[244] *See* letter from ABA.

[245] *See, e.g.,* letters from ABA and COEC I.

prescribe specific estimation techniques or confidence levels for identifying the median employee because we believed that companies would be in the best position to determine what is reasonable in light of their own employee population and access to compensation data. We proposed to require registrants to briefly describe and consistently use the methodology and any material assumptions, adjustments, or estimates applied to identify the median employee, and for any estimated amounts to be clearly identified as such.

We proposed this flexible approach because we believed that the most appropriate and cost effective methodology would necessarily depend on a registrant's particular facts and circumstances, including, among others, such variables as: The size and nature of the registrant's workforce; the complexity of its organization; the stratification of pay levels across the workforce; the types of compensation paid to employees; the extent that different currencies are involved; the number of tax and accounting regimes involved; and the number of payroll systems the registrant has and the degree of difficulty involved in integrating payroll systems to readily compile total compensation information for all employees. We believed that these likely are the same factors that would cause substantial variation in the costs of compliance.

In the Proposing Release, we stated our belief that the proposed rule's flexibility would enable registrants to manage compliance costs more effectively. We also stated that, by allowing registrants to better manage costs, a flexible approach could mitigate, to some extent, any potential negative effects on competition arising from the mandated requirements. We recognized, however, that a flexible approach could increase uncertainty for registrants that would prefer more specificity on how to comply with the proposed rule, particularly for those registrants that do not use statistical analysis in the ordinary course of managing their businesses.

In the Proposing Release, we offered guidance on two permissible methodologies under the proposal: (1) Statistical sampling and (2) use of a consistently applied compensation measure. The variance of underlying compensation distributions (that is, how widely employee compensation is spread out or distributed around the mean) could appreciably affect the sample size needed for reasonable statistical sampling. We conducted an analysis about sample size that we described in the Proposing Release. Our analysis used mean and median wage estimates from the U.S. Department of Labor's Bureau of Labor Statistics (''BLS'') at the 4-digit North American Industry Classification System (''NAICS'') industry level (290 industries) and assumed a lognormal wage distribution, a 95% confidence interval with 0.5% margin of error. The analysis focused on the registrants that have a single business or geographical unit. The analysis also assumed that the sampling method would be a true random sampling because it would not be biased by region, occupation, rank, or other factor. In our analysis, the appropriate sample size for the registrants with a single business or geographical unit varied between 81 and 1,065 across industries, with the average estimated sample size close to 560.

We acknowledged, however, that variation in the types of employees at a registrant across business units and geographical regions would add complexity to the sampling procedure. While we generally agreed that a relatively small sample size would be appropriate in some situations, a reasonable determination of sample size would ultimately depend on the underlying distribution of compensation data. We noted that reasonable estimates of the median for registrants with multiple business lines or geographical units could be arrived at through more than one statistical sampling approach. All approaches, however, would require drawing observations from each business or geographical unit with a reasonable assumption on each unit's compensation distribution and inferring the registrant's overall median based on the observations drawn. Certain cases may not easily generate confidence intervals around the estimates or prescribe the appropriate minimum sample size. As a result, compliance costs would vary across registrants according to the characteristics of their compensation distributions. Nevertheless, we concluded that permitting registrants to use statistical sampling could lead to a reduction in compliance costs as compared with other methods of identifying the median.

Additionally, we noted that the identification of a median employee would not necessarily require a determination of exact compensation amounts for every employee included in the sample. A registrant could, rather than calculating exact compensation, identify the employees in the sample that have extremely low or extremely high pay that would fall completely on either end of the pay spectrum. Since identifying the median involves finding the employee in the middle, it might not be necessary to determine the exact compensation amounts for every employee paid more or less than the employee in the middle.

In addition to statistical sampling, the Proposing Release also highlighted the use of a consistently applied compensation measure. We recognized concerns about expected compliance costs arising from the complexity of the ''total compensation'' calculation under Item 402(c)(2)(x) and, in particular, the determination of total compensation in accordance with Item 402(c)(2)(x) for employees when identifying the median. To address these concerns, the proposed rule would allow companies to use total direct compensation (such as annual salary, hourly wages, and any other performance-based pay) or cash compensation to first identify a median employee and then calculate that median employee's annual total compensation in accordance with Item 402(c)(2)(x). We noted that this approach would provide a workable identification of the median for many registrants, and we expected that the costs of compliance would be reduced if registrants were permitted to identify the median using a less complex, more readily available figure, such as salary and wages, rather than total compensation as determined in accordance with Item 402(c)(2)(x).

This approach could also reduce costs for registrants that are unable to use statistical sampling techniques, as registrants would be permitted to use a consistently-applied compensation measure to identify the median employee regardless of whether they use statistical sampling. Further, because of concerns that using cash compensation could be just as burdensome to calculate for registrants with multiple payroll systems in various countries, we did not propose to require companies to use a specific compensation measure like cash compensation or total direct compensation when they were identifying the median employee. Instead, we believed that registrants would be in the best position to select a compensation measure that was appropriate to their own facts and circumstances and that a consistently applied compensation measure would result in a reasonable estimate of a median employee at a substantially reduced cost. Therefore, the proposed rule permitted a registrant to identify a median employee based on any consistently applied compensation measure, such as information derived from its tax and/or payroll records, as long as the registrant briefly disclosed the measure that it used.

We also recognized that the annual period used for payroll and/or tax recordkeeping could sometimes differ from the registrant's fiscal year. For purposes of calculating the annual total compensation amounts when using a consistently applied compensation measure, the proposed rule permitted registrants to use the same annual period that was used in the payroll and/or tax records from which the compensation amounts were derived. We did not propose to define or limit what would qualify as payroll and/or tax records. We noted, however, that the proposed accommodation was intended to be construed broadly enough to allow registrants to use information that they already tracked and compiled for payroll and/or tax purposes. We thought that permitting registrants to use compensation information in the form that it was maintained in their own books and records would reduce compliance costs without appreciably affecting the quality of the disclosure.

Additionally, although our proposed flexible approach could reduce comparability of the pay ratio disclosure across registrants, we stated our belief that precise conformity or comparability of the ratio across companies was not necessary and indicated that a possible benefit of the pay ratio disclosure would be providing a company-specific metric that shareholders could use to evaluate the PEO's compensation within the context of his or her own company. Accordingly, we did not believe that improving the comparability of the disclosure across companies by mandating a specific method for identifying the median would be justified in light of the costs that would be imposed on registrants by a more prescriptive rule.

Also, even assuming the benefits of comparability across registrants as a desirable goal, we did not believe that mandating a particular methodology would necessarily improve comparability because of the numerous other factors that could also cause the ratios to be less meaningful for company-to-company comparison, such as differences in industry and business type; variations in the way companies organize their workforces to accomplish similar tasks; differences in the geographical distribution of employees (domestic or international, as well as in high- or low-cost areas); degree of vertical integration; reliance on contract and outsourced workers; and ownership structure. We also note that some commenters asserted that disclosing the pay ratio could potentially increase the likelihood that a registrant's competitors could infer proprietary or sensitive information about the registrant's business, which could cause a competitive disadvantage for registrants.[246]

Finally, we recognized that allowing registrants to select a methodology for identifying the median, including identifying the median employee based on any consistently applied compensation measure and allowing the use of reasonable estimates, rather than prescribing a methodology or set of methodologies, could potentially permit a registrant to alter the reported ratio to achieve a particular objective with the pay ratio disclosure, thereby potentially reducing the usefulness of the information. But, as we explained, we believed that requiring the use of a consistently applied compensation measure should lessen this concern.

(b) Comments on the Proposed Rule

(i) Flexibility

A large number of commenters indicated that they supported the flexibility permitted in the proposed rule generally, or more specifically supported the flexibility of the proposed rule in permitting registrants to choose a methodology for calculating the median.[247] Some commenters contended that the flexibility would lessen the costs and burdens of the proposed rule without reducing the rule's benefits.[248] A few commenters suggested that the proposed rule's flexibility would not undermine the rule and would be consistent with the directives of Section 953(b).[249] Other commenters indicated that, although the proposed rule's flexibility might alter pay ratio disclosures, any distortion would be minimal.[250] One commenter claimed that the proposed rule was not flexible enough because Instruction 2(iii) to Item 402(u) would permit a registrant to identify the median employee only using ''compensation'' measures, whereas the commenter advocated for use of a ''job-level'' measure.[251] Despite the permitted flexibility, another commenter remained concerned about the complexity of finding the median employee.[252]

One commenter contended that a registrant should be permitted to develop its own methodology for identifying their median employee to mitigate costs [253] if the rule required the registrant to accurately describe its methodology, perform consistent calculations each year, disclose when and how it chose to deviate from the prior year's methodology, select the methodology in good faith, and make reasonable assumptions, adjustments, and estimates. Some commenters recommended that, once a registrant chooses its methodology for identifying the median employee, the registrant should be required to use that methodology going forward.[254] Other commenters supported the proposed rule's flexibility in allowing registrants to choose a methodology for identifying the median employee, provided that registrants are required to disclose the methodologies they used.[255] One commenter suggested that the final rule provide some type of check generally on a registrant's methodology.[256]

Some commenters were opposed to the proposed rule's flexibility. Most of these commenters were individuals who claimed that the proposed rule's flexibility would allow registrants to reduce the ratio in inappropriate

[246] *See, e.g.,* letters from Huan Lou (Dec. 2, 2013) (''Lou'') and Prof. Ray.

[247] *See, e.g.,* letters from Prof. Angel, Aon Hewitt, Bâtirente *et al.,* Best Buy *et al.,* CalSTRS, Capital Strategies, CEG, Chicago Teachers Fund, Corporate Secretaries, Cummings Foundation, Cummins Inc., CUPE, Davis Polk, E&Y, First Affirmative, Freeport-McMoRan, FS FTQ, ICCR, IL Bricklayers and Craftworkers Union, Intel, Johnson & Johnson, Marco Consulting, McMorgan & Co., Mercer I, Meridian, Microsoft, Novara Tesija, NSFM, NY Bricklayers and Craftworkers Union, NYC Bar, OCP, Oxfam, PGGM, Public Citizen I, Quintave, Rep. Ellison *et al.* II, SEIU, Sen. Menendez *et al.* II, Socially Responsive Financial Advisors, Teamsters, Trillium I, Trustee Campbell, UAW Trust, Vectren Corp., WA State Investment Board, and WorldatWork I.

[248] *See, e.g.,* letters from ABA, AFSCME, Barnard, Bricklayers International, CII, LIUNA, Fowler, Mirczak, PNC Financial Services, Sen. Menendez *et al.* II, US SIF, Vivient, and Walden.

[249] *See, e.g.,* letters from Domini and PM&P.

[250] *See, e.g.,* letters from Capital Strategies and WorldatWork I.

[251] *See* letter from Towers Watson. According to the commenter, in a job-level approach, a global company assigns all jobs in its organization to one of X number of job levels (determined by how the particular job role contributes to the organization based on tasks, skills, expertise, leadership, functional strategy and business strategy). The company would readily be able to determine the job or job family that would fall at the median of skill levels within the company based on a ratio that compares the total number of employees at each job level to the total employee population. The job or job family in the median of skill levels would be where the median-level employee resides and, once it is determined that the median employee resides at a particular level, the company would then be able to apply a statistical sampling approach to that job level, taking into account compensation earned in different locations or countries, to further reduce the number of payroll files that will need to be examined. The commenter indicated that more details of this approach can be found at: *http://www.towerswatson.com/en/Services/Tools/job-leveling-global-grading-and-career-map.*

[252] *See* letter from Vectren Corp.

[253] *See* letter from ABA.

[254] *See, e.g.,* letters from PGGM and RPMI.

[255] *See, e.g.,* letters from Australian Council of Superannuation Investors (Dec. 2, 2013) (''ACSI'') and IPS.

[256] *See* letter from Mirczak.

ways.[257] Other commenters contended that the permitted flexibility would decrease the ratio's utility, especially for comparing the ratios of different companies.[258] A few commenters maintained that the proposed rule would still lead to high costs, even taking into account its flexibility.[259]

Some commenters recommended that the final rule include a safe harbor for identifying the median employee to minimize burdens, provide greater comparability, and limit liability.[260] One commenter encouraged us to retain the proposed rule's flexibility in allowing a registrant to remove some percentage of the distribution from both the high and low ends of an employee sample because this would not distort the median employee determination while reducing costs.[261]

Only a few commenters commented specifically on using reasonable estimates for identifying the median employee. One commenter declared that the final rule should not permit any estimates at all.[262] Other commenters contended that the final rule should permit reasonable estimates.[263] One of these commenters noted that permitting reasonable estimates would mitigate the rule's costs while not ''materially'' impacting its usefulness.[264] Also, some commenters recommended that the final rule not specify any requirements, guidance, or safe harbors regarding the estimates.[265] Several commenters asserted that the final rule should not provide guidance regarding assumptions about error rates or confidence levels.[266] One of these commenters expressed concern that, if the final rule provided such guidance, the assumptions would become *de facto* requirements.[267]

A number of commenters provided suggestions on the methodologies a registrant should be permitted to use in identifying the median employee. A few commenters stated that the final rule should provide more explicit guidance on what ''other reasonable methods'' for identifying the median employee are available.[268] One of these commenters suggested allowing the following methods: (1) Specific safe harbor assumptions about the statistical distribution of compensation within the company and its business units; (2) formulaic, numerical, and other computational approaches to estimate the median compensation; and (3) disclosure of a reasonable range of outcomes rather than requiring the ''right'' outcome.[269]

Additionally, other commenters provided specific suggestions for methods that we should consider ''reasonable'' in the final rule. One commenter requested that the final rule allow registrants to identify the median employee based on rates of pay or compensation schedules applicable to classes of employees instead of pay actually earned over the course of the year.[270] Another commenter suggested that, where a registrant has an even number of employees and, therefore, is unable to select one median employee, the registrant should be permitted to select and disclose an average of the compensation of the two employees nearest the median.[271] Finally, one commenter indicated that a registrant's methodology should be based on a ''good faith compliance'' standard that is akin to that type of standard in our proposed crowdfunding rules.[272]

(ii) Statistical Sampling

We received many comments on using statistical sampling for identifying the median employee, with a majority of these commenters supporting the use of statistical sampling, as permitted in the proposed rule. Many of these commenters suggested that allowing the use of statistical sampling would reduce the costs for registrants, without specifically quantifying a reduction.[273] Some commenters that supported statistical sampling recommended that the final rule not specify requirements for statistical sampling (such as appropriate sample size, confidence levels, or other requirements).[274] One of these commenters contended that specifying requirements for statistical sampling would unduly constrain registrants from developing the most appropriate methodology and would be inconsistent with flexibility.[275]

Another commenter asserted that the statute permits statistical sampling because Section 953(b) does not prescribe a particular way to identify the median employee.[276] Some commenters stated that registrants would likely use statistical sampling in identifying their median employee,[277] and that statistical sampling is feasible.[278] A few commenters agreed with the proposal that registrants should be allowed to identify the median employee by using statistical sampling based on a definition of compensation other than ''annual total compensation'' under Item 402.[279] Some commenters indicated that the final rule should include a safe harbor for statistical sampling.[280]

Although the majority of commenters that discussed statistical sampling supported its use in identifying the median employee, one commenter stated specifically that the final rule should discourage the use of statistical sampling in favor of information

[257] *See, e.g.,* letters from Bupp, Corayer, Fedewa, Fox, Friend, Grotzke, Hlodnicki, Kizzort, Maly, Petricoin, and Van Pelt.

[258] *See, e.g.,* letters from Amundi, BCIMC, Ciatto, Glenn, IBC, Prof. Muth, and NIRI.

[259] *See, e.g.,* letters from ABA (stating that registrants will still incur significant costs even with the ability to select a methodology) and FSR.

[260] *See, e.g.,* letters from NSFM, OCP, PM&P, Quintave, and SHRM.

[261] *See* letter from E&Y.

[262] *See* letter from Dennis T. (Nov. 19, 2013) (''Dennis T'').

[263] *See, e.g.,* letters from ABA, Capital Strategies, Davis Polk, Hyster-Yale, Johnson & Johnson, NACCO, and WorldatWork I.

[264] *See* letter from ABA.

[265] *See, e.g.,* letters from ABA (noting that further guidance is not needed because there is already sufficient deterrence for unreasonable estimates with the principles-based disclosure framework and anti-fraud provisions), Capital Strategies, Hyster-Yale, Johnson & Johnson, and NACCO.

[266] *See, e.g.,* letters from Prof. Angel, Hyster-Yale, and NACCO.

[267] *See* letter from Prof. Angel.

[268] *See, e.g.,* letters from E&Y and TCA.

[269] *See* letter from TCA.

[270] *See* letter from RILA (''In order to reduce the cost of using payroll or other data and annualizing information for employees such as new hires who are employed for less than an entire fiscal or other year, we would propose that registrants be permitted as an alternative to determine the median employee based upon employee rate of pay on the measurement date. For some issuers, identifying the median employee based upon rates of pay, rather than pay earned over the course of a year, will reduce the burden and minimize the skewing effects on the ratio of a large number of part-time, temporary and seasonal employees. Provided that the method is disclosed, the final rule should give issuers flexibility in this regard.'').

[271] *See* letter from SH&P.

[272] *See* letter from FSR. *See also Crowdfunding,* Release No. 33–9470 (Oct. 23, 2013) [78 FR 66427].

[273] *See, e.g.,* letters from AFL–CIO I, AFSCME, Prof. Angel, Bricklayers International, Calvert, Chesapeake Utilities, Chicago Teachers Fund, CUPE, Davis Polk, First Affirmative, FS FTQ, FSI, ICCR, IL Bricklayers and Craftworkers Union, LIUNA, Marco Consulting, McMorgan & Co., Meridian, NACD, Novara Tesija, NRF, NY Bricklayers and Craftworkers Union, Oxfam, Public Citizen I, Rep. Ellison *et al.* I; Socially Responsive Financial Advisors, TCA, Teamsters, Trillium I, Trustee Campbell, US SIF, and WA State Investment Board.

[274] *See, e.g.,* letters from ABA, IBC, Johnson & Johnson, and WorldatWork I.

[275] *See* letter from ABA.

[276] *See* letter from Michael Ohlrogge, Stanford Law School and Stanford Department of Management Science and Engineering (Sep. 25, 2013) (''Ohlrogge I'').

[277] *See, e.g.,* letters from Capital Strategies and Mercer I.

[278] *See, e.g.,* letters from Ohlrogge I, Michael Ohlrogge, Stanford Law School and Stanford Department of Management Science and Engineering (Jul. 5, 2015) (''Ohlrogge II''), and Mike Petty (Oct. 21, 2013) (''M. Petty'').

[279] *See, e.g.,* letters from Emergent and McGuireWoods.

[280] *See, e.g.,* letters from American Benefits Council; E&Y; FSR; Dr. Sandy J. Miles, Professor of Human Resource Management, Murray State University (Nov. 29, 2013) (''Prof. Miles''); Strus and Associates Inc. (Nov. 30, 2013) (''Strus and Assoc.''); and TCA.

derived from tax and/or payroll records to determine actual employee pay rather than an estimated amount.[281] Other commenters, while not necessarily opposed to statistical sampling, contended that it would not mitigate costs of collecting and assembling employee compensation data, which, in their view, is the most expensive part of the rule.[282]

(iii) Consistently Applied Compensation Measures

Most commenters that discussed using consistently applied compensation measures, such as information derived from tax and/or payroll records, to identify the median employee agreed with the proposed rule's approach.[283] Generally, these commenters contended that permitting the use of such measures would reduce costs while not impairing the pay ratio's usefulness. For example, one commenter noted that, while using a consistently applied compensation measure may exclude benefits, perquisites, and other allowances, it would still capture salary, incentive cash earned, and stock awards.[284] Therefore, the measure would include ''the substantial majority of compensation and [would] not lead to distortion of the median.'' Another commenter asserted that the final rule should be flexible enough to encompass different approaches across jurisdictions.[285]

One commenter disagreed with permitting the use of consistently applied compensation measures on the basis that it would alter the pay ratio because not all compensation would be included.[286] Some commenters noted that using consistently applied compensation measures would not reduce the costs for registrants with non-U.S. employees.[287] Therefore, several of these commenters recommended that the final rule should allow registrants to use one or more comparable consistently applied compensation measures and not be limited to a single consistently applied compensation measure for employees in different international jurisdictions to reduce registrants' costs and burdens.[288]

(iv) The ''Median'' Employee

A number of commenters recommended that the rule use compensation of an employee, or employees, other than the median employee as is required in Section 953(b). A few of these commenters suggested that, instead of using their median employee in their pay ratio, registrants should be permitted to use their ''average'' employee.[289] The commenters contended that using ''average'' instead of ''median'' would reduce costs, would be better understood by the public, and could be calculated easily using tax records.[290] One of these commenters acknowledged that the statutory language of Section 953(b) uses the word ''median'' rather than ''average,'' but pointed out that the Proposing Release quotes from two letters submitted by members of Congress, including two co-sponsors of Section 953(b), in which the members refer to the ''average'' and ''typical'' employee instead of the ''median'' employee when discussing the statute.[291] Also, the commenter noted that we stated in the Proposing Release that ''Section 953(b) does not expressly set forth a methodology that must be used to identify the median, nor does it mandate that [we] must do so in [our] rules.'' [292]

Other commenters recommended that the final rule allow registrants to use existing BLS data to calculate their pay ratios, which is based on average employee compensation figures.[293] One of these commenters contended that allowing registrants to use existing data sources, including BLS data, would be faithful to the intent of Section 953(b) and not be ''materially'' different than using the median, even though it would be less precise.[294]

A few commenters contended that registrants should be permitted to use the compensation of a range of employees as the median compensation instead of the compensation of the median employee.[295] One of these commenters noted that it would be unlikely for a registrant, using a convenient and cost-effective measure, to determine a single employee that is the median.[296] According to this commenter, it would be more likely that the registrant's calculations would yield a group of employees, any of whom who could serve as the median employee. Therefore, once the range of employees is determined, registrants should be permitted to use any reasonable method to determine which employee to use as the median employee.

Similarly, one commenter recommended that the final rule permit registrants, after identifying the median employee using whatever methodology they select, to use another employee as the median employee if that employee is within a 1% variance of the median and the original employee has anomalous compensation characteristics that would create the risk of a distorted pay ratio.[297] The commenter recognized that Section 953(b) refers to the ratio of the ''median'' employee's annual compensation to the compensation of the PEO but contended that some deviation from that precise statutory language should be acceptable if it furthers the statute's intent to show the

[281] *See* letter from LAPFF.

[282] *See, e.g.,* letters from Business Roundtable I, Chamber I, COEC I, COEC II, ExxonMobil, Freeport-McMoRan, FuelCell Energy, Garmin, Johnson & Johnson, Microsoft, NAM I, NAM II, NIRI, and WorldatWork I.

[283] *See, e.g.,* letters from ABA, AFL–CIO I, Calvert, Chesapeake Utilities, Chicago Teachers Fund, CII, First Affirmative, FS FTQ, ICCR, IL Bricklayers and Craftworkers Union, Johnson & Johnson, Marco Consulting, Meridian, Microsoft, Novara Tesija, NY Bricklayers and Craftworkers Union, Oxfam, Public Citizen I, SH&P, WA State Investment Board, and WorldatWork I.

[284] *See* letter from Microsoft.

[285] *See* letter from ABA.

[286] *See* letter from Tumeh.

[287] *See, e.g.,* letters from Corporate Secretaries, Davis Polk, and FSR.

[288] *See, e.g.,* letters from Corporate Secretaries (''For example, a company may be able to use W–2 or payroll information to relatively efficiently and accurately quantify annual cash compensation for US employees, but this data could be impracticable to replicate for certain non-US employees due to privacy concerns, comparability of compensation schemes, tax systems, or otherwise. . . . In light of this, we propose that the Commission consider including in the final rules that for employees based in non-US jurisdictions, registrants be permitted to use (i) the same compensation measure used in the US or (ii) another reasonably comparable compensation measure for any non-US jurisdiction where the same compensation measure is not used, unless a different application is required or compensation cannot be estimated in a particular jurisdiction for a particular reason (*i.e.,* data privacy laws).'') and Davis Polk (''For example, a registrant using cash compensation as its consistently applied compensation measure for purposes of determining its median employee may intend to include only base salary and bonus amounts for its U.S. employees, but may find it appropriate to also include other benefits commonly considered to be part of base compensation for its non-U.S. employees, such as meal stipends or automobile allowances. We believe that it would be appropriate for registrants to use these reasonably comparable measures, even if not the exact same measure, across different employee populations in order to provide for more meaningful comparisons across the varying compensation structures in international jurisdictions and to reduce unnecessary burdens on registrants.'').

[289] *See, e.g.,* letters from Hyster-Yale, Mercer I, NACCO, and Powers.

[290] *See, e.g.,* letters from Hyster-Yale and NACCO. *But see* letter from Suzanne Laatsch (Nov. 29, 2013) (''Laatsch'') (asserting that using the median employee, as opposed to using the average employee, would actually reduce costs).

[291] *See* letter from NACCO.

[292] *See* letter from NACCO.

[293] *See, e.g.,* letters from Brian Foley & Co., NACD, and NIRI.

[294] *See* letter from NIRI. *But see* letter from IPS (disagreeing specifically with the NIRI letter and asserting that the final rule should not permit registrants to use BLS data).

[295] *See, e.g.,* letters from Capital Strategies, Hyster-Yale, Mercer I, and NACCO.

[296] *See* letter from NYC Bar.

[297] *See* letter from PNC Financial Services.

ratio of the compensation of the typical or representative employee to that of the PEO.

Another commenter advocated using one of two alternative approaches based on whether the registrant has international employees that would segregate employees with similar positions into different groups. Registrants could identify in which group the median resides based on a ratio that compares the total number of employees at each job level to the total employee population and use sampling or another technique to identify the median of that group, which the registrant would use as its median for pay ratio purposes.[298]

(c) Final Rule

We are adopting the final rule as proposed. Consistent with the proposal, the final rule does not specify any required methodology for registrants to use in identifying the median employee. Instead, the final rule permits registrants the flexibility to choose a method to identify the median employee based on their own facts and circumstances. To identify the median employee, registrants may use a methodology that uses reasonable estimates. The median employee may be identified using annual total compensation or any other compensation measure that is consistently applied to all employees included in the calculation, such as information derived from tax and/or payroll records. Also, in determining the employees from which the median is identified, a registrant is permitted to use its employee population or statistical sampling and/or other reasonable methods. In any event, the final rule requires a registrant to briefly describe the methodology it used to identify the median employee and any material assumptions, adjustments (including any cost-of-living adjustments), or estimates it used to identify the median employee or to determine total compensation or any elements of total compensation, which shall be consistently applied. The registrant also must clearly identify any estimates used.

(i) Flexibility

As we noted in the Proposing Release, we believe that allowing registrants the flexibility to choose a method that works best for their particular facts and circumstances will help them comply with the rule in a relatively cost-efficient manner while still fulfilling the purpose of Section 953(b). We recognize that a flexible approach could increase uncertainty for registrants that prefer more specificity on how to comply with the final rule, particularly for those registrants that do not use statistical analysis in the ordinary course of managing their businesses. We believe that any negative effects caused by any uncertainty would be offset by the positive effects of permitting flexibility. Also, the final rule establishes certain methodologies and permissible uses of estimates, such that registrants may use reasonable estimates both in the methodology used to identify the median employee and in calculating annual total compensation or any elements of total compensation for employees other than the PEO; use their employee population, statistical sampling, or another reasonable methods in determining the employees from which the median employee is identified, and identify the median employee using annual total compensation or any other compensation measure that is consistently applied to all employees included in the calculation.

We believe also that any uncertainty provided by the final rule's flexibility is offset by other benefits. Particularly, as we noted in the Proposing Release, the final rule's flexibility allows registrants to provide the required disclosure in a relatively cost-efficient manner based on the registrant's own facts and circumstances using total compensation for each employee under Item 402(c)(2)(x), statistical sampling, reasonable estimates, or the use of any consistently applied compensation measures to identify the median. A large number of commenters supported this flexibility because it would reduce the rule's costs without significantly diminishing its benefits.[299] In this regard, we do not believe permitting this flexibility will limit the usefulness of the pay ratio for shareholders as a data point in making their voting decisions on executive compensation under Section 951 of the Dodd-Frank Act.

In determining their methodology, registrants may consider, among other factors, such variables as: The size and nature of the workforce; the complexity of the organization; the stratification of pay levels across the workforce; the types of compensation the employees receive; the extent that different currencies are involved; the number of tax and accounting regimes involved; and the number of payroll systems the registrant has and the degree of difficulty involved in integrating payroll systems to readily compile total compensation information for all employees. These likely are the same factors that could cause substantial variation in the costs of compliance, but the final rule's flexibility should help registrants reduce these costs.

As part of the flexibility permitted by the final rule, registrants may use a methodology that uses reasonable estimates in identifying the median employee and calculating the annual total compensation or any elements of compensation for employees other than the PEO, as proposed. Most commenters on this issue agreed that the final rule should permit reasonable estimates to mitigate the rule's costs.[300] Some of these commenters suggested that the final rule should not include further requirements or guidance for making reasonable estimates, including safe harbors, assumptions for error rates, or confidence levels.[301] We are not persuaded that further guidance is necessary.

Further, as proposed, in determining the employees from which the median is identified, the final rule permits registrants to use ''other reasonable methods'' in addition to using its employee population or statistical sampling. Some commenters provided suggestions on the ''other reasonable methods'' a registrant should be permitted to use in identifying the median employee.[302] We are not specifying the ''other reasonable methods'' that may be appropriate because we seek to allow each registrant

[298] *See* letter from Tower Watson. *See also* letter from Mercer I (advocating a somewhat similar approach using multiple statistical samples).

[299] *See, e.g.,* letters from ABA, AFSCME, Barnard, Bricklayers International, Capital Strategies, CII, Domini, LIUNA, Fowler, Mirczak, PM&P, PNC Financial Services, US SIF, Vivient, Walden, and WorldatWork I.

[300] *See, e.g.,* letters from ABA, Capital Strategies, Davis Polk, Hyster-Yale, Johnson & Johnson, NACCO, and WorldatWork I.

[301] *See, e.g.,* letters from ABA, Capital Strategies, Hyster-Yale, Johnson & Johnson, and NACCO. *But see* letters from NSFM, OCP, PM&P, Quintave, and SHRM (recommending that the final rule include a safe harbor for identifying the median employee).

[302] *See, e.g.,* letters from E&Y (''In the adopting release, we believe the Commission should identify additional methods that, if used, would satisfy the requirements for determining which employees should be included in the analysis.''), FSR (indicating that an issuer's methodology should be based on a ''good faith compliance'' standard that is akin to our proposed crowdfunding rules), RILA (requesting that the final rule allow issuers to identify the median employee based on rates of pay instead of pay earned over the course of the year), TCA (suggesting that final rule allow the following methods: (1) Specific safe harbor assumptions about the statistical distribution of compensation within the company and its business units; (2) formulaic, numerical, and other computational approaches to estimate the median compensation; and (3) disclosure of a reasonable range of outcomes rather than requiring the ''right'' outcome), and Towers Watson (recommending that the final rule permit registrants to ''employ a methodology using *salary grades* or *job levels,* as appropriate, to reasonable identify the median'' (emphasis in original)).

the flexibility to determine the method that best suits its own facts and circumstances, which may include some of the suggestions made by these commenters.

(ii) Statistical Sampling

Consistent with the proposal, the final rule permits registrants to use statistical sampling in determining the employees from which the median is identified. We believe permitting statistical sampling is appropriate under Section 953(b). Statistical sampling is based on statistical theory to make sampling more efficient. For example, with large populations, results accurate enough to be useful can be obtained from samples that represent only a small fraction of the population.[303] We note that one commenter recommended that we discourage statistical sampling in favor of using the information derived from tax and/or payroll records to determine actual employee pay rather than allowing registrants to use an estimation.[304] We believe, however, that statistical sampling can be a reliable means of identifying the median employee.

Some commenters indicated that permitting statistical sampling in the final rule would not mitigate costs because the final rule would still require registrants to collect and assemble employee compensation data, which the commenters view as the most expensive part of the rule.[305] We believe, however, that permitting registrants to use statistical sampling could lead to a reduction in compliance costs as compared with other methods of identifying the median employee without significantly affecting the pay ratio because registrants are not required to calculate the total compensation for each of their employees. Therefore, although the final rule still requires registrants to collect and assemble employee compensation data, the availability of statistical sampling may allow them to assemble far less employee compensation data than if the final rule prohibited such sampling. We note that a number of other commenters indicated that permitting statistical sampling would reduce costs.[306] Also, because of the reliability of the result achieved through appropriately conducted statistical sampling, we do not believe the use of sampling will limit the usefulness of the pay ratio for shareholders as a data point in making their voting decisions on executive compensation under Section 951 of the Dodd-Frank Act.

The final rule does not provide specific parameters for statistical sampling, including the appropriate sample size. We agree with commenters that specifying requirements for statistical sampling, including appropriate sample sizes, confidence levels, or other requirements would unduly constrain registrants from developing the most appropriate methodology.[307] Instead, we believe registrants must make their own determinations on what is appropriate based on their own facts and circumstances.

We are, however, providing some guidance for registrants when using statistical sampling. In this regard, based on the analysis we described in the Proposing Release, we believe that a relatively small sample size may be appropriate in certain situations.[308] A reasonable determination of sample size ultimately depends on the underlying distribution of compensation data. Further, we believe that reasonable estimates of the median for registrants with multiple business lines or geographical units may be determined using more than one statistical sampling approach. Additionally, all statistical sampling approaches should draw observations from each business or geographical unit with a reasonable assumption on each unit's compensation distribution and infer the registrant's overall median based on the observations drawn.

Moreover, as we noted in the Proposing Release, the identification of a median employee does not necessarily require a determination of exact compensation amounts for every employee included in the sample. For example, rather than calculating exact compensation, a registrant could identify the employees in its sample that have extremely low or extremely high pay that would, therefore, fall on either end of the compensation spectrum. Since identifying the median involves finding the employee in the middle, it may not be necessary to determine the exact compensation amounts for every employee paid more or less than that employee in the middle. Instead, just noting that the employees are above or below the median may be sufficient for finding the employee in the middle of the compensation spectrum.

(iii) Consistently Applied Compensation Measures

As proposed, the final rule permits registrants to use a consistently applied compensation measure, such as information derived from tax and/or payroll records, in determining the employees from which the median is identified as long as the registrant discloses the compensation measure used. Due to concerns about expected compliance costs arising from the complexity of using the ''total compensation'' calculation under Item 402(c)(2)(x) when identifying the median, we sought a reasonable alternative to identifying the median employee that is easier to calculate.

As we noted in the Proposing Release, this approach provides a workable identification of the median employee for many registrants, and we expect it will reduce the costs of compliance. Most commenters discussing this issue agreed with this position and supported permitting registrants to use consistently applied compensation measures, such as information derived from tax and/or payroll records, to identify the median employee because it would reduce costs while not significantly affecting a registrant's pay ratio.[309] As one commenter noted, while

[303] *See generally* Cochran, W. G. (1977), *Sampling Techniques,* 3rd Edition, New York: Wiley. Different statistical sampling methods have been developed and have been well established in literature and practice since 1786. *See* Laplace, P.S. (1786). ''Sur Les Naissances, Les Mariages Et Les Morts,'' In Histoire de L'Academie Royale des Sciences, 1783, Paris, 693–702; Stephan, F. F. (1948). *History of the uses of modern sampling procedures.* Journal of the American Statistical Association 43:12–37; Godambe, V. P. (1954). *A unified theory of sampling from finite populations.* Journal of the Royal Statistical Society 17(2):269–278; Sukhatme, P. V. (1966). *Major developments in sampling theory and practice.* Research papers in statistics. F.N. David Ed. John Wiley & Sons. 367–409pp; Lohr, S.L. (2009), *Sampling: Design and Analysis*, 2nd Edition, Cengage Learning; and Rao, J.N.K. (2011). *Impact of frequentist and Bayesian methods on survey sampling practice: a selective appraisal.* Statistical Science 26(2): 240–256pp.

[304] *See* letter from LAPFF.

[305] *See, e.g.,* letters from Business Roundtable I, Chamber I, COEC I, ExxonMobil, Freeport-McMoRan, FuelCell Energy, Garmin, Johnson & Johnson, Microsoft, NAM I, NAM II, NIRI, and WorldatWork I.

[306] *See, e.g.,* letters from AFL–CIO I, AFSCME, Bricklayers International, Calvert, Chesapeake Utilities, Chicago Teachers Fund, CUPE, Davis Polk, Dennis T, First Affirmative, FS FTQ, FSI, ICCR, IL Bricklayers and Craftworkers Union, LIUNA, Marco Consulting, McMorgan & Co., Meridian, NACD, Novara Tesija, NRF, NY Bricklayers and Craftworkers Union, Oxfam, Public Citizen I, Rep. Ellison *et al.* I, Socially Responsive Financial Advisors, TCA, Teamsters, Trillium I, Trustee Campbell, Prof. Angel, US SIF, and WA State Investment Board.

[307] *See, e.g.,* letters from ABA, IBC, Johnson & Johnson, and WorldatWork I.

[308] In that analysis, we determined that the appropriate sample size for the registrants with a single business or geographical unit varied between 81 and 1,065 employees across industries, with the average estimated sample size close to 506.

[309] *See, e.g.,* letters from ABA, AFL–CIO I, Calvert, Chesapeake Utilities, Chicago Teachers Fund, CII, First Affirmative, FS FTQ, ICCR, IL Bricklayers and Craftworkers Union, Johnson &

a consistently applied compensation measure may exclude benefits, perquisites, and other allowances, it will still capture salary, incentive cash earned, and stock awards, which will encompass ''the substantial majority of compensation and [should] not lead to distortion of the median.'' [310] In light of these comments, we do not believe this provision will hinder shareholders in using the pay ratio as a potentially useful data point in making their voting decisions on executive compensation under Section 951 of the Dodd-Frank Act.

One commenter asserted that the final rule should be flexible enough to permit a registrant to use an internally consistent measure that is not necessarily internally identical.[311] According to the commenter, the consistently applied compensation measure could be a measure based on the registrant's individual organizational structure that is reasonably designed to identify the median employee. As an example, the commenter stated that if a registrant selects to use ''taxable wages'' as the consistently applied compensation measure, it is possible that the measure may be defined differently across multiple jurisdictions and be calculated over differing time periods. In such a situation, the commenter suggested that, although the registrant should attempt to use the non-United States equivalent to a Form W–2 for purposes of conducting its analysis, the final rule should provide sufficient flexibility to permit the use of other reasonable data sources for collecting the comparable information relating to non-U.S. employees as long as such measures are consistently applied within each subject jurisdiction.

We agree. We note that a consistently applied compensation measure, such as ''taxable wages'' or ''cash compensation,'' [312] may be defined differently across jurisdictions and may include different annual periods. For purposes of calculating the annual total compensation amounts when using a consistently applied compensation measure, the final rule permits registrants to use a measure that is defined differently across jurisdictions and may include different annual periods as long as within each jurisdiction, the measure is consistently applied. A registrant, however, would not be permitted to use an entirely different type of measure across jurisdictions that would not be consistently applied. The final rule does not require registrants to use any specific compensation measure when identifying the median employee. We continue to believe that registrants are in the best position to select a compensation measure that is appropriate to their own facts and circumstances. Therefore, consistent with the proposal, the final rule permits registrants to identify a median employee based on any consistently applied compensation measure, such as information derived from tax and/or payroll records, as long as the registrant briefly discloses the measure that it used. After the median employee is identified, registrants must calculate that median employee's annual total compensation in accordance with Item 402(c)(2)(x).

(iv) The ''Median'' Employee

Some commenters recommended that the final rule permit registrants to calculate the ratio using a figure other than the median, such as the employee earnings estimates available through the BLS,[313] which may reduce costs for registrants and promote comparability across companies. As we stated in the Proposing Release, although such an approach would greatly reduce the compliance burden for registrants, we do not believe it is consistent with Section 953(b).

Consistent with the proposal, the final rule requires that registrants provide their pay ratio disclosure using the compensation of their median employee. Section 953(b)(1)(A) states specifically that registrants must disclose ''the median of the annual total compensation of all employees of the issuer, except the chief executive officer.'' We believe, therefore, that Congress intended that the final rule should require registrants to use their median employee in their pay ratio determination.

Although we considered commenters' arguments that ''median,'' as used in Section 953(b), can be interpreted to mean a measure other than ''median,'' such as ''average'' or ''mean,'' we believe the better reading of the statutory language is that it means the statistical median of all employee compensation. ''Median'' has a specific meaning in statistics and probability theory,[314] and there is no reason to believe that, when Congress chose to use this term in Section 953(b), it intended that it not have its established meaning. In the context of the disclosure required by Section 953(b), the alternative measures suggested by commenters could produce a significantly different number than the ''median,'' and we do not believe that would be appropriate in light of the statutory language and our understanding of its purpose. Further, we believe the median may provide a more useful or relevant data point for shareholders making their say-on-pay votes than would a mathematical average because the use of median can decrease the significance of outliers.

Similarly, we note that some commenters suggested that a registrant should be permitted to use the compensation of a range of employees as the median compensation instead of the compensation of the exact median employee.[315] We disagree. No matter what method a registrant chooses to identify its median employee, it must identify an actual employee and determine that employee's annual total compensation to use in the pay ratio disclosure. We note, however, that the final rule does not require a registrant to disclose any personally identifiable information about that employee other than his or her compensation. A registrant may choose to generally identify the employee's position to put the employee's compensation in context, but the registrant is not required to provide this information and should not do so if providing the information could identify any specific individual.

Another commenter recommended that a registrant, after identifying the median employee, should be able to select another employee as the median if that employee is within a 1% variance of the median and the original employee has anomalous compensation characteristics that would result in a pay ratio that did not accurately reflect the relationship between the compensation practices for a typical employee and the compensation of the

Johnson, Marco Consulting, Meridian, Microsoft, Novara Tesija, NY Bricklayers and Craftworkers Union, Oxfam, Public Citizen I, SH&P, WA State Investment Board, and WorldatWork I.

[310] *See* letter from Microsoft.

[311] *See* letter from ABA.

[312] *See, e.g.,* letters from Corporate Secretaries and Davis Polk.

[313] *See, e.g.,* letters from Brian Foley & Co., NACD, and NIRI. Some commenters recommended that the final rule permit registrants to use the average salary of its employees instead of the median. *See, e.g.,* letters from Hyster-Yale, and NACCO, which they suggest also may reduce costs for registrants and promote comparability across companies. As with using the BLS data, however, we do not believe this approach is consistent with Section 953(b).

[314] The dictionary defines ''median'' as ''the middle number in a sequence, or the average of the two middle numbers when the sequence has an even number of numbers.'' Random House Webster's Dictionary, 411 (2d ed. 1996).

[315] *See, e.g.,* letters from Capital Strategies, Hyster-Yale, Mercer I, NACCO, and NYC Bar.

CEO.[316] Given the significant flexibility that the rule provides registrants in identifying the median employee, we believe it would be appropriate to substitute another substantially similarly situated employee in these circumstances. Thus, when calculating the total compensation for that median employee in accordance with Item 402(c)(2)(x), if the registrant reasonably determines that there are anomalous compensation characteristics of that employee's compensation that would have a significant higher or lower impact on the pay ratio, we will not object if the registrant substitutes another employee with substantially similar compensation to the original median employee based on the compensation measure used to select the median employee. The registrant must, however, disclose this fact as part of its brief description of the methodology it used to identify the median employee.

b. Calculating Annual Total Compensation

i. Proposed Rule

The proposed rule would define ''total compensation'' by reference to Item 402(c)(2)(x). In the Proposing Release, we stated that, because of the complexity of the requirements of Item 402(c)(2)(x), registrants typically compile information required by Item 402(c) manually for the named executive officers, which takes significant time and resources. Given the specificity of the definition used in Section 953(b), the proposed rule incorporated the Item 402(c)(2)(x) definition of ''total compensation'' for purposes of disclosing the median of the annual total compensation of employees and the pay ratio. Because the total compensation calculation using Item 402(c)(2)(x) would only be required for one additional employee (the median employee), we did not propose to simplify the total compensation definition that is required to be used to disclose the median employee compensation and the ratio.

Additionally, the proposed rule permitted the use of reasonable estimates in determining any elements of total compensation of employees other than the PEO under Item 402(c)(2)(x). For registrants using estimates, an instruction to the proposed rule would require them to disclose and consistently apply any material estimate used to identify the median employee or to determine that employee's total compensation or any elements of total compensation, and to clearly identify any estimates used. In using an estimate for annual total compensation (or for a particular element of total compensation), a registrant would be required to have a reasonable basis to conclude that the estimate approximates the actual amount of compensation under Item 402(c)(2)(x) (or for a particular element of compensation under Item 402(c)(2)(iv)-(ix)) awarded to, earned by, or paid to the employee. We did not specify what a reasonable basis would entail because we believed that would necessarily depend on the registrant's particular facts and circumstances.

Because the requirements of Item 402(c)(2)(x) were promulgated to address executive officer compensation, rather than compensation for all employees, we considered some interpretive questions that registrants could face in applying the requirements of Item 402(c)(2)(x) to employees who are not executive officers and proposed ways to address those questions. Those included questions concerning: applying the definition of ''total compensation'' to an employee who is not an executive officer and valuation issues for certain elements of total compensation, including for non-U.S. employees.

ii. Comments on the Proposed Rule

One commenter agreed with the Proposed Rule's requirement that ''total compensation'' be calculated using the requirements of Item 402(c)(2)(x).[317] Also, this commenter and a few others stated specifically that they supported the proposed rule's flexibility in permitting the use of reasonable estimates to calculate the annual total compensation or any elements of total compensation for employees other than the PEO.[318] One commenter indicated that it expected its clients to use reasonable estimates for calculating total compensation.[319] Some commenters requested additional guidance as to what estimates would be considered reasonable,[320] but other commenters said that no additional guidance is required.[321]

One commenter stated that it was ''deeply troubled'' that the proposed rule would require registrants to calculate the median employee's total compensation using Item 402(c)(2)(x) because no registrant uses this measure to calculate a non-executive officer's compensation.[322] According to the commenter, a significant difficulty with using Item 402(c)(2)(x) is the inclusion of pension benefits because the actuarial value of pensions vacillate dramatically from year to year, which would significantly impact total compensation. The commenter recommended excluding pension value from the total compensation calculation. If the final rule does not exclude pensions, the commenter suggested that government-related pensions for non-U.S. employees should be excluded as they are for named executive officers under Item 402(c)(2)(x).

Other commenters also contended that the final rule should not require calculating total compensation using Item 402(c)(2)(x) because certain compensation measures are excluded from that item requirement, such as benefits, non-discriminatory plans, perquisites, and personal benefits that aggregate less than $10,000, which would cause the median employee's total compensation to be understated.[323] Another commenter, while not necessarily advocating against using Item 402(c)(2)(x) to calculate total compensation, noted that it would be difficult for registrants to use that item requirement because it would require them to include as compensation bonuses, stock compensation, pensions, and other benefits for the median employee that are usually not factored into annual salary amounts in company records.[324]

Some commenters suggested that the final rule prescribe a methodology for calculating total compensation.[325] One commenter requested specifically that we include guidance about excluding government-mandated pension plans.[326] Another commenter suggested that registrants should be permitted (but not required) to include benefits, non-discriminatory plans, perquisites, and personal benefits that aggregate less than $10,000 in total compensation because Item 402(c)(2)(x) merely

[316] *See* letter from PNC Financial Services (noting that if the median employee is chosen by a metric other than total Item 402(c) compensation, when that median employee's compensation is then calculated using Item 402(c), it is possible that such employee may have pay elements or be missing pay elements that would make his or her compensation anomalous when compared with others at the same overall compensation level, and providing some examples such as if the employee does not participate in certain benefit programs that are reflected in Item 402(c) compensation but not in W–2 compensation).

[317] *See* letter from COEC II.

[318] *See, e.g.,* letters from ABA, Prof. Angel, COEC I, COEC II, Davis Polk, and Vectren.

[319] *See* letter from Mercer I.

[320] *See, e.g.,* letters from Aon Hewitt (requesting also a safe harbor in the final rule) and PM&P.

[321] *See, e.g.,* letters from ABA and COEC II.

[322] *See* letter from PM&P.

[323] *See, e.g.,* letters from Hyster-Yale, NACCO, and NACD.

[324] *See* letter from IBC.

[325] *See, e.g.,* letters from Friend and William Preston (Oct. 5, 2013) (''Preston'').

[326] *See* letter from ABA.

permits and does not require exclusion of such items for executive officers.[327] Other commenters contended that the calculation of total compensation in the final rule should include all compensation of a registrant's PEO and median employee, such as benefits, perks, bonuses, stock options, and other forms of compensation;[328] be limited to cash and stock-based compensation;[329] or include only compensation on the W–2 Form of the PEO and median employee.[330]

One commenter recommended that total compensation either include the average change in defined benefit pension values or exclude defined benefit pension values entirely.[331] Another commenter indicated that total compensation should include welfare and retirement benefits included to union members.[332] One commenter indicated that total compensation should be calculated based upon the same method used when identifying the three most highly compensated executive officers in accordance with Instruction 1 of Item 402(a)(3), which excludes the value of the aggregate change in actuarial present value of defined pension benefits under Item 402(c)(2)(viii).[333]

Finally, one commenter suggested that, if the final rule allows registrants to identify the median employee only every three years, registrants should similarly be allowed to calculate total compensation either every year or only when a new median is determined unless there has been a material change in annual total compensation.[334]

iii. Final Rule

The definition of ''total compensation'' in the final rule is unchanged from the proposal. The final rule requires that ''total compensation'' for both the median employee and PEO be calculated using the requirements of Item 402(c)(2)(x). As with the proposed rule, the final rule provides registrants with flexibility in identifying the median employee, and does not require registrants to identify the median employee by calculating the total compensation for each employee. Because the total compensation calculation using Item 402(c)(2)(x) is only required for one additional employee (the median employee), we do not believe it necessary in the final rule to simplify the total compensation definition that is required to be used in that calculation.

THE FINAL RULE PERMITS REGISTRANTS TO USE REASONABLE ESTIMATES IN CALCULATING THE ANNUAL TOTAL COMPENSATION OF THEIR MEDIAN EMPLOYEE, INCLUDING ANY ELEMENTS OF THE TOTAL COMPENSATION, UNDER ITEM 402(C)(2)(X). A FEW COMMENTERS SUPPORTED SUCH FLEXIBILITY.[335] WE BELIEVE, AS WE NOTED IN THE PROPOSING RELEASE, THAT THE USE OF REASONABLE ESTIMATES DOES NOT DIMINISH THE POTENTIAL USEFULNESS OF THE PAY RATIO DISCLOSURE, IS CONSISTENT WITH SECTION 953(B), AND WILL RESULT IN LOWER COMPLIANCE COSTS ON REGISTRANTS.

Under the final rule, registrants must clearly identify any estimates used. Additionally, registrants must have a reasonable basis to conclude that their estimates approximate the actual amounts of Item 402(c)(2)(x) compensation, or a particular element of compensation under Item 402(c)(2)(iv)–(ix), that are awarded to, earned by, or paid to the median employee. Some commenters requested that we provide additional guidance as to what estimates would be considered reasonable.[336] Consistent with the Proposing Release, we are not prescribing what a reasonable basis would entail in the final rule because we believe that will necessarily depend on the registrant's particular facts and circumstances.

As we discussed in the Proposing Release, our rules for compensation disclosure focus on the compensation of executive officers and directors rather than compensation for all employees. Some commenters urged us not to require registrants to calculate total compensation using Item 402(c)(2)(x).[337] We believe, however, that it is appropriate to require ''total compensation'' to be calculated using Item 402(c)(2)(x) for both the median employee and PEO. Using different measures of total compensation for the median employee and the PEO would be inconsistent with the statutory language and alter the pay ratio. Due to the concerns about calculating median employee compensation using requirements meant only for executive offices, however, we are reiterating the discussion that we included in the Proposing Release to help registrants understand our views on how the final rule should be applied.

In calculating the annual total compensation of employees in accordance with Item 402(c)(2)(x), applicable references to ''named executive officer'' in Item 402 and the related instructions are deemed in the final rule to refer instead to ''employee,'' as proposed. Also, the final rule clarifies that, for non-salaried employees, references to ''base salary'' and ''salary'' in Item 402 are deemed to refer instead, as applicable, to ''wages plus overtime.'' We are adopting this provision to help registrants calculate the total compensation for a median employee that happens to be non-salaried.

Additionally, registrants may use reasonable estimates, as described above, in determining an amount that reasonably approximates the aggregate change in actuarial present value of an employee's defined pension benefit for purposes of Item 402(c)(2)(viii), as we stated in the Proposing Release. For example, in the case of pension benefits provided to union members in connection with a multi-employer defined benefit pension plan, the participating employers typically do not have access to information (or may not have access in the timeframe needed to compile pay ratio disclosure) from the plan administrator that would be needed to calculate the aggregate change in actuarial present value of the accumulated benefit of a particular individual under the plan.[338] In such circumstances, we believe it would be appropriate for a registrant to use reasonable estimates in determining an amount that reasonably approximates the aggregate change in actuarial present value of an employee's defined pension benefit for purposes of Item 402(c)(2)(viii).

The instructions to Item 402(c)(2)(ix) permit the exclusion of personal benefits as long as the total value for the

[327] *Id.*

[328] *See, e.g.,* letters from Corayer, Fedewa, Gould, LAPFF, Matteson, and Anne C. Somers (Oct. 24, 2013) (''Somers'').

[329] *See, e.g.,* letters from Brian Foley & Co., Dover Corp., and Semtech.

[330] *See, e.g.,* letters from Capital Strategies, FEI, Hyster-Yale, and NACCO.

[331] *See* letter from Mercer I.

[332] *See* letter from Vectren Corp.

[333] *See* letter from SH&P.

[334] *See* letter from ABA.

[335] *See, e.g.,* letters from ABA, Capital Strategies, COEC I, Davis Polk, Johnson & Johnson, Mercer I, Vectren, Corp., and WorldatWork I.

[336] *See, e.g.,* letters from Aon Hewitt (requesting also a safe harbor in the final rule) and PM&P.

[337] *See, e.g.,* letters from Hyster-Yale, IBC, NACCO, NACD, and PM&P.

[338] Section 101(k) and related regulations under the Employee Retirement Income Security Act of 1974, as amended [21 U.S.C. 1021(k)], govern the requirements for plan administrators to provide actuarial reports relating to the plan. Under the rules, a plan administrator has thirty days to respond to a request for an actuarial report, and it is not required to provide access to any reports that have not been its possession for more than thirty days. In addition, the rules prohibit the disclosure of reports that include information that the plan administrator reasonably determines to be personally identifiable information regarding a plan participant, beneficiary or contributing employer. *See* 29 CFR 2520.101–6.

employee is less than $10,000, based on the basis of the aggregate incremental cost to the registrant.[339] In calculating any such amounts for purposes of calculating the annual total compensation of employees other than the PEO, a registrant may use reasonable estimates in the manner described above, as proposed. In light of concerns about the difficulty and complexity in the valuation of government-mandated pension plans, we acknowledged in the proposing release that some registrants might need clarity as to how to treat government-mandated pension plans for purposes of calculating an employee's total compensation and, specifically, for purposes of determining the aggregate change in actuarial present value of defined pension benefits under Item 402(c)(2)(viii). Item 402(c)(2)(viii) applies to a defined benefit plan, which, as explained in the 2006 Adopting Release, is a retirement plan in which the company pays the executive specified amounts at retirement that are not tied to the investment performance of the contributions that fund the plan.[340] In contrast, under many government-mandated pension plans, the employee ultimately receives the pension benefit payment from the government, not the employer, and the purpose of the mandated pension benefit is not to provide compensation to the employee for services performed for the employer.[341] Notwithstanding any amounts that an employer may be obligated to pay (typically as a tax) to the government in respect of an employee or amounts the employee may be obligated to have withheld from wages and paid to the government, where a pension benefit is being provided to the employee from the government and not by the registrant, a government-mandated defined benefit pension plan should not be considered a ''defined benefit plan'' for purposes of Item 402(c)(2)(viii) and any accrued pension benefit under such a plan should not be considered compensation for purposes of Item 402(c)(2)(x).

Some commenters expressed concern over including pension benefits in calculating total compensation.[342] One commenter indicated that it would be difficult to use Item 402(c)(2)(x) in calculating ''total compensation'' due to the inclusion of pension benefits because the actuarial value of pensions vacillate dramatically from year to year, which could significantly impact total compensation.[343] Another commenter requested specifically that we include guidance about excluding government-mandated pension plans.[344] In response to these comments, we are clarifying that, in calculating ''total compensation,'' registrants may exclude government-related pension benefits for non-U.S. employees, just as Social Security benefits are excluded under ''total compensation'' for U.S. employees. Ultimately, as to both concerns, we believe that the ability to use reasonable estimates should help with calculating total compensation for the median employee who has pension benefits.

We acknowledge that the application of the definition of total compensation under Item 402(c)(2)(x) to employees who are not executive officers could understate the overall compensation paid to such employees. Item 402 captures all of the various compensation components received by a named executive officer, excluding certain limited items like benefits under non-discriminatory plans and perquisites and personal benefits that aggregate less than $10,000. By excluding certain benefit plans and perquisites that do not exceed the $10,000 threshold, however, the rules may understate the median employee's actual total compensation. To address this, the final rule permits registrants, at their discretion, to include personal benefits that aggregate less than $10,000 and compensation under non-discriminatory benefit plans in calculating the annual total compensation of the median employee. To be consistent, however, the PEO's total compensation used in the related pay ratio disclosure must also reflect the same approach to these items used for the median employee. The registrant must also explain any difference between the PEO total compensation used in the pay ratio disclosure and the total compensation amounts reflected in the Summary Compensation Table, if material.

One commenter suggested that, if the final rule allows registrants to identify the median employee only every three years, registrants should similarly be required to calculate total compensation only when a new median is determined or when there is a material change to the annual total compensation figure.[345] The final rule allows registrants to identify the median employee every three years, but requires total compensation for that employee to be calculated each year. The primary reason for our decision to permit registrants to calculate the median employee every three years is to reduce the costs and burdens to registrants. Based on the comments we received, we understand that much of the cost associated with the proposed rule arises from the task of identifying the median employee.[346] Several commenters stated that navigating a registrant's payroll systems and creating a single database of all of its employees' compensation, especially non-U.S. employees' compensation, would be the most costly aspect of the proposed rule.[347] Other activities mentioned by commenters that would contribute to the costs of the proposed rule included data privacy compliance, foreign exchange calculations, data testing, establishing corporate guidelines, obtaining legal services, auditing results, public relations tasks, and litigation risk.[348] Many of these activities also must be undertaken in identifying the median employee. Once the median employee has been identified, however, it does not appear that calculating the annual total compensation of that one additional employee is a source of significant additional cost. Additionally, since the PEO's compensation will be updated annually, we believe that it is appropriate to have a consistent reflection of that year's compensation both for the PEO and the median employee. Therefore, the final rule requires registrants to calculate the median employee's annual total compensation every year.

Finally, Section 953(b)(2) states that ''total compensation'' shall be determined in accordance with Item 402(c)(2)(x) ''as in effect on the day before the date of enactment of this

[339] *See* Instruction 4 to Item 402(c)(2)(ix). This instruction would apply to perquisites and personal benefits. Accordingly, perquisites provided to executive officers who are included in the identification of the median would be treated as set forth in Instruction 4. For this purpose, however, benefits that were provided to all employees or all salaried employees would not have been considered ''perquisites.''

[340] *See* 2006 Adopting Release at 53175. This definition serves to distinguish defined benefit pension plans from defined contribution plans, in which the amount payable at retirement is tied to the performance of the contributions that fund the plan.

[341] Although Item 402(a)(2) includes compensation transactions between a registrant and a third party where the purpose of the transaction is to furnish compensation to the employee, we generally would not consider a government-mandated pension plan to be such a transaction.

[342] *See, e.g.,* letters from ABA and PM&P.

[343] *See* letter from PM&P.

[344] *See* letter from ABA.

[345] *See* letter from ABA.

[346] One commenter stated explicitly that the primary cost associated with the proposed rule would be in identifying the median employee. *See* letter from McGuireWoods.

[347] *See, e.g.,* letters from Aon Hewitt, Avery Dennison, Business Roundtable I, Chamber I, COEC I, Corporate Secretaries, Eaton, FEI, FuelCell Energy, IBC, KBR, NACCO, NAM I, NAM II, and NIRI.

[348] *See, e.g.,* letters from Aon Hewitt, Corporate Secretaries, and McGuireWoods.

Act.'' One commenter suggested that this statement does not preclude any amendment of Regulation S–K subsequent to the passage of the Dodd-Frank Act that would alter the definition of ''total compensation'' in Item 402 in effect on the day before the date of enactment of the Act.[349] In the Proposing Release, we noted that Section 953(b) refers to Item 402(c)(2)(x) in effect on the day before enactment of the Dodd-Frank Act, or July 20, 2010. We also indicated that, because no substantive amendments have been made to Item 402(c) since that date, the proposed rule would refer to Item 402(c)(2)(x) without reference to the rules in effect on July 20, 2010. We further stated that we expect to address the impact on the proposed rule of any future amendments to Item 402(c)(2)(x) if and when such future amendments are considered. No substantive amendments have been made to Item 402(c) since July 20, 2010. We continue, therefore, to take the approach articulated in the Proposing Release on this issue.

3. Disclosure of Methodology, Assumptions, and Estimates

a. Proposed Rule

The proposed rule required registrants to briefly describe and consistently apply any methodology used to identify the median and any material assumptions, adjustments, or estimates used to identify the median or to determine total compensation or any elements of total compensation. The proposed rule also provided that, if a registrant changes methodology, material assumptions, adjustments, or estimates from those used in its pay ratio disclosure for the prior fiscal year, and if the effects of any such change are material, the registrant must briefly describe the change and the reasons for the change, and provide an estimate of the impact of the change on the median and the ratio. The proposed rule would not require registrants to provide technical analyses or formulas (such as statistical formulas, confidence levels or the steps used in data analysis).

b. Comments on the Proposed Rule

Many commenters indicated that the rule should require registrants to provide narrative information about the methodology and material assumptions, adjustments, or estimates they used in identifying the median or calculating annual total compensation for employees.[350] Only a few commenters asserted that the rule should not require registrants to provide narrative information.[351] One of these commenters recommended also that we clarify the nature of the information that we expect registrants to disclose without imposing restrictions on methodologies; state expressly that disclosure is only required if a registrant used material assumptions, adjustments, or estimates; and state that no negative statement is required if a registrant did not use material assumptions, adjustments, or estimates.[352]

One commenter expressed concern that the disclosure would not be brief because of the registrant's need to use many estimates and assumptions for the median, especially for non-U.S. employees.[353] Another commenter cited survey data in which 66% of respondents anticipated that they would feel compelled to provide more than a brief narrative to explain how they determined the pay ratio.[354] Some commenters did not support requiring any additional narrative disclosure beyond what was already in the proposed rule.[355] Some of these commenters, as well as a large number of other commenters, asserted that the final rule should permit registrants to provide additional narrative disclosures if they chose to do so.[356]

Some commenters noted that the final rule should require registrants to disclose material changes to their assumptions, adjustments, or estimates from previous years, as proposed.[357] One commenter suggested that the final rule allow a good-faith compliance period of two years in which a registrant can change its initial methodology without having to specifically explain and quantify the change.[358]

Finally, a few commenters requested that the final rule require some additional metrics, such as upper and lower quartiles, mean, and standard deviation,[359] and one commenter suggested that companies voluntarily disclose both the ratio between average employee pay and average executive pay and the ratio of pay between the top and bottom 10% of earners within the company.[360] Other commenters, however, stated specifically that the final rule should not require the disclosure of any additional metrics.[361]

c. Final Rule

The final rule, consistent with the proposal, requires registrants to briefly describe and consistently apply any methodology used to identify the median and any material assumptions, adjustments (including any cost-of-living adjustments), or estimates used to identify the median or to determine total compensation or any elements of total compensation. The final rule also requires a registrant to clearly identify any estimates used. For example, when statistical sampling is used, registrants must describe the size of both the sample and the estimated whole population, any material assumptions used in determining the sample size and the sampling method (or methods) is used. Additionally, although the required descriptions must provide sufficient information for readers to evaluate the appropriateness of the methodologies used, registrants are not required to include any technical analyses, formulas, confidence levels, or the steps used in data analysis.[362] Although one commenter suggested that the final rule allow a good-faith compliance period of two years in which an issuer may change its initial methodology without having to specifically explain and quantify the change,[363] the final rule requires registrants to disclose any change in methodology, significant assumption, adjustment, or estimate from the prior year if the effects of any such change are significant. Registrants must also disclose if they changed from using the cost-of-living adjustment to not using that adjustment and if they changed from not using the cost-of-living

[349] *See* letter from Chamber I.

[350] *See, e.g.,* letters from AFL–CIO I, Barnard, Business Roundtable I, CalPERS, CalSTRS, Calvert, CII, COEC I, COEC II, CT State Treasurer, Domini, Hermes Equity Ownership Services (Nov. 18, 2013) (''Hermes''), Alex Kasner (Nov. 12, 2013) (''Kasner''), LAPFF, Meridian, Microsoft, Somers, Wesley Sze (Nov. 13, 2013) (''Sze''), UAW Trust, US SIF, and WorldatWork I.

[351] *See, e.g.,* letters from Prof. Angel, Capital Strategies, and Prof. Ray.

[352] *See* letter from ABA.

[353] *See* letter from Business Roundtable I.

[354] *See* letter from COEC I.

[355] *See, e.g.,* letters from ABA, COEC I, Hyster-Yale, Intel, Meridian, NACCO, NYC Comptroller, Vivient, and WorldatWork I.

[356] *See, e.g.,* letters from AFL–CIO I, AFSCME, Bâtirente *et al.,* CBIS, CT State Treasurer, E&Y, First Affirmative, CUPE, FS FTQ, Hyster-Yale, ICCR, IL Bricklayers and Craftworkers Union, Intel, Marco Consulting, McGuireWoods, McMorgan & Co., NYC Comptroller, NACCO, Novara Tesija, NY Bricklayers and Craftworkers Union, Oxfam, Public Citizen I, Rep. Ellison *et al.* I, Socially Responsive Financial Advisors, Teamsters, Trillium I, Trustee Campbell, Vivient, and Walden.

[357] *See, e.g.,* letters from ABA, CEG, CT Treasuer, Domini, Kasner, McGuireWoods, and WorldatWork I.

[358] *See* letter from Frederic W. Cook & Co.

[359] *See, e.g.,* letters from Prof. Ray and Rebecca Vogel (Nov. 13, 2013) (''R. Vogel'').

[360] *See* letter from LAPFF.

[361] *See, e.g.,* letters from Capital Strategies, Johnson & Johnson, and WorldatWork I.

[362] A registrant, however, must include the measure used as the basis for any cost-of-living adjustments when briefly describing the cost-of-living adjustments it used to identify the median employee and calculate the median employee's annual total compensation.

[363] *See* letter from Frederic W. Cook & Co.

adjustment to using it. We believe that it is important for shareholders to understand changes to a registrant's methodology so that they may make informed voting decisions on executive compensation under Section 951 of the Dodd-Frank Act.

We believe that requiring registrants to include the brief overview will make it easier for shareholders to understand the pay ratio disclosure for that company and better evaluate its utility in assessing the compensation and accountability of a registrant's executives, including in making their voting decisions on executive compensation under Section 951. We do not believe that requiring registrants to provide additional metrics, such as a more detailed or technical analysis will help shareholders in this manner. We note that other of our rules require similar disclosures, particularly where registrants are given the flexibility to choose a methodology, such as the valuation method for determining the present value of accrued pension benefits in Item 402(h)(2) or the description of models, assumptions, and parameters in Item 305 of Regulation S–K (quantitative and qualitative disclosures about market risk). Several commenters agreed that the rule should require registrants to provide this narrative description, as proposed, and no additional information.[364] Further, a number of these commenters indicated that the final rule should clarify that the narrative should be brief.[365] Consistent with these comments, the final rule specifically states that registrants must ''briefly'' describe this information.

We note that some commenters contended that the final rule should require additional metrics,[366] whereas other commenters stated specifically that the final rule should not require the disclosure of any additional metrics.[367] As we discussed in the Proposing Release, we are sensitive to the costs of the mandated disclosure, and we believe that narrative disclosure in addition to what is already required about the ratio would not, for many registrants, provide useful information for shareholders. For example, disclosures about employment policies, use of part-time employees, use of seasonal employee workers, and outsourcing and off-shoring strategies are not required under the final rule. The final rule does, however, allow registrants the flexibility to provide those additional disclosures that they believe will assist shareholders' understanding of the meaning of the pay ratio disclosure for their particular circumstances. We believe this approach is preferable to imposing a requirement on all registrants to provide additional metrics that may not be useful in many cases.

4. Meaning of ''Annual''

a. Proposed Rule

The proposed rule would define ''annual total compensation'' to mean total compensation for the last completed fiscal year, consistent with the time period used for the other Item 402 disclosure requirements. This provision was intended to address concerns about the need to update the pay ratio disclosure throughout the year and to make clear that the disclosure does not need to be updated more than once a year. Although we considered other ''annual'' periods that may have reduced compliance costs for registrants by giving them the ability to use information in the form that it is currently compiled for other purposes, we believed it was appropriate for the time period for the pay ratio disclosure to be the same as the time period used for the PEO's compensation. Registrants, therefore, would be required to calculate the total compensation for the median employee for their last completed fiscal year.

For purposes of identifying the median employee, however, we proposed allowing registrants to use compensation amounts derived from the information derived from tax and/or payroll records for the annual period used in those records. We believed that permitting companies to identify the median employee using compensation information in the form that it is maintained in their own books and records would reduce compliance costs. Registrants using the information derived from tax and/or payroll records to identify the median employee would still be required to calculate the Item 402(c)(2)(x) total compensation for that median employee for the last completed fiscal year, rather than the annual period used in the payroll and/or tax records.

b. Comments on the Proposed Rule

Some commenters agreed that the final rule should require the pay ratio to be calculated for the last completed fiscal year, as proposed, rather than some other annual period.[368] Other commenters, however, contended that the final rule should provide another annual period. Some of these commenters recommended that the final rule permit registrants to use the year prior to the registrant's last completed fiscal year for identifying the median employee, annual total compensation, or both to give the registrants more time to identify the median employee and calculate his or her total compensation.[369] Using the employee population from the year before, one commenter stated, would not have a material impact on the ratio and the added value of more contemporaneous information would likely be negligible.[370] Another commenter suggested using this time period for registrants with non-U.S. employees.[371]

Some commenters urged us to adopt a final rule that permitted use of the time periods used for payroll and/or tax records when calculating compensation to identify the median employee and the pay ratio for that employee.[372] These commenters indicated that the periods could be different across jurisdictions. In this regard, another commenter noted that there is no need to have exact overlap of the time periods because the pay ratio ''won't change all that much.''[373]

Other commenters asserted that registrants should be given flexibility to choose any annual period in identifying the median employee and/or that employee's total compensation.[374] One of these commenters stated, however, that the annual period must substantially relate to the fiscal year for which the pay ratio disclosure is being provided, regardless of whether the last day of such annual period falls before or after the end of the registrant's fiscal year for the purposes of identifying the median employee.[375] As an example, this commenter stated that, if the registrant has a fiscal year ending on November 30, the registrant should be permitted to identify the median employee based on a compensation

[364] *See, e.g.,* letters from ABA, AFL–CIO I, Barnard, Business Roundtable I, CalPERS, CalSTRS, Calvert, CII, COEC I, COEC II, CT State Treasurer, Domini, Hermes, Hyster-Yale, Kasner, Intel, LAPFF, Meridian, Microsoft, NACCO, Comptroller of the City of New York (Nov. 27, 2013) (''New York City Comptroller''), Somers, UAW Trust, US SIF, Vivient, and WorldatWork I.

[365] *See, e.g.,* letters from ABA, AFL–CIO I, Business Roundtable I, COEC I, COEC II, Domini, Meridian, Microsoft, and WorldatWork I.

[366] *See, e.g.,* letters from Prof. Ray, LAPFF, and R. Vogel.

[367] *See, e.g.,* letters from Capital Strategies, Johnson & Johnson, and WorldatWork I.

[368] *See, e.g.,* letters from ABA, CalPERs and UAW Trust.

[369] *See, e.g.,* letters from Aon Hewitt, Business Roundtable I, Corporate Secretaries, and Eaton.

[370] *See* letter from Aon Hewitt.

[371] *See* letter from FSR.

[372] *See, e.g.,* letters from Hyster-Yale and NACCO.

[373] *See* letter from Prof. Angel.

[374] *See, e.g.,* letters from Davis Polk and WorldatWork I.

[375] *See* letter from Davis Polk.

measure calculated from January 1 through December 31 of that year, as long as such records substantially relate to the fiscal year for which pay ratio disclosure is being provided.

c. Final Rule

The final rule defines ''annual total compensation'' to mean ''total compensation'' for the registrant's last completed fiscal year, as proposed. Although there were other ''annual'' periods suggested by commenters, such as the year prior to the registrant's last completed fiscal year [376] or the time periods used for the information derived from tax and/or payroll records,[377] we believe the registrant's last completed fiscal year is more appropriate. Using the registrant's last completed fiscal year is consistent with the time period used for the other Item 402 disclosure requirements. Registrants are required, therefore, to disclose the ''total compensation,'' using Item 402(c)(2)(x), for their median employee and PEO based on the compensation they provided for these individuals in the last completed fiscal year. We believe that making the time period for the pay ratio disclosure consistent with other Item 402 disclosures will better enable shareholders to use it in conjunction with the other Item 402 disclosures to assess the compensation and accountability of a registrant's executives. For this same reason, we are not permitting registrants to select any annual period or the year prior to the last completed fiscal year to calculate total compensation.

As discussed above, registrants may use compensation amounts derived from the information derived from their tax and/or payroll records for the same annual period used in those records to identify their median employee because we believe this reduces compliance costs. Registrants using the information derived from tax and/or payroll records to identify the median employee are still required to calculate the Item 402(c)(2)(x) total compensation for that median employee for the registrant's last completed fiscal year, rather than the annual period used in the payroll and/or tax records because identifying the median is a separate process from calculating total compensation.

5. ''Filed'' Not ''Furnished''

a. Proposed Rule

Under the proposal, the pay ratio disclosure would be considered ''filed'' for purposes of the Securities Act and Exchange Act, which is the same as for other Item 402 information.

b. Comments on the Proposed Rule

Only one commenter stated explicitly that the pay ratio disclosure should be ''filed,'' as proposed.[378] This commenter agreed that the information should be filed because Section 953(b) refers to ''filings.'' Further, the commenter stressed that any concerns registrants may have about the pay ratio information being ''filed'' are mitigated by the proposed rule's flexibility.

Commenters that opposed the proposed rule generally indicated that the pay ratio disclosure should be ''furnished'' rather than ''filed.'' [379] The commenters contending that the pay ratio information should be ''furnished'' argued that, in making the calculations for identifying the median employee and total compensation, registrants will have to review a large amount of data and make a significant number of estimates, assumptions, and judgment calls, which will necessarily lead to imprecision.[380] Some noted that this imprecision will subject a registrant to potential liability and litigation,[381] make it difficult to validate the information sufficiently for Sarbanes-Oxley Act [382] certification purposes,[383] and/or not permit the information to be audited (or greatly increase the costs of the audits).[384]

Some commenters asserted that use of the word ''filing'' in Section 953(b) does not demonstrate a Congressional desire that the disclosure be ''filed'' rather than ''furnished.'' Some of these commenters pointed out that the statutory language refers to information to be included in ''filings'' rather than requiring the information to be ''filed.'' [385] Also, the commenters noted that there is some information in our ''filings'' that is ''furnished,'' such as Items 2.02 and 7.01 of Form 8–K, the glossy annual reports to shareholders, the audit committee reports (Item 407(d)), the stock performance graphs (Item 2.01(e)), the compensation committee reports (Item 407(e)(5)), and that executive compensation information in ''filings'' was ''furnished'' until 2006.[386]

One commenter recommended that, in the event that the pay ratio disclosure must be ''filed,'' we consider providing a ''safe harbor'' excluding the disclosure from the portion of a registrant's filings that must be certified pursuant to Exchange Act Rules 13a–14 and 15d–14 and are also subject to Section 906 of the Sarbanes-Oxley Act of 2002.[387] Additionally, another commenter recommended that, at least initially, we make the pay ratio disclosure an addendum to documents required under Regulation S–K and have that addendum deemed ''furnished.'' [388] This commenter indicated that this approach could minimize some of the rule's costs and burdens.

c. Final Rule

The final rule treats the pay ratio disclosure, as with other Item 402 information, as ''filed'' for purposes of the Securities Act and Exchange Act, and, therefore, subject to potential liabilities under those statutes, including Exchange Act Section 18 liability.[389] Information required to be disclosed by registrants pursuant to the federal securities laws generally is filed with us and subject to the liabilities thereunder, unless a specific exception applies. Although we recognize that identifying the median employee and calculating total compensation may require registrants to review a large amount of data and make a significant number of estimates, assumptions, and judgment calls, we do not believe this fact alone justifies exempting this information from being ''filed.'' Many of the disclosures required by our rules require complex calculations and estimates. Moreover, the fact that registrants will be required to provide disclosure about how they have arrived at their pay ratio calculations, and in particular the required disclosure about the assumptions and methodologies underlying the calculations, will permit registrants to clearly explain to shareholders where potential imprecisions may be introduced into the reported statistic. We also note that all

[376] *See, e.g.,* letters from Aon Hewitt, Business Roundtable I, Corporate Secretaries, Eaton, and FSR.

[377] *See, e.g.,* letters from Hyster-Yale and NACCO.

[378] *See* letter from US SIF.

[379] *See, e.g.,* letters from AAFA II, ABA, American Benefits Council, Aon Hewitt, Best Buy *et al.,* Bill Barrett Corp., Business Roundtable I, Chamber I, Chesapeake Utilities, COEC I, COEC II, Corporate Secretaries, Eaton, Freeport-McMoRan, General Mills, Intel, Mercer I, NAM I, NIRI, NRF, PM&P, RILA, SHRM, and Vectren Corp.

[380] *See, e.g.,* letters from AAFA II, ABA, Business Roundtable I, Chesapeake Utilities, COEC I, COEC II, Corporate Secretaries, Eaton, General Mills, NRF, RILA, and Vectren Corp.

[381] *See, e.g.,* letters from ABA, American Benefits Council, Aon Hewitt, Bill Barrett Corp., Chamber I, General Mills, Mercer I, and PM&P.

[382] *See* Pub. L. 107–204, 116 Stat. 745 (2002).

[383] *See, e.g.,* letters from ABA, Best Buy *et al.,* Corporate Secretaries, Freeport-McMoRan, Intel, NAM I, NAM II, and SHRM.

[384] *See, e.g.,* letters from COEC I, COEC II, Corporate Secretaries, and NIRI.

[385] *See, e.g.,* letters from ABA, COEC I, COEC II, Corporate Secretaries, PNC Financial Services, and RILA.

[386] *See, e.g.,* letters from ABA, Business Roundtable I, COEC I, General Mills, and Mercer I.

[387] *See* letter from ABA.

[388] *See* letter from Chamber I.

[389] 15 U.S.C. 78r.

other Item 402 information is considered ''filed'' rather than ''furnished'' and that the disclosure called for by Item 402(u)—information pertaining to the registrant's operations and workforce composition—differs from the types of information we typically permit to be ''furnished'' rather than ''filed.'' [390] For similar reasons, we do not believe these disclosures should be exempted from the certification requirements of Exchange Act Rules 13a–14 and 15d–14 or Section 906 of the Sarbanes-Oxley Act of 2002 or be provided as an addendum to filings referenced in Regulation S–K.

In addition, we note that Section 18 of the Exchange Act does not create strict liability for ''filed'' information. Rather, it states that a person shall not be liable for misleading statements in a filed document if it can establish that it acted in good faith and had no knowledge that the statement was false or misleading.[391] A plaintiff asserting a claim under Section 18 would need to meet the elements of the statute to establish a claim, including purchasing or selling a security at a price that was affected by the false or misleading statement in reliance on the misstatement, and damages caused by that reliance. Finally, regardless of whether the information is ''filed'' or ''furnished,'' registrants that fail to comply with the final rule could also be violating Exchange Act Sections 13(a) and 15(d), as applicable, and would also be subject to potential liability under Exchange Act Section 10(b) [392] and Rule 10b–5,[393] promulgated thereunder, for any false or misleading material statements in the information disclosed pursuant to the rule.

6. Timing of Disclosure

a. Updating Pay Ratio Disclosure for the Last Completed Fiscal Year

i. Proposed Rule

The proposed rule would not have required the pay ratio for the registrant's last completed fiscal year to be disclosed until the filing of its annual report on Form 10–K for that fiscal year or, if later, the filing of a definitive proxy or information statement relating to its next annual meeting of shareholders (or written consents in lieu of such a meeting) following the end of such fiscal year. The proposed rule would require pay ratio information to be filed, in any event, not later than 120 days after the end of such fiscal year as provided in General Instruction G(3) of Form 10–K. Also, in any filing a registrant made after the end of its last completed fiscal year and before the filing of such Form 10–K or proxy or information statement, as applicable, a registrant that was subject to the proposed rule for the fiscal year prior to the last completed fiscal year would be permitted to include or incorporate by reference the pay ratio disclosure information for that prior fiscal year. We proposed this provision because, as discussed above, the proposed rule would require annual total compensation amounts used in the ratio to be calculated for the registrant's last completed fiscal year. In addition, pay ratio disclosure would be required in any filing by the registrant that required Item 402 disclosure.

Although the annual update of the pay ratio was not required to be disclosed until the filing of an annual report for the last completed fiscal year, or if later, the filing of a definitive proxy statement or information statement relating to the registrant's annual meeting of shareholders, this provision would not have altered the requirements for Item 402 disclosure under Item 8 of Schedule 14A in other proxy or information statement filings.

ii. Comments on the Proposed Rule

Some commenters generally agreed with the proposed rule's requirement that the pay ratio disclosure be updated no earlier than the filing of a registrant's annual report on Form 10–K or, if later, the filing of a proxy or information statement for the registrant's annual meeting of shareholders (or written consents in lieu of such a meeting), and in any event no later than 120 days after the end of its fiscal year.[394] One of these commenters agreed with the proposal that all registrants, should be allowed to file their pay ratio disclosure no later than 120 days after fiscal year end by either an amended Form 10–K or Form 8–K because permitting the later filing would allow registrants not subject to the proxy rules to have the same amount of time to file their pay ratio disclosure as filers that are subject to the proxy rules.[395] One commenter indicated that, although timing of the disclosure is ''not important,'' the information should be required in the registrant's annual report on Form 10–K and permitted in other filings.[396] Another commenter contended that the information should at least be available in a registrant's proxy statement for the annual meeting so that shareholders may use the information for voting.[397]

One commenter stated that it would not object to the proposed delay because it would not diminish the usefulness of the disclosure to investors.[398] The commenter, however, noted that the proposed delay still might not provide registrants enough time after the end of the fiscal year for all registrants to calculate and disclose the pay ratio in their annual proxy statement. Therefore, the commenter stated that it ''generally would not object to the rules providing for some additional accommodation to the extent that it does not significantly diminish the usefulness of the disclosure to investors.''[399]

Other commenters disagreed with the proposed rule's requirement that registrants disclose their pay ratio information on Form 10–K, the proxy or information statement, or 120 days after the end of its fiscal year. Mainly, these commenters believed the requirement would not provide sufficient time for registrants to identify the median employee, calculate total compensation and the pay ratio, and file their information.[400] Most of these commenters recommended that the final rule permit disclosure on Form 8–K at

[390] Some examples of information that are ''furnished'' include: the Results of Operations and Financial Condition information (Item 2.02 of Form 8–K); Regulation FD disclosures (Item 7.01 of Form 8–K); the Stock Performance Graph (Item 201(e) of Regulation S–K); the Audit Committee Report (Item 407(d) of Regulation S–K); the Compensation Committee Report (Item 407(e)(5) of Regulation S–K); and the annual reports to shareholders (Rules 14a–3(b) and 14c–3(a) under the Exchange Act and General Instruction G(2) to Form 10–K).

[391] Exchange Act Section 18(a) provides that any person who shall make or cause to be made any statement in any application, report, or document filed pursuant to this title or any rule or regulation thereunder or any undertaking contained in a registration statement as provided in subsection (d) of section 15 of this title, which statement was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, shall be liable to any person (not knowing that such statement was false or misleading) who, in reliance upon such statement shall have purchased or sold a security at a price which was affected by such statement, for damages caused by such reliance, unless the person sued shall prove that he acted in good faith and had no knowledge that such statement was false or misleading. A person seeking to enforce such liability may sue at law or in equity in any court of competent jurisdiction. In any such suit the court may, in its discretion, require an undertaking for the payment of the costs of such suit, and assess reasonable costs, including reasonable attorneys' fees, against either party litigant.

[392] 15 U.S.C. 78j.

[393] 17 CFR 240.10b–5

[394] *See, e.g.,* letters from ABA, CalPERS, Calvert, CII, E&Y, Trillium II, UAW Trust, US SIF, and Vectren Corp.

[395] *See* letter from ABA.

[396] *See* letter from Capital Strategies.

[397] *See* letter from UAW Trust.

[398] *See* letter from CII.

[399] *Id.*

[400] *See, e.g.,* letters from American Benefits Council, Brian Foley & Co., Chesapeake Utilities, Frederic W. Cook & Co., Hyster-Yale, Mercer I, NACCO, and PM&P.

some other time of the year, including when the information is able to be calculated,[401] ''within some extended period (such as 180 days after fiscal year end, as is the case for Form 11–Ks and other reports),''[402] any time during the first five months after fiscal year-end,[403] before the end of the registrant's second quarter,[404] and 14 days before the annual meeting of shareholders.[405]

iii. Final Rule

The final rule does not require registrants to provide the pay ratio disclosure information for the registrant's last completed fiscal year until it files its annual report on Form 10–K for that year or, if later, it files the definitive proxy or information statement relating to its next annual meeting of shareholders (or written consents in lieu of such a meeting). In any event, the final rule requires registrants to file their pay ratio information not later than 120 days after the end of such fiscal year in a manner similar to General Instruction G(3) of Form 10–K.[406] This requirement is consistent with the proposal. Also, consistent with the proposed rule, a registration statement that incorporates by reference a Form 10–K (or amended Form 10–K) containing all Part III information *other than* updated pay ratio information could be declared effective before the registrant's definitive proxy or information statement containing updated pay ratio information is filed in accordance with General Instruction G(3).

Additionally, although the annual update is not required to be disclosed until the filing of an annual report for the last completed fiscal year, or if later, the filing of a definitive proxy statement or information statement relating to the registrant's annual meeting of shareholders, as discussed in the Proposing Release, this provision does not alter the requirements for Item 402 disclosure under Item 8 of Schedule 14A in other proxy or information statement filings. For example, if a registrant filed a proxy statement (other than the definitive proxy statement for its annual meeting) that required Item 402 information pursuant to Item 8 of Schedule 14A, the registrant would be required to include or incorporate by reference pay ratio disclosure for the most recent period that had been filed in its Form 10–K or definitive proxy statement for its annual meeting.

We continue to believe this provision is appropriate for the reasons discussed in the Proposing Release. Without it, a registrant would be required to include its pay ratio disclosure in a filing (such as a registration statement) filed after the end of the prior fiscal year, but before it was able to compile its executive compensation information for that fiscal year, which is usually included in a registrant's proxy statement relating to its annual meeting of shareholders following the end of the fiscal year, which could raise additional incremental costs for registrants that elect to provide executive compensation disclosure in their annual proxy statement rather than their annual report and for registrants that are conducting registered offerings at the beginning of their fiscal year.

We note that a number of commenters agreed with our approach. In response to other comments stating that our approach will not provide registrants sufficient time to identify the median employee, calculate total compensation and the pay ratio, and file their information, we note that the final rule retains the significant flexibility afforded to registrants in the proposal and includes several additional accommodations intended to reduce the burdens of producing the required disclosure. We believe these provisions will make it feasible for registrants to file their pay ratio disclosure within the timeframes set forth in the final rule. We do not believe it would be appropriate to extend the deadline by which the pay ratio disclosure should be updated in light of its relevance to shareholders in making their voting decisions under Section 951 of the Dodd-Frank Act. If registrants were not required to provide the pay ratio disclosure when they file their annual report on Form 10–K or, if later, the definitive proxy or information statement for their next annual meeting of shareholders (or written consent in lieu of such a meeting), this could result in the disclosure not being presented together with other relevant executive compensation information to which it relates and not being available to inform shareholders as they exercise their say-on-pay voting rights, which we understand to be the disclosure's primary purpose. For all of these reasons, we believe the timing requirements in the final rule are reasonable and appropriate.

b. Omitting Salary or Bonus Information for the PEO in Reliance on Instruction 1 to Item 402(c)(2)(iii) and (iv), and Technical Amendment to Item 5.02(f) of Form 8–K

i. Proposed Rule

In cases where a registrant is relying on Instruction 1 to Items 402(c)(2)(iii) and (iv) of Regulation S–K to omit salary or bonus of the PEO that is not calculable until a later date, the proposed rule would permit registrants to omit pay ratio disclosure until those elements of the PEO's total compensation are determined. The proposed rule would also have required registrants relying on that instruction to provide their pay ratio disclosure in the same Form 8–K filing in which the PEO's salary or bonus is disclosed. We proposed a conforming amendment to Item 5.02(f) of Form 8–K to reflect the addition of this pay ratio disclosure requirement. Although a filing is triggered under Item 5.02(f) when the omitted salary or bonus becomes calculable in whole or in part, under the proposed amendment to Form 8–K, the pay ratio information would be required only when the salary or bonus became calculable in whole, which would avoid the need for multiple updates to the pay ratio disclosure until the final total compensation amount for the PEO is known.

ii. Comments on the Proposed Rule

Only a few commenters discussed this proposed instruction and they generally agreed with the proposed rule.[407] One commenter contended that, if the registrant is relying on Instruction 1 to Item 402(c)(2)(iii) and (iv), the final rule should require neither an estimate of compensation nor additional supplemental disclosure prior to the Item 5.02 8–K because it would further dilute the utility of the pay ratio information for shareholders.[408] One commenter suggested that delaying the pay ratio information under Instruction 1 to Item 402(c)(2)(iii) and (iv) would diminish the information's usefulness, but did not object to the proposed instruction because it would only affect a small number of registrants.[409]

[401] *See, e.g.,* letters from Chesapeake Utilities, Mercer I, and PM&P.

[402] *See* letter from American Benefits Council.

[403] *See* letter from Brian Foley & Co.

[404] *See* letter from Frederic W. Cook & Co.

[405] *See, e.g.,* letters from Hyster-Yale and NACCO.

[406] General Instruction G(3) of Form 10–K permits registrants to incorporate by reference Part III of its Form 10–K, which includes the Item 402 information, from their definitive proxy or information statements filed in connection with the registrant's annual meeting if such definitive proxy or information statements are filed within 120 days after the end of the fiscal year covered by the Form 10–K. If a definitive proxy or information statement is not filed within this 120-day period, Items comprising the Part III information must be filed as part of the Form 10–K, or as an amendment to the Form l0–K, not later than the end of the 120-day period.

[407] *See, e.g.,* letters from ABA, Capital Strategies, and CII.

[408] *See* letter from ABA.

[409] *See* letter from CII.

iii. Final Rule

As proposed, the final rule permits registrants to omit pay ratio disclosure until the salary or bonus of their PEO's total compensation is determined in cases in which the registrant is relying on Instruction 1 to Items 402(c)(2)(iii) and (iv) of Regulation S–K [410] to omit the salary or bonus of the PEO that is not calculable until a later date. Commenters on this provision generally agreed with our approach. The final rule also includes a conforming amendment to Item 5.02(f) of Form 8–K to reflect the addition of this pay ratio disclosure requirement. However, although a filing is triggered under Item 5.02(f) when the PEO's omitted salary or bonus becomes calculable in whole or in part, under the conforming amendment to Form 8–K, the pay ratio information is required only when the salary or bonus become calculable in whole, which avoids the need for multiple updates to the pay ratio disclosure until the final total compensation amount for the PEO is known.

The final rule includes an instruction that provides that a registrant relying on Instruction 1 to Items 402(c)(2)(iii) and (iv) with respect to the salary or bonus of the PEO would be required to disclose that the pay ratio disclosure is not calculable until the PEO salary or bonus, as applicable, is determined and disclose the date that the PEO's actual total compensation is expected to be determined. The instruction also requires the registrant to include its pay ratio disclosure in the filing on Form 8–K that includes the omitted salary or bonus information as contemplated by Instruction 1 to Items 402(c)(2)(iii) and (iv).

We believe, as stated in the Proposing Release, that the potential benefits of the complete and up-to-date pay ratio disclosure could be diminished if the pay ratio were to be calculated using less than the entire amount of the PEO's total compensation for the period and that these potential benefits could justify the potential costs to shareholders of a delay in the timing of the disclosure. For example, in some cases, the amount of compensation that is omitted under Instruction 1 to Items 402(c)(2)(iii) and (iv) could be significant, and, therefore, the pay ratio would be lower if presented using that incomplete compensation amount. Similarly, we believe that the potential benefits of the complete and up-to-date pay ratio disclosure could be diminished if the registrant used the prior year's pay ratio information to calculate an approximate pay ratio for the current year, especially if there is a significant change to the PEO's compensation from the prior year. Also, based on the number of registrants that have historically relied on Instruction 1 to Items 402(c)(2)(iii) and (iv),[411] we do not expect that the instruction will impact a significant number of registrants each year.

c. Initial Compliance Date

i. Proposed Rule

We proposed to require a registrant to comply with proposed Item 402(u) with respect to compensation for the registrant's first fiscal year commencing on or after the effective date of the rule. We also proposed to permit a registrant to omit this initial pay ratio disclosure until the filing of its annual report on Form 10–K for that fiscal year or, if later, the filing of a proxy or information statement for its next annual meeting of shareholders (or written consents in lieu of a meeting) following the end of such year. In any event, the information would be required to be filed not later than 120 days after the end of such fiscal year. We recognized in the Proposing Release that a transition period would likely be needed by large, multinational registrants and any registrants that did not have a centralized, consolidated payroll, benefits, and pension system that captures the information necessary to identify the median. We expected that it would take registrants one full reporting cycle to implement and test any necessary systems.

ii. Comments on the Proposed Rule

One commenter disagreed with the initial transition period in the proposed rule on the grounds that further delays in having access to the pay ratio disclosure are not in the best interests of shareholders.[412] Other commenters contended that the transition period in the Proposing Release would disadvantage registrants with fiscal years that end on or close to the effective date of the final rule and suggested that the transition period be extended until:

- a registrant's first fiscal year commencing on or after six months following the effective date of the final rule; [413]
- a registrant's first fiscal year commencing one year after the effective date of the final rule; [414]
- a registrant's first fiscal year commencing after the second anniversary of the effective date of the final rule (or, alternatively, a registrant's first fiscal year commencing on or after December 15 of the year in which the rule becomes effective); [415]
- a registrant's first fiscal year commencing on or after the first January 1 after the effective date of the final rule; [416]
- a registrant's 2016 fiscal year, if the final rule is adopted in 2014; [417]
- a registrant's 2017 fiscal year; [418]
- one year after the Proposing Release's compliance date (*i.e.,* one year after a registrant's first fiscal year commencing on or after the effective date of the final rule); [419]
- two full years after the effective date of the final rule; [420] and
- three years after the effective date of the final rule.[421]

One commenter recommended delaying compliance with ''the most onerous parts of this rule,'' [422] and a further commenter requested that we phase in various requirements of the rule.[423] Neither of these commenters, however, was more specific as to which parts of the rule to delay or phase-in. One commenter suggested that we include a three-year sunset provision in the final rule.[424] Other commenters suggested various transition periods for companies with non-U.S. employees. Some commenters requested that, if the final rule includes non-U.S. employees,

[410] Instruction 1 to Items 402(c)(2)(iii) and (iv) of Regulation S–K, under our existing executive compensation disclosure rules, permits registrants to omit disclosure in the Summary Compensation Table of the salary or bonus of a named executive officer if it is not calculable as of the latest practicable date. In that circumstance, the registrant must include a footnote disclosing that fact and providing the date that the amount is expected to be determined, and the amount must be disclosed at that time by filing a Form 8–K. Item 5.02(f) of Form 8–K sets forth the requirements for the filing of information that was omitted from Item 402 disclosure in accordance with Instruction 1 to Items 402(c)(2)(iii) and (iv), including the requirement to include a new total compensation figure for the named executive officer.

[411] For example, based on a review of EDGAR filings for calendar years 2012 and 2013, we estimate that approximately 11 Forms 8–K are filed pursuant to Item 5.02(f) annually and approximately 90% of these relate to disclosure of PEO compensation.

[412] *See* letter from IPS.

[413] *See, e.g.,* letters from American Benefits Council, COEC I, Frederic W. Cook & Co., and Microsoft.

[414] *See, e.g.,* letters from AAFA II and NRF.

[415] *See* letter from ABA.

[416] *See, e.g.,* letters from Best Buy *et al.,* Corporate Secretaries, General Mills, Meridian, PM&P, and SH&P.

[417] *See, e.g.,* letters from Chesapeake Utilities, Intel, and Mercer I.

[418] *See, e.g.,* letters from Hay Group, Hyster-Yale, and NACCO.

[419] *See* letter from RILA.

[420] *See, e.g.,* letters from Business Roundtable I, Eaton, and SHRM.

[421] *See* letter from FSI.

[422] *See* letter from Semtech.

[423] *See* letter from Chamber I.

[424] *See* letter from COEC I.

we permit registrants to exclude non-U.S. employees from the pay ratio for an additional two years.[425] A few commenters recommended that we extend the transition period for multinational registrants to permit them to begin to comply with the final rules with respect to compensation for their first full fiscal year commencing on or after the second anniversary of the effective date of the final rules (assuming foreign employees are not excluded from the ''median employee'' determination).[426] One commenter urging a transition period for non-U.S. employees stated that ''a staged implementation would allow companies to design methodologies for pay ratio compliance during the first year and test them on an employee population where data collection is more manageable.'' [427]

iii. Final Rule

The final rule provides that registrants' first reporting period is their first full fiscal year beginning on or after January 1, 2017, instead of on or after the effective date of the rule, as proposed. For example, the reporting period for a company with a fiscal year that ends on December 31 will begin on January 1, 2017.[428] We believe a transition period is appropriate because, as we noted in the Proposing Release, certain registrants may need additional time to implement systems to compile the disclosure and verify its accuracy.

We are changing our approach from the proposal because a number of commenters contended that the proposed transition period would be burdensome to registrants, and would particularly disadvantage registrants with fiscal years that end on or close to the effective date of the final rule.[429] Additionally, a number of these commenters indicated at least another additional year would be required for registrants to establish systems to comply with the final rule.[430] One commenter claimed, in particular, that registrants would need ''an initial year to establish and test the systems that may be necessary to collect and analyze the data required to identify their median employee and develop the necessary disclosure controls and procedures, and then a second year involving a full reporting cycle to actually put their selected system into operation.'' [431]

We are not providing an additional transition period or staggered compliance for registrants with non-U.S. employees, as requested by some commenters. We believe that the final rule provides sufficient time for all registrants, including multinationals and those with non-U.S. employees, to identify the median employee and calculate annual total compensation for that employee and the PEO. Additionally, we note that the *de minimis* and foreign privacy law exemptions to the definition of ''employee'' in the final rule may help reduce the burden on such registrants in preparing the necessary disclosure.

d. Transition Period for New Registrants

i. Proposed Rule

The proposed rule would permit new registrants to delay compliance so that the pay ratio disclosure would not be required in a registration statement on Form S–1 [432] or Form S–11 [433] for an initial public offering or registration statement on Form 10.[434] Such registrants would be required to comply with proposed Item 402(u) with respect to compensation for the first fiscal year commencing on or after the date the registrant became subject to the requirements of Section 13(a) or Section 15(d) of the Exchange Act, and the registrant could omit this initial pay ratio disclosure from its filings until the filing of its Form 10–K for such fiscal year or, if later, the filing of a proxy or information statement for its next annual meeting of shareholders (or written consents in lieu of a meeting) following the end of such fiscal year. Similar to the proposed instructions for updating pay ratio disclosure, these proposed instructions also would require that this initial pay ratio disclosure be filed, in any event, as provided in connection with General Instruction G(3) of Form 10–K not later than 120 days after the end of such fiscal year.

ii. Comments on the Proposed Rule

All the commenters that discussed the topic agreed that new registrants should not be required to provide pay ratio disclosure in their initial registration statements on Form S–1, Form S–11, or Form 10.[435] A few commenters also agreed that a new public company should not have to provide any pay ratio disclosure until it completes its first full fiscal year as a public company.[436]

iii. Final Rule

Similar to the transition period for existing registrants, the final rule provides that a new registrant's first pay ratio disclosure must follow its first full fiscal year beginning after the registrant has (i) been subject to the requirements of Sections 13(a) or 15(d) of the Exchange Act for a period of at least twelve calendar months beginning on or after January 1, 2017 and (ii) filed at least one annual report pursuant to Sections 13(a) or 15(d) of the Exchange Act that does not contain the pay ratio disclosure.[437]

This change aligns the transition for new registrants with the change we made to the initial transition period for existing registrants. As discussed above, the final rule provides that a registrant's first reporting period is its first full fiscal year beginning on or after January 1, 2017, instead of on or after the effective date of the rule, as proposed. Also, this change is consistent with

[425] *See, e.g.,* letters from FSR (suggesting that the final rule permit registrants with non-U.S. employees at least two full fiscal years to comply, and providing two suggestions for doing so: (1) providing a ''transition period during which the registrant may report its pay ratio disclosure solely on the basis of the data available in respect of its employees based in the United States;'' or (2) providing a transition period for any registrant with more than a *de minimis* non-U.S. workforce), FuelCell Energy (requesting that we ''provide an additional two years before companies must include overseas workers in their pay ratio calculations''), Garmin (same), NIRI (same), and Semtech (same).

[426] *See* letter from ABA and American Benefits Council.

[427] *See* letter from COEC I.

[428] Approximately 70% of registrants have fiscal years that begin on January 1. We determined this figure based on the number of current reporting companies. There are 8,529 total registrants, and 5,799 of these registrants have a fiscal year end of December 31, which is approximately 68% (5,799/8,529=.67991).

[429] *See, e.g.,* letters from AAFA II, ABA, American Benefits Council, Best Buy *et al.,* Business Roundtable I, Chamber I, Chesapeake Utilities, COEC I, Corporate Secretaries, Eaton, Frederic W. Cook & Co., FSI, General Mills, Hay Group, Hyster-Yale, Intel, Mercer I, Meridian, Microsoft, NACCO, NRF, PM&P, RILA, Semtech, SH&P, and SHRM.

[430] *See, e.g.,* letters from ABA, Business Roundtable I, Chesapeake Utilities, Eaton, FSI, Hay Group, Hyster-Yale, Intel, Mercer I, NACCO, and SHRM.

[431] *See* letter from ABA.

[432] 17 CFR 239.11.

[433] 17 CFR 239.18.

[434] 17 CFR 249.210.

[435] *See, e.g.,* letters from ABA, CalPERS, CII, Corporate Secretaries, Hyster-Yale, NACCO and PM&P.

[436] *See, e.g.,* letters from ABA and Hyster-Yale.

[437] For example, company with a fiscal year ending on December 31 that completes its initial public offering on March 1, 2017 will not be required to include any pay ratio information in its registration statement on Form S–1. The registrant will be first required to include pay ratio disclosure in its Form 10–K for its 2018 fiscal year or its definitive proxy or information statement for its 2019 annual meeting of shareholders, but no later than 120 days following the end of its 2018 fiscal year. The registrant's pay ratio disclosure will be required for its 2018 fiscal year because it filed its registration statement after January 1, 2017 (March 1, 2017), it will have been subject to the requirements of Sections 13(a) or 15(d) of the Exchange Act for a period of at least twelve calendar months (March 1, 2017 to March 1, 2018), and it will have filed at least one annual report pursuant to Sections 13(a) or 15(d) of the Exchange Act (for fiscal year 2017).

some commenters' recommendation that new registrants not be required to provide any pay ratio disclosure until they complete their first full fiscal year as a public company.[438]

Additionally, as proposed, the final rule does not require the pay ratio to be disclosed in a registration statement on Form S–1 or Form S–11 for an initial public offering or an initial registration statement on Form 10. Also, new registrants are permitted to omit their pay ratio disclosure from their filings until after the later of (i) their first full fiscal year beginning on the date they first become subject to the requirements of Section 13(a) or 15(d) of the Exchange Act and (ii) January 1, 2017. All commenters that discussed the topic agreed that new registrants should not be required to provide pay ratio disclosure in their initial registration statements on Form S–1, Form S–11, or Form 10.[439]

We noted in the Proposing Release that shareholders might benefit from pay ratio disclosure in connection with an initial public offering or Exchange Act registration. Even so, we continue to believe that it is appropriate to give companies time to develop any needed systems to compile the disclosure and verify its accuracy. This is particularly so since we believe the primary purpose of the pay ratio disclosure is to provide a useful data point for shareholders in making their voting decisions on executive compensation, including their say-on-pay votes, which is unlikely to occur for those registrants until at least a year after the initial public offering has occurred. The transition period for new registrants is similar to the time frame provided for other registrants to comply with pay ratio disclosure requirements following the effective date of the final rule.

As we stated in the Proposing Release, we are sensitive to the impact that a rule could have on capital formation. Section 953(b), as amended by the JOBS Act, distinguished between certain newly public companies and all other registrants by providing an exemption for emerging growth companies. We note further that, without a transition period, the incremental time needed to compile pay ratio disclosure could cause companies that are not emerging growth companies to delay an initial public offering, which could have a negative impact on capital formation. In this regard, we assume that companies that are no longer eligible for emerging growth company status are likely to be businesses with more extensive operations or a greater number of employees, which could increase the initial efforts needed to comply with the proposed requirements. We continue to believe that providing a transition period for these newly public companies could mitigate this potential impact on capital formation and will not significantly affect shareholders' ability to assess the compensation and accountability of a registrant's executives.

e. Additional Transition Periods

i. Proposed Rule

We did not propose a transition period for registrants that cease to be smaller reporting companies or emerging growth companies or engage in business combinations and/or acquisitions. We did, however, request comment on whether there should be such transition periods and the appropriate length of time for any such transition period.

ii. Comments on the Proposed Rule

One commenter recommended a transition period for registrants that cease to be smaller reporting companies.[440] The commenter recommended that those registrants not be required to provide their pay ratio disclosure until the first full fiscal year commencing on or after the first anniversary of the end of the fiscal year in which the registrant is no longer a smaller reporting company.

Several commenters supported generally a transition period for registrants that engage in a business combination and/or an acquisition to delay including any new employees acquired in the transaction in the acquirer's pay ratio.[441] Other commenters suggested specific transition periods for such registrants, including: six months after the end of the fiscal year in which the transaction closes;[442] six or more months after the transaction;[443] one full fiscal year following the transaction;[444] the fiscal year beginning 18 months after closing of the transaction;[445] and three years after the transaction.[446]

iii. Final Rule

In response to comments, the final rule provides that a registrant that ceases to be a smaller reporting company or an emerging growth company will not be required to provide pay ratio disclosure until after the first full fiscal year after exiting such status and not for any fiscal year commencing before January 1, 2017. For example, if a calendar year-end smaller reporting company registrant's public float exceeds $75 million as of the end of its second fiscal quarter in 2017, the registrant will cease to be a smaller reporting company as of the beginning of its fiscal year starting on January 1, 2018.[447] The registrant, therefore, must include its pay ratio disclosure in its Form 10–K for 2018 or a proxy or information statement for its 2019 annual meeting of shareholders (or written consents in lieu of a meeting) following the end of the 2018 fiscal year, but not later than 120 days after the end of the 2018 fiscal year. We believe that this approach is appropriate because, as commenters noted, smaller reporting companies ''will encounter the same challenges in preparing to comply with the pay ratio disclosure requirement as registrants generally and, therefore, will need time to determine how they will collect the data necessary to identify their median employee and prepare the necessary disclosure,'' but, ''as relatively small entities, these registrants are not likely to need as much time as 'regular' (larger) registrants to transition to compliance with the pay ratio disclosure requirement.'' [448] This new transition period is consistent with the one comment we received on this issue, and we believe it will provide sufficient time for these registrants to prepare their disclosure.

Similarly, in 2017, if a calendar year-end emerging growth company had total annual gross revenues of $1 billion or more, exceeded the $1 billion threshold in non-convertible debt for the previous 3-year period, has reached the fifth anniversary of the date of the first sale of its common equity securities pursuant to an effective registration statement under the Securities Act, had not issued $1 billion in non-convertible debt during the previous 3-year period, or is deemed to be a ''large accelerated filer,'' the registrant will cease to be an emerging growth company at the beginning of its fiscal year starting on January 1, 2018.[449] The registrant,

[438] *See, e.g.,* letters from ABA and Hyster-Yale.

[439] *See, e.g.,* letters from ABA, CalPERS, CII, Corporate Secretaries, Hyster-Yale, NACCO and PM&P.

[440] *See* letter from ABA.

[441] *See, e.g.,* letters from Eaton, Hyster-Yale, NAM I, NAM II, and PM&P.

[442] *See* letter from Brian Foley & Co.

[443] *See id.* (providing an alternative to initial recommendation of six months after the end of the fiscal year in which the transaction closes).

[444] *See, e.g.,* letters from ABA, Business Roundtable I, Chesapeake Utilities, Frederic W. Cook & Co., NACCO, and NYC Bar.

[445] *See* letter from Microsoft.

[446] *See* letter from Cummins Inc.

[447] *See* 17 CFR 229.10(f)(1).

[448] *See* letter from ABA.

[449] 17 CFR 229.10(a).

therefore, will be required to include pay ratio disclosure in its Form 10–K for 2018 or a proxy or information statement for its 2019 annual meeting of shareholders (or written consents in lieu of a meeting) following the end of the 2018 fiscal year, but not later than 120 days after the end of the 2018 fiscal year.

We have decided to adopt this provision because it is consistent with a commenter's similar recommendation for a transition period when a registrant ceases to be a smaller reporting company. The reasoning for the approach for both types of registrants is similar in that emerging growth companies will need time to determine how they will collect the data necessary to identify their median employee and prepare the necessary disclosure.

The final rule also permits a registrant that engages in a business combination and/or an acquisition to omit the employees of a newly-acquired entity from their pay ratio calculation for the fiscal year in which the business combination or acquisition becomes effective. For example, for a calendar year-end registrant that engages in a business combination and/or acquisition in 2017, the registrant's first period for which it will have to include the newly-acquired employees in the pay ratio disclosure would be fiscal year 2018, with the disclosure included in its Form 10–K for 2018 or a proxy or information statement for their next annual meeting of shareholders (or written consents in lieu of a meeting) following the end of the 2018 fiscal year, but not later than 120 days after the end of such fiscal year.

A number of commenters recommended a transition period for such registrants. Suggestions for the length of the transition period ranged from six months [450] to three years.[451] The transition period being adopted is generally consistent with commenters' suggestions that the disclosure not be required until one full fiscal year after the transaction. We also believe that the final rule's approach will allow a registrant sufficient time to incorporate the payroll, compensation, and/or recordkeeping structures of the newly-acquired entity into the registrant's pay ratio disclosure framework.

Finally, under the provision in the final rule for triennial calculations of median employee compensation discussed above, in the year of the acquisition or business combination, the registrant need not evaluate whether the acquisition or business combination would result in a substantial change to its pay ratio disclosure that would necessitate the re-identification of the median employee. Rather, consistent with the one year transition for incorporating the new employees in the pay ratio disclosure, the first time the registrant must evaluate whether the business combination or acquisition would result in a substantial change to its pay ratio disclosure that would necessitate a re-identification of the median employee is in the fiscal year following the acquisition or business combination. We believe this will provide registrants sufficient time to integrate the new business or acquisition. Nevertheless, those registrants must identify the acquired business excluded and the approximate number of employees for the fiscal year in which the business combination or an acquisition becomes effective to provide transparency about what the pay ratio disclosure does and does not include.

III. Economic Analysis

A. Background

We have performed an economic analysis of the main economic effects that may result from the final rule, relative to the baseline discussed below. Section 2(b) of the Securities Act and Section 3(f) of the Exchange Act require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, also to consider whether the action will promote efficiency, competition, and capital formation.[452] Further, Section 23(a)(2) of the Exchange Act requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule will have on competition and to not adopt any rule that would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.[453]

As discussed above, Section 953(b) of the Dodd-Frank Act directs us to amend Item 402 of Regulation S–K to add a pay ratio disclosure requirement. Section 953(b) imposes a new requirement on registrants to disclose the median of the annual total compensation of all employees and the ratio of that median to the annual total compensation of the CEO. In doing so, Section 953(b) requires registrants to determine total compensation in accordance with Item 402(c)(2)(x). Our rules for compensation disclosure generally focus on compensation matters that relate to executive officers and directors. While registrants subject to Item 402 are required to provide extensive information about the compensation of the PEO and other named executive officers identified pursuant to Item 402(a), current disclosure rules do not require registrants to disclose compensation information for other employees in their filings with us.

As directed by Congress, we proposed amendments to Item 402 to require the disclosure of the annual total compensation of a registrant's PEO, the median annual total compensation of all employees of that registrant (excluding the PEO), and the ratio of the median annual total compensation of all employees to the annual total compensation of the PEO. We considered the statutory language and exercised our discretion to develop a proposal designed to lower compliance costs while remaining consistent with the mandate of Section 953(b). In particular, among other things, we proposed a rule that would permit registrants to use reasonable estimates to identify the median employee, including by using statistical sampling, and a consistently applied compensation measure (such as payroll or tax records). The proposed rule would also allow the use of reasonable estimates in calculating the annual total compensation or any elements of total compensation for employees. The proposed flexible approach was aimed at decreasing compliance costs while taking into consideration a registrant's particular facts and circumstances. We received thousands of comment letters in response to the proposal.

To satisfy the statutory mandate of Section 953(b), we are adopting amendments to Item 402 substantially as proposed, with modifications intended to address some of the concerns raised by commenters and provide further flexibility in the determination of the pay ratio. We believe the primary benefit that Congress intended with pay ratio disclosure is to provide shareholders with a company-specific metric that they can use to inform their voting decisions regarding executive compensation under Section 951 of the Dodd-Frank Act. Several commenters stated affirmatively that they would find the new data points, including pay ratio disclosure, relevant and useful when

[450] *See* letter from Brian Foley & Co. (suggesting that the final rule allow registrants conducting a merger/acquisition transaction to delay reporting ''until at least 6 months after the end of the fiscal year in which the M&A transaction closes, or 6 or more months after the closing date'').

[451] *See* letter from Cummins Inc.

[452] *See* 15 U.S.C. 77b(b) and15 U.S.C. 78c(f).

[453] *See* 15 U.S.C. 78w(a)(2).

making voting decisions.[454] As discussed above, while neither the statute nor the related legislative history directly states the objectives or intended benefits of the provision, we believe, based on our analysis of the statute and comments received, that Section 953(b) was intended to provide shareholders with a company-specific metric that can assist in their evaluation of a registrant's executive compensation practices.

We are sensitive to the costs and benefits that stem from the final rule. Some of the costs and benefits stem directly from the statutory mandate in Section 953(b), while others are affected by the discretion we exercise in implementing that mandate. Our economic analysis of the final rule addresses both the costs and benefits that stem directly from the mandate of Section 953(b) and those arising from the policy choices made using our discretion, recognizing that it may be difficult to separate the discretionary aspects of the rule from those elements required by statute.

In the economic analysis that follows, we first examine the current regulatory and economic landscape to form a baseline for our analysis. We then analyze the likely economic effects—including benefits and costs and impact on efficiency, competition, and capital formation—arising from the new mandatory disclosure requirement prescribed by the Dodd-Frank Act and from the choices we have made in exercising our discretion, relative to the baseline discussed below.

B. Baseline

To assess the economic impact of the final rule, we are using as our baseline the current state of the market without a requirement for registrants to disclose pay ratio information. At present, registrants that are required to comply with Item 402(c) of Regulation S–K provide disclosure of their PEO's compensation as Section 953(b) requires. Other registrants, such as emerging growth companies, smaller reporting companies, foreign private issuers, and MJDS filers, are not required to comply with Item 402(c).[455] We do not expect that many registrants, if any, currently maintain payroll and information systems that track total compensation as determined pursuant to Item 402 for all their employees, or make that information publicly available. Some registrants have reported ratios of CEO compensation to employee pay.[456] We note, however, that the voluntarily reported information is different from the elements covered by Item 402(c)(2)(x), and therefore is not identical to what would be required under the final rule.

Currently, shareholders cannot calculate registrant-specific median employee compensation or the ratio of the PEO compensation to median employee compensation because there are no existing publicly available sources for this data. In the absence of such data, researchers have approximated the ratio using other available data, such as average employee pay.[457] Statistics on the median earnings of U.S. workers in various ''industries'' are publicly available from the BLS,[458] enabling shareholders to approximate the ratio using the industry median employee compensation and the information about PEO compensation for those registrants subject to Item 402(c).[459] The distribution of the ratios of CEO to industry median employee compensation for a sample of large reporting companies is reported by NAICS industry sectors in the figure below for fiscal year 2013.[460] Using this data, it is possible, for example, to determine that, for the median manufacturing firm with available data, CEO pay was approximately 105 times industry median employee pay. The 25th–75th percentile range for manufacturing firms was approximately 51–195.

[454] *See, e.g.,* letters from AFL–CIO I, AFSCME, Amalgamated, Bricklayers International, CalSTRS, Calvert, Chevy Chase Trust, CorpGov.net, Form Letter C, Form Letter D, Form Letter E, Form Letter F, LIUNA, LAPFF, NY State Comptroller, Pax World Funds, Public Citizen I, Rep. Ellison *et al.* I, Rep. Ellison *et al.* II, Trillium I, Trillium II, UAW Trust, and US SIF.

[455] These registrants are required to provide disclosure of executive compensation, but the disclosure requirements for these registrants do not fall under Item 402(c)(2)(x).

[456] For example, Noble Energy Inc. voluntarily disclosed that ''our Chairman and CEO's total annual direct compensation was approximately 85 times that of the median annual total direct compensation of all of our other employees'' in their 2014 proxy filing and disclosed a pay ratio in their 2015 proxy filing. MBIA Inc. provided voluntary disclosure about average and median salary and bonus for all employees other than the NEOs, and compared them to the CEO's salary and bonus in its 2011 and 2012 proxy filings. NorthWestern Corp. disclosed in its 2011 proxy filing that its CEO compensation (salary, annual incentive and long-term incentive) was ''18 times the median pay of all our employees'' and disclosed a pay ratio of 19–24 in its 2012–2015 proxy filings. Whole Foods Market Inc. disclosed in its filings a ''salary cap'' on executive cash compensation based on a multiple of the employee ''average annual wage''. Other examples of registrants that disclosed a pay ratio or median employee pay in its proxy filings include Advanced Environmental Recycling Technologies Inc., First Real Estate Investment Trust of New Jersey, Inter Parfums Inc., Itex Corporation, and Penn Virginia Corp. *See also* Simpson Thacher survey of pay ratio disclosures, available at *http://www.compensationstandards.com/member/memos/firms/Simpson/03_15_ratio.pdf*. We note that the pay ratio in these voluntary disclosures may differ from the pay ratio required to be disclosed in the final rule. In addition, registrants that currently disclose pay ratio are not necessarily the same registrants subject to the final rule.

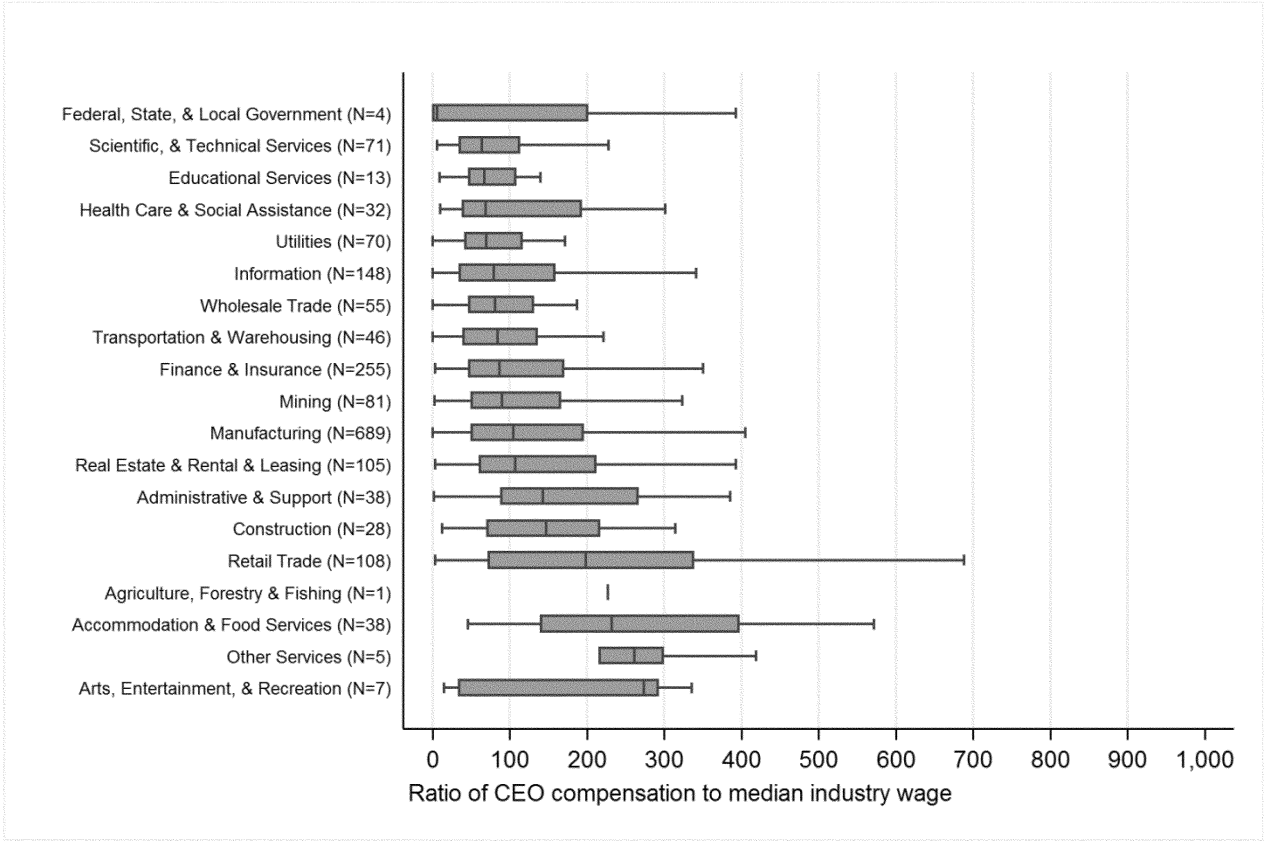
[457] In a working paper entitled ''The CEO-Employee Pay Ratio,'' Dr. Steven Crawford finds that during the 1995–2012 period the ratio of CEO compensation to the average employee pay at U.S. commercial banks was on average 16.6 (with a median of 8.4). *See* ''The CEO-Employee Pay Ratio'' available at *http://ssrn.com/abstract=2529112*.

[458] *See* BLS Occupational Employment Statistics available at *http://www.bls.gov/oes/*.

[459] *See* letter from Prof. Angel (''CEO compensation is already disclosed for public, but not private companies. The only new information is the pay of the median employee. However, there is already pretty good information about median compensation in various industries. For example, a few seconds of Googling leads to *http://www.bls.gov/oes/current/oessrci.htm*.'').

[460] The ratios in the figure are calculated for each registrant with executive compensation data from the Standard and Poor's Compustat Executive Compensation database which tracks compensation for the companies currently or previously in the S&P 1500 index and industry median employee wage information at each 3-digit NAICS level from the BLS as of May 2014. The data in the Compustat Executive Compensation database is for fiscal year 2013, which is the most recent fiscal year with complete coverage at the time of this analysis. The distribution of the registrant-level ratios within each NAICS industry sector (2-digit) is represented using horizontal box plots that show the minimum and maximum, and 25th, 50th (median), and 75th percentiles.

Figure 1. Distribution of the ratio of CEO compensation to median industry wage



We caution that any pay ratio estimate that can be made with currently available information would be different from the ratio required under the final rule. The above example uses the BLS median wage information of U.S. workers within the same 3-digit NAICS industries, while the final rule mandates registrants to use registrant-specific information about median employee compensation for ''all employees,'' including employees in workplaces outside the U.S., subject to certain exemptions. Also, the example is based on only wages and does not consider other forms of compensation for employees other than PEOs because the BLS does not report those components for detailed industry definitions. In contrast, the final rule requires registrants to present the ratio using ''total compensation,'' which includes all forms of compensation in Item 402(c)(2)(x). Thus, while existing public data may permit shareholders to estimate median pay ratios across industry sectors, it does not allow for the particularized, registrant-specific assessment that, in our view, Section 953(b) was intended to facilitate.

To assess the economic effects of the final rule, we consider its impact on shareholders, registrants subject to the pay ratio disclosure, and all registrants' employees, including executive officers. We estimate that the final rule applies to approximately 3,571 registrants.[461]

Important potential determinants of the economic effects of the pay ratio disclosure requirements on the affected registrants are the differences in size, nature, and location of the workforce; complexity of the organization; and the degree of integration of payroll systems that are likely to exist among these registrants. In particular, the number of business and/or geographic segments within a particular registrant can significantly affect the compliance costs associated with the final rule. The registrants that operate in different geographic and business segments will likely have a less homogeneous workforce and are also less likely to maintain a single centralized payroll system.[462] The average number of geographic and business segments and employees per each segment disclosed by some of the potentially affected

[461] Based on a review of EDGAR filings in calendar year 2014, we estimate that there were approximately 7,619 annual reports on Form 10–K filed in that year with available Xtensible Business Reporting Language (XBRL) data tags (available at *http://www.sec.gov/dera/data/financial-statement-data-sets.html*). From this number we subtracted the annual reports filed by approximately 678 emerging growth companies (EGCs), 2,958 smaller reporting companies (SRCs), and 412 ABS issuers. These ABS issuers typically omit executive compensation disclosures in accordance with General Instruction J to Form 10–K. To the extent that the number of EGCs is growing each year, we might be underestimating the number of registered EGCs because we look only at registrants that file an annual report on Form 10–K. Registrants can fall into multiple categories among emerging growth companies, smaller reporting companies, and foreign private issuers. For example, 371 smaller reporting companies self-identified also as emerging growth companies. Therefore, we did not include these 371 registrants in the 2,958 smaller reporting companies that we subtracted from the 7,619 registrants that file annual reports on Form 10–K because they were already included as emerging growth companies. Foreign private issuers and MJDS filers that file annual reports on Form 20–F and Form 40–F, respectively, are not required to provide Item 402 information. They are therefore not included in the 3,571 affected registrants estimated above.

[462] *See* letter from Chamber II (reporting that 39 companies that conduct operations in more than 50 countries with an average of 90 different ''employee data systems'' worldwide would have average estimated labor costs of $311,800 for first year compliance. In contrast, 37 companies that operate in fewer than 10 countries with an average of 4.2 employee data systems would have average estimated labor costs of $67,200 for first year compliance (according to the 25 firms that provided this data)).

registrants in the calendar year 2014 are reported in the table below.[463]

TABLE 1—CHARACTERISTICS OF REGISTRANTS WITH SEGMENTS DATA

	Average	Min	Median	Max	Number of registrants
Total Assets ($ millions)	13,250	1	1,840	3,248,176	2,681
Number of Employees per Registrant	15,453	0	2,978	537,000	1,575
Number of Geographic Segments	3.11	1	2	31	2,263
Geographic Segment Assets ($ millions)	11,892	3.1	1,512	3,248,176	1,037
Number of Employees per Geographic Segment	8,742	0	1,522	1,100,000	1,210
Number of Business Segments	2.45	1	1	11	2,444
Business Segment Assets ($ millions)	4,614	1	811	812,044	2,171
Number of Employees per Business Segment	7,849	0	1,022	420,000	1,429

Table 1 shows that, in 2014, potentially affected registrants had an average of three geographic segments and two business segments. Also, the average number of employees was approximately 8,700 per geographic segment and 7,800 per business segment. We do not have complete information on how the registrants maintain their payroll systems across multiple geographic and business segments, but we believe that, because it is probable that registrants with multiple geographic and business segments will have multiple payroll systems and therefore lack easily accessible employee-level data on compensation, the number of such segments serves as an indication of the complexity and costs of trying to comply with the final rule (whether by sampling at each segment and aggregating the samples across the segments or by aggregating the payroll observations and sampling from the aggregated pool). The estimated costs associated with compliance for registrants with multiple geographic and business segments employing multiple payroll systems are discussed below.

One commenter asserted that the pay ratio disclosure may affect PEO compensation.[464] If the pay ratio disclosure were to significantly affect PEO compensation, the rule may have adverse effects on registrants' ability to attract and retain PEOs focused on such compensation. We note that there may be other factors affecting the ability of a registrant to attract and retain executive talent, such as the general structure and conditions of the labor market for executives. However, we do not have enough information to assess the effect of the new rule on PEO compensation or on the level of competition in the labor market for PEOs.

Relative to the baseline discussed above, the economic analysis that follows focuses initially on the likely economic effects—including benefits and costs and impact on efficiency, competition, and capital formation—arising from the new mandatory disclosure requirement prescribed by the Dodd-Frank Act, and it then focuses on those that arise from the choices we have made in exercising our discretion.[465]

C. Economic Effects From Mandated Disclosure Requirements

1. Benefits

The following discussion is mainly intended to address benefits of the mandated disclosure to shareholders and shareholders of the registrants that are subject to the disclosure requirements mandated by Section 953(b).

Although Congress neither expressly identified in Section 953(b) a specific market failure intended to be addressed by the new disclosure requirement nor expressly stated the specific objectives and intended benefits of Section 953(b), we nonetheless believe that the context in which the provision appears provides useful evidence of Congress' purpose in enacting the provision. As discussed above, we believe that Congress intended Section 953(b) to enhance the executive compensation information available to shareholders. Particularly, Section 953(b) provides new data points that shareholders may find relevant and useful when exercising their voting rights under Section 951. We believe, therefore, that Section 953(b) should be interpreted consonant with Subtitle E's general purpose of further facilitating shareholder engagement in executive compensation decisions. A significant consideration for us in fashioning a final rule implementing Section 953(b), then, is the extent to which elements of the final rule further Congress' apparent goal of giving shareholders additional executive compensation information to use as part of the shareholder engagement envisioned by Section 951.

Moreover, as discussed earlier, a number of commenters stated that they would find the pay ratio disclosure relevant when making voting decisions.[466] We acknowledge the views of these commenters and regard the informational benefit of facilitating shareholder engagement in executive compensation decisions as potentially a significant new benefit to shareholders when they exercise their say-on-pay voting rights. We note that registrants have not historically been required to provide shareholders with access to information that would allow them to

[463] The corporate segments data used in the table come from the Standard and Poor's Compustat Segments database for companies with a business or geographic segment listed under ''segment type''. Segment information is self-reported by companies. As such, it is not based on standardized definitions of lines-of-business and geographic areas. The database provides some geographic segment information for approximately 63% of the potentially affected registrants and some business segment information for approximately 68% of the potentially affected registrants.

[464] *See* letter from Lou (''In spite of the fact that the pay ratio does not necessarily lead to CEO pay cuts, some companies may decrease executive pay if the number is too embarrassing. But this productivity-unrelated deduction can artificially depress the U.S. CEO market and IPOs.'').

[465] Although we have divided our discussion of the economic effects of the rule between mandatory and discretionary features, we do not mean to imply that Congress unambiguously compelled us to adopt all of the items discussed under the mandatory requirements discussion. Specifically, we recognize that we retain exemptive authority and interpretive authority over many aspects of the rule, including many of those that we discuss within the mandatory requirements section. Generally speaking, we have chosen to classify items as mandatory because, in our view, these particular items appear to us to be consistent with the Congressional intent underlying Section 953(b).

[466] *See, e.g.,* letters from AFL–CIO I, AFSCME, Amalgamated, Bricklayers International, CalSTRS, Calvert, Chevy Chase Trust, CorpGov.net, Form Letter C, Form Letter D, Form Letter E, Form Letter F, LAPFF, LIUNA, NY State Comptroller, Pax World Funds, Public Citizen I, Rep. Ellison *et al.* I, Rep. Ellison *et al.* II, Trillium I, Trillium II, UAW Trust, and US SIF.

assess the level of a PEO's compensation as it compares to employees at the same registrant and, as a result, shareholders generally have not been provided such information.

While we believe that the pay ratio disclosure may provide an informational benefit to shareholders in their say-on-pay voting, we are unable to quantify this benefit. This is so for a number of reasons. First, the primary benefit that results from the pay ratio disclosure is not directly tied to an immediate economic transaction, such as the purchase or sale of a security, which makes it difficult for us to quantify in monetary terms the likely benefit to shareholders of this information. Second, the pay ratio disclosure is but one data point among many considerations that shareholders might find relevant when exercising their say-on-pay votes, which also makes it difficult for us to quantify the precise benefit that shareholders may experience. Third, even in situations where the pay ratio may be a significant or dispositive consideration for shareholders, because the say-on-pay vote is advisory and not binding, it is difficult for us to link the disclosure with certainty to a potential change in PEO compensation and even more speculative for us to link the disclosure to an economic outcome at a registrant. Further, we note that no commenter provided us with data that would allow us to quantify the potential benefits nor did any commenter suggest a source of data or a methodology that we could look to in quantifying the rule's potential benefits.

We also think it is important to observe that, despite our inability to quantify the benefits, Congress has directed us to promulgate this disclosure rule. Thus, we believe it reasonable to rely on Congress's determination that the rule will produce benefits for shareholders and that its costs (which we discuss further below) are necessary and appropriate in furthering shareholders' ability to meaningfully exercise their say-on-pay voting rights. Because Congress expressly directed us to undertake this rulemaking, we do not believe it would be appropriate to second-guess its apparent conclusion that the benefits from this rule justify its adoption. In any event, as noted above, we concur with Congress's judgment that the pay ratio disclosure could be beneficial for shareholders.

Commenters also suggested that pay ratio disclosure can be a valuable tool in evaluating PEO compensation practices in general.[467] Among other uses of the pay ratio information, some commenters suggested that comparing the total compensation of the median employee and PEO would assist investors in their ability to evaluate the PEO's compensation in the context of the registrant's overall business,[468] and could provide insight into the effectiveness of board oversight and sound board governance.[469] Other commenters noted that they incorporate social and governance issues, like pay equity, as part of their investment decisions.[470]

As noted above, we recognize that there are significant limitations to using the pay ratio information for comparative purposes in light of the various factors that could affect employee compensation at a particular registrant and the flexibility we are providing. We believe that the informational benefit to shareholders from the final rule is in providing information about a particular registrant's executive compensation.

In addition to its utility in assessing PEO compensation practices, commenters identified a number of ancillary benefits that may arise from the required pay ratio disclosure. Some commenters suggested that the new disclosure could offset an upward bias in executive compensation resulting from the practice of benchmarking executive pay solely against the compensation of other executives to the extent that current benchmarking practices are inefficient.[471] Other commenters suggested that a comparison of PEO compensation to employee compensation could be used by shareholders to approximate employee morale and/or productivity[472] or analyzed as a measure of a particular registrant's approach to managing human capital.[473] One commenter cited his own research showing that large pay disparities within a corporation contribute to an unethical culture within the corporation.[474] Finally, some commenters asserted that the registrant-specific information about the median employee compensation may be used to address a broader public policy concern relating to income inequality and income mobility, which they suggest is exacerbated by increasingly high levels of PEO compensation relative to other workers.[475]

With respect to employee morale and productivity, commenters did not specify what effect a pay ratio disclosure would have on these conditions relative to other environment-specific and registrant-specific factors. In particular, the pay ratio disclosure may be significantly dependent on how a registrant structures its business. For example, one registrant might outsource the labor-related (manufacturing) aspects of its business to a third party to focus on product innovation, while another registrant competing in the same industry might choose to retain the labor aspect of its business. To the extent that product innovation requires higher pay than manufacturing, the outsourcing company will have a lower pay ratio for the same PEO pay. Therefore, the potential value of this disclosure for assessing issues related to employee morale, productivity, and investment in human capital may be

[467] *See, e.g.,* letters from Alexander, Bricklayers International, CalSTRS, Calvert, Chicago Teachers Fund, First Affirmative, Grossman, Grosvenor Capital, ICCR, IL Bricklayers and Craftworkers Union, Cummings Foundation, LaBruyere, Linton, Marco Consulting, NEI Investments (Dec. 2, 2013) (''NEI Investments I''), NEI Investments (Feb. 28, 2014) (''NEI Investments II''), Novara Tesija, NY Bricklayers and Craftworkers Union, NY State Comptroller, Oxfam, Pax World Funds, Public Citizen I, RPMI, Taylor, Tortora, US SIF, and Walden.

[468] *See, e.g.,* letter from UAW Retiree Medical Benefits Trust (Apr. 15, 2011) (''UAW Trust pre-proposal'') (''Disclosure of internal pay equity, whether the ratio between median employee wages and those of the CEO or the ratio between compensation awarded to the CEO and to other top executives, will ultimately help investors evaluate executive pay practices by better contextualizing the information provided to the shareholders through the proxy statement and other corporate filings.'').

[469] *See, e.g.,* letters from Allied Value, LLC (''Allied Value''); Kranen; Lynne L. Dallas, Professor of Law, University of San Diego (Dec. 1, 2013) (''Prof. Dallas''); UAW Trust pre-proposal (noting ''we view Section 953(b) as an essential tool that will increase corporate board accountability to investors''); and WA State Investment Board.

[470] *See, e.g.,* letters from AFR, CT State Treasurer, Cummings Foundation, and Form Letter B (''I support Dodd-Frank rule 953(b), which strikes me as being all about the intersection of pay equity and investor value.'').

[471] *See, e.g.,* letters from AFR, Cummings Foundation, LIUNA, PGGM, and RPMI.

[472] *See, e.g.,* letters from AFL–CIO I, AFR, AFSCME, Alexander, Allied Value, Bâtirente *et al.,* CalSTRS, Calvert, Cummings Foundation, CUPE, Demos I, Domini, Professors Charles M. Elson and Craig K. Ferrere (Dec. 2, 2013) (''Profs. Elson and Ferrere''), Estep, Form Letter A, FS FTQ, Daniel Greenwood (Oct. 26, 2013) (''Greenwood''), Grossman, IPS, LaBruyere, Linton, McMorgan Co., Mudd, NY State Comptroller, Overcott, Pax World Funds, Public Citizen I, Rosati, SEIU, Socially Responsive Financial Advisors, Somers, Taylor, Teamsters, Tortora, Trillium I, Trillium II, Trustee Campbell, US SIF, and Walden.

[473] *See, e.g.,* letters from Bricklayers International, Demos (May 30, 2014) (''Demos II''), FS FTQ, MVC Associates, Quintave, OCP, Rep. Ellison *et al.* I, and UAW Trust.

[474] *See* letter from Prof. Dallas.

[475] *See* letters from Rep. Ellison *et al.* I; Rep. Ellison *et al.* II; and Dr. Sue Ravenscroft, Professor of Accounting, Iowa State University (Jun. 18, 2014) (''Prof. Ravenscroft II'').

diminished by the variation in business structures.

Some commenters suggested that the pay ratio disclosure would promote capital formation.[476] The main rationale given for this effect is that the new disclosure would help shareholders understand the assets of the firms they invest in or that it will let shareholders choose registrants that invest in their workforce.[477] On the other hand, some commenters asserted that the rule would discourage capital formation because it would discourage firms from accessing the U.S. capital markets.[478] We note that the final rule does not apply to emerging growth companies, which conduct the bulk of initial public offerings.[479] While the pay ratio disclosure could be costly, it is not clear whether it would significantly affect a registrant's ongoing capital raising activity.

Overall, while certain shareholders may use the pay ratio for their investment decisions, it is unclear whether the final rule would impact the capital formation of U.S. capital markets in a significant way. As discussed above, shareholders may be able to approximate the industry level pay ratio using industry employee compensation data from BLS and the information about PEO compensation for registrants subject to Item 402(c). In this regard, adding the pay ratio statistic to the mix of reported financial and operational data may not change the investment decision of investors who access this data. On the other hand, the pay ratio disclosure is company-specific, which adds information not otherwise available to investors.

In contrast to commenters supporting the required disclosure, some commenters stated that the disclosure mandated by Section 953(b) would not have any benefit, or would not have benefits sufficient to justify the compliance costs, which many of those commenters anticipate would be substantial.[480] Some of the commenters questioned the materiality of pay ratio information to an investment decision.[481] This view was also asserted by the minority in the Senate report accompanying the legislation.[482]

While we acknowledge these concerns about the usefulness or materiality of the mandated disclosure, we note that other commenters asserted that certain shareholders incorporate social and governance issues, like pay equity, as part of their decision making.[483] These shareholders may realize non-economic benefits associated with their decision making based on this type of information. These commenters, however, did not quantify the extent to which shareholders would value pay ratio information or would incorporate the disclosure required by Section 953(b) into their investment or voting decision, if at all. Academic research suggests that the stock market does not fully incorporate employee satisfaction into stock prices.[484] As mentioned above, because company-specific pay ratio information is not currently reported, it is not possible to assess the usefulness to shareholders of this information as required by Section 953(b) relative to the usefulness of publicly available statistics of median compensation, or the usefulness of any other company-specific metric of employee compensation or satisfaction.

Some commenters were particularly concerned that the comparisons of pay ratios across registrants may be inappropriate to the extent that registrants employ workers in different countries that have unique compensation practices,[485] use different methodologies to calculate the median employee,[486] employ workers with different skill levels,[487] and have different corporate structures.[488] As noted above, we believe that the purpose of the pay ratio disclosure is to provide shareholders of a registrant with new data points that they may find relevant and useful when exercising their voting rights under Section 951. As we noted in the Proposing Release, we believe that a variety of factors can potentially limit the comparability of the pay ratio across registrants. We also acknowledge that the final rule we are adopting allows for significant flexibility in determining the pay ratio to address concerns raised by a number of commenters about the potential costs of the pay ratio disclosure. One result of allowing for this flexibility, however, is that the comparability of the pay ratio from registrant to registrant may be further diminished. We recognize this consequence but believe it is justified in light of the cost savings that such flexibility will provide and because we do not regard precise comparability as the primary objective of the final rule.

2. Costs

a. General

The following discussion is mainly intended to address costs to registrants that are subject to the pay ratio disclosure. The analysis of costs focuses on direct compliance costs on registrants.

As discussed above, the final rule permits registrants to choose from several options to identify the median employee. First, registrants can choose to use Item 402(c)(2)(x) to calculate the annual total compensation for each employee and then identify the median employee. Second, registrants can choose a statistical method that is appropriate to the size and structure of their own businesses and the way in which they compensate employees to identify the median employee, and then use Item 402(c)(2)(x) to calculate the median employee's compensation. Third, registrants can use a consistently applied compensation measure, whether with respect to the entire employee population or in conjunction with

[476] *See, e.g.,* letters from Alexander, Capital Strategies, Change to Win (Nov. 25, 2013) (''Change to Win''), CUPE, Greenwood, Grossman, LaBruyere, Mudd, Overcott, Prof. Ravenscroft I, Taylor, and Tortora.

[477] *See, e.g.,* letters from Alexander, Greenwood, Grossman, LaBruyere, Mudd, Overcott, Taylor, and Tortora.

[478] *See, e.g.,* letters from Prof. Angel, COEC I, Lou, and NIRI.

[479] M. Dambra, L. Field and M. Gustafson, *The JOBS Act and IPO Volume: Evidence that Disclosure Costs Affect the IPO Decision*, J. OF FINANCIAL ECONOMICS. (2014) (documenting that 88% of the U.S. IPOs filed in the 4/1/12–3/31/14 period are eligible for the EGC revenue threshold).

[480] *See, e.g.,* letters from AAFA I, American Benefits Council, ASA, Brian Foley & Co. Chamber I, Chamber II, NIRI, Tesoro Corp., WorldatWork I, and WorldatWork II.

[481] *See, e.g.,* American Benefits Council, ExxonMobil, Prof. Muth, and RILA. Another commenter noted that pay ratio disclosure that includes all employees and is based on a large, global, full- and part-time pool of employees will not be meaningful without substantial explanation. *See* letter from WorldatWork II.

[482] *See* S. Rep. No. 111–176 (2010) (''Although provisions like this appeal to popular notions that chief executive officer salaries are too high, they do not provide material information to investors who are trying to make a reasoned assessment of how executive compensation levels are set. Existing SEC disclosures already do this.'').

[483] *See, e.g.,* letters from AFR and Form Letter B.

[484] Existing research has studied whether there is a correlation between information about employee satisfaction and long-term equity returns in an effort to understand how the market values a public company's intangible assets. This research uses different information than what is provided in the pay ratio disclosure. This research was based on the equity prices of companies that were identified on Fortune Magazine's list of the ''100 Best Companies to Work For in America.'' *See* A. Edmans, *Does the stock market fully value intangibles? Employee satisfaction and equity prices*, J. OF FINANCIAL ECONOMICS 101, 621–640 (2011) (finding evidence implying that the market fails to incorporate intangible assets, like employee satisfaction, fully into stock valuations until the intangible subsequently manifests in tangibles, such as earnings, that are valued by the market, and finding evidence suggesting that the non-incorporation of intangibles into stock prices is not simply due to the lack of salient information about them).

[485] *See, e.g.,* letters from Avery Dennison, BCIMC, and COEC I.

[486] *See* letter from BCIMC.

[487] *See* letter from COEC I.

[488] *See* letters from Prof. Angel, COEC I, and Tesoro Corp.

statistical sampling, to identify the median employee, and then calculate and disclose that median employee's total compensation in accordance with Item 402(c)(2)(x).

In addition to providing flexibility in identifying the median employee's compensation, the final rule allows flexibility in several other respects. Registrants may:

- Use reasonable estimates when applying Item 402(c)(2)(x) to calculate the annual total compensation for employees other than the PEO, including when disclosing the annual total compensation of the median employee identified using a consistently applied compensation measure;
- identify the median employee every three years to the extent that there is no significant change in the registrant's employee population or employee compensation arrangements;
- consistently choose any date within the last three months of a registrant's fiscal year to identify the median employee.

Moreover, the final rule allows flexibility for registrants with non-U.S. employees by providing (1) a foreign data privacy law exemption reducing the burden on registrants that operate in certain foreign jurisdictions, and (2) a *de minimis* exemption that may reduce the number of payroll systems that need to be used to identify the median employee and will allow registrants some flexibility in addressing payroll matters that may result from having employees in multiple jurisdictions. Finally, the final rule also provides that registrants, when determining the compensation of the median employee for purposes of identifying the median employee and making the pay ratio disclosure, may elect to adjust the compensation of their employees in jurisdictions other than the jurisdiction in which the PEO resides to reflect the cost of living in the PEO's country of residence, but they must also provide disclosure of the registrant's pay ratio calculated without the cost-of-living adjustment. Overall, we believe that the flexible approach allowed by the final rule is consistent with Section 953(b) and, in certain circumstances discussed below, may reduce costs compared to other methods of implementing the statute.

b. Compliance Cost Estimates in Comment Letters

In the pre-proposing period, we received estimates of the costs of compliance for certain registrants from some commenters.[489] These estimates varied significantly and were based on the commenters' initial reading and interpretation of the statute and not on the proposed rule, which would allow for flexibility not accounted for in the pre-proposal letters. For example, prior to the proposal, one commenter estimated the cost of compliance with Section 953(b) would be $250,000 to $500,000 annually, and revised its cost estimate downward to $15,000 annually after the proposed rule was released ''primarily due to the ability afforded by the proposed rule for registrants to use a consistently applied compensation measure, such as payroll records or W–2 reportable wages and the equivalents for non-U.S. employees, to identify the median employee.'' [490]

In the Proposing Release, we did not estimate the costs of the calculation and disclosure of a registrant's pay ratio because we did not have enough data for such estimation. In response to the Proposing Release, a number of commenters evaluated our estimates of the compliance costs represented by the estimated Paperwork Reduction Act (''PRA'') burdens imposed by the proposed rule. Most commenters generally indicated that those PRA burdens underestimated the compliance costs associated with the disclosure requirement, and some provided more specific cost estimates. For example, one commenter noted that our PRA estimate of an average of 340 hours of internal company time in year one to comply with the proposed rule significantly understates the time that many companies would need to comply (especially those with non-U.S. employees).[491] Below, we discuss the specific comments that we consider to be the most useful to estimate the compliance costs of the pay ratio disclosure. We note that, in providing specific comments, commenters did not typically distinguish between costs derived from the statutory mandate and costs derived from the exercise of our discretion. Furthermore, they typically did not distinguish between internal costs in burden hours versus external professional costs in dollar amounts for PRA purposes.

Two commenters provided survey studies with several relevant estimates of the compliance costs associated with the proposed rule, as well as characteristics of the types of registrants that would be affected. As discussed in greater detail below, the aggregate initial external compliance cost estimates provided by these commenters range between $187 million [492] and approximately $711 million.[493] These estimates are based on responses to the surveys discussed below and may not be representative of all registrants affected by the final rule.

i. Center on Executive Compensation Survey

One commenter provided the results of a joint survey it conducted among its members.[494] The results are based on the responses from 128 public companies out of 1,270 surveyed.[495] Most of the respondents are large registrants, with average revenue of approximately $28 billion; 59% of the registrants had revenues greater than $10 billion. Nearly 80% of respondents had 10,000 or more employees, most of them employed full-time. In addition, nine out of ten respondents had foreign operations with employees located outside the United States. On average, respondents operated in 34 countries, and about two-fifths of their employees worked in foreign countries. The average number of separate employee data systems that respondents had worldwide was 46.

In its letter, the commenter questioned our estimate, for PRA purposes, of $400 per hour for outside professional costs and the estimated PRA hour burden. More than half of the survey respondents indicated that the average hourly fee for their company's

[489] For example, one pre-proposal comment letter from an industry group reported that a member company estimated that it would require approximately $7.6 million and 26 weeks to prepare the pay ratio disclosure and that a separate member company estimated that it would cost approximately $2 million annually to determine the actuarial value of employee pension benefits. *See* American Benefits Council *et al.,* (Jan. 19, 2012) (''American Benefits Council *et al.* pre-proposal letter'').

[490] *See* letter from Intel.

[491] *See* letter from NIRI.

[492] *See* letter from COEC I. We note that this estimate represents only the cost of outside professionals and does not take into account internal company hours as an additional cost of compliance with the rule. This commenter estimated that compliance would require at least 801,000 hours of in-house personnel time (at least 255,000 additional company hours above the 546,000 company hours we estimated) in addition to a cost of $187 million.

[493] *See* letter from Chamber II. This commenter estimated an annual internal compliance burden of 3.6 million hours in addition to an annual cost of $710.9 million.

[494] This survey was jointly conducted by the COEC, Human Resource Policy Association, and Corporate Secretaries. *See* letters from COEC I and Corporate Secretaries. *See also* letter from Business Roundtable I (referencing the results from the COEC I survey).

[495] *See* letter from COEC I. We note that the letter from Corporate Secretaries refers to results from the same survey, but for the 127 respondents who are also members of Corporate Secretaries.

external securities compliance counsel is above $700. The respondents also indicated that, on average, 72% of the estimated initial compliance costs are expected to be incurred in subsequent years. Based on these survey results, the commenter asserted that compliance with the rule would require at least 255,000 additional company hours and an additional $114.1 million in costs across all affected registrants for outside professional services above the our PRA burden estimates in the Proposing Release ($72.77 million). Using these updated estimates, the commenter arrived at a total initial compliance cost estimate of at least $186.9 million.[496] We note that, although labeled ''total compliance costs'' by the commenter, that estimate of compliance costs includes only the cost of outside professionals, and thus is only part of the expected total compliance costs. The estimate does not take into account internal company hours as an additional cost of compliance with the rule. Additionally, the commenter assumed that all affected registrants will bear the same compliance costs, which may bias its total cost estimate because compliance costs are likely to vary between registrants with and without foreign operations, or between small and large registrants.

The survey provided several estimates of how compliance costs might change if there were certain changes in the rule. For instance, the commenter's letter argued that the final rule should apply only to a registrant's consolidated subsidiaries, noting that its survey indicated that, if the final rule were to include employees of all minority-owned subsidiaries and joint ventures, a registrant's compliance costs would increase by an average of 91%, with a mid-range of 20%. The letter from the other commenter that jointly conducted the survey also presented information about the inclusion of all minority-owned subsidiaries and joint ventures, but its letter presented the survey data in a different format. It presented the average and median anticipated increases categorized based on the company's annual revenue.[497] According to this comment letter, for registrants with annual revenue of over $30 billion, the median increase in cost would be approximately 35% if employees in minority-owned subsidiaries and joint ventures were included. For registrants with annual revenue between $5 billion and $30 billion, that median increase would be approximately 20%, while for registrants with annual revenue below $5 billion, the median increase in compliance cost would be 10%. These numbers, however, appear to reflect an increase in the compliance cost if the coverage of subsidiaries and joint ventures were to be increased from the suggested coverage under the Proposing Release to complete (100%) coverage of subsidiaries and joint ventures. Thus, they do not directly correspond to the changes we made in this release, including the change that we made to include only employees of a registrant's consolidated subsidiaries, as suggested by the commenter.

If a registrant were permitted to calculate the pay ratio based on full-time, permanent employees only, then according to the survey responses, the compliance cost would decrease by a mid-range of 10% or an average of approximately 11%.[498] Another commenter suggested that the median decrease in compliance costs would be approximately 10% or an average of 12% if a registrant were permitted to calculate the pay ratio based on full-time, permanent employees only.[499] Requiring only U.S. employees to be used when estimating the pay ratio would decrease costs on average by 40%, while the mid-range decrease would be approximately 50%.[500] In contrast, if the rule did not contain the flexibility allowed under the proposal and instead total compensation as calculated in the Summary Compensation Table was required to be used to identify the median employee, 99% of the respondents said that their cost would increase and 49.1% said that the cost would increase by over 100%. Another commenter, relying on information from the same survey, suggested that the average cost increase would be 4,689% and the median cost increase would be approximately 175% if total compensation as calculated in the Summary Compensation Table was required to be used to identify median employee pay.[501]

ii. Chamber of Commerce Survey

A different commenter also provided estimates of compliance costs of the proposed rule based on survey results.[502] This commenter's survey is a version of the COEC survey that included only 118 respondents, approximately ''3.1% of all covered businesses.'' The commenter did not elaborate on how its version of the survey is different from the COEC survey, other than including fewer respondents.[503] The commenter's letter provides no information on the survey's respondent size characteristics to provide context with respect to the respondents' potential organizational complexity and associated challenges in complying with the proposed rule. Based on the survey, the commenter concludes that the average labor cost per company of complying with the proposed rule would be approximately $185,600 for the initial year. That commenter also estimated, but did not monetize, an annual compliance time of 3.6 million hours.[504] The survey results also show a wide divergence in cost estimates across survey respondents, with 42 respondents estimating the value of the time necessary to comply with the proposal to be at least $100,000, while 13 respondents estimated this value to be less than $10,000. On average, respondents estimated 952 hours needed to comply with the proposed rule. Respondents that conduct operations in foreign countries will have higher compliance costs according to the survey results. Thirty-nine respondents that conduct operations in more than 50 countries indicated an average labor cost of $311,800 to comply with the proposed rule. These respondents also reported an average of 90 different employee data systems worldwide. On the other hand, for 37 respondents that operate in fewer than 10 countries, the average compliance cost was estimated to be $67,200. Based on the survey results, the commenter asserted that the total external compliance costs for the private sector could be approximately $711 million and that total cost could increase to $1.1 billion (in addition to the internal compliance time) if every

[496] The commenter reports the additional cost of outside professional services of $114 million in excess of the cost of outside professional services estimated by us in the Proposing Release. The total cost estimate reported as $186.9 million can be obtained by adding $114 million and $72.77 million, with the difference likely due to rounding. *See* letter from COEC I.

[497] *See* letter from Corporate Secretaries.

[498] *See* letter from COEC I. While the survey data attached to the comment letter showed that the average anticipated cost reduction would be 11%, the text of the comment letter discussing the survey also stated that for the subset of respondents that anticipated that limiting the rule to full-time employees would lower costs, ''the average savings would be approximately 20 percent.''

[499] *See* letter from Corporate Secretaries.

[500] *See* letter from COEC I (mentioning in the text of the comment letter that the expected decrease is ''47% on average for firms with non-U.S. employees''). *See also* letter from Corporate Secretaries.

[501] *See* letter from Corporate Secretaries.

[502] *See* letter from Chamber II.

[503] The letter from Chamber II does not specify how many companies were surveyed but the letter indicates that the Chamber represents over ''3 million businesses and organizations of every size, sector and region.''

[504] *See* letter from Chamber II.

affected registrant has an average cost of $311,800.

iii. Other Specific Comments

In addition to the two surveys, several other commenters provided the following cost estimates based on the proposed rule. In these estimates, the commenters did not distinguish between the costs arising from the mandated disclosure and the costs arising from the exercise of our discretion. The estimates for the proposal were as follows:

- $500,000 to $1 million to automate a large global registrant's processes; [505]
- between $1 million and $1.5 million for at least 10 to 15 internal staff members and two or three external advisors, with 100 to 150 hours of internal work and 20 to 40 hours in external consulting time; [506]
- annual compliance cost of $15,000 for an issuer with global operations; [507]
- a ''likely to be conservative'' estimate of $100,000 per company, based on what mid-sized retail corporations informed the commenter.[508]
- approximately $250,000 for 1,000 internal hours initially and $100,000 per year for 500 hours annually thereafter (but, according to the commenter, the workload would perhaps drop by 90% if the final rule includes only employees employed by the U.S. parent organization and all U.S.-based subsidiaries in addition to other changes recommended by the commenter); [509]
- ''thousands of dollars to hire a dedicated resource and overhaul our payroll and human resource information system in order to prepare our first pay ratio disclosures under this rule;'' [510]
- between $50,000 and $100,000 to test the commenter's current payroll system for a quote on identifying the median employee, with an ''actual cost'' that ''is indeterminable'' but that the commenter believes could cost over $500,000; [511]
- $500,000 to $1 million for 50 internal employees and outside advisors; [512]
- 3,000 work hours in the initial year and 850 work hours annually thereafter (but, according to the commenter, these costs would be reduced by 90% if the final rule excluded non-U.S. employees); [513]
- over $1.6 million not including modifications of payroll or accounting systems; [514]
- actual cost is indeterminable, but believed to exceed $500,000 due to substantial non-U.S. employee base; [515]
- cost for many registrants would likely to be in the millions of dollars; [516] and
- annual cost to collect required data would exceed $2 million.[517]

The overall cost range provided by individual commenters for initial compliance by a large registrant was between $15,000 per year to $2 million.[518] We note that all of these comments concerned the proposed rule, rather than the final rule. As discussed below, the final rule allows for further flexibility, which we believe will reduce the cost of compliance.

These estimates provide a significant number of data points on the anticipated compliance costs that we use in our quantification of the estimated compliance costs of the final rule below. However, we caution that these estimates do not necessarily represent an accurate indication of the expected costs because they use different methodologies and assumptions in arriving at these numbers, some of which might change with the different requirements under the final rule. Moreover, only a few commenters discussed the complexity of their payroll systems; [519] the degree to which the estimated costs reflect internal personnel costs [520] or the costs of outside service providers [521] and outside professionals; [522] and the precise assumptions used in deriving the estimates, all of which may be relevant for assessing the estimates provided.[523] Also, although most of these estimates do not precisely distinguish between initial and ongoing costs, we expect that, for many registrants, the overall compliance burden will diminish after systems are in place to gather and verify the underlying data.[524] Some commenters noted that the costs are impossible to determine before they start the process.[525] The provided cost estimates were also given prior to additional cost-reducing measures adopted in the final rule in response to comments, including comments about costs. These measures include: The ability to calculate the median employee once every three years, the exemption from the definition of ''employee'' of a *de minimis* percentage of non-U.S. employees, the requirement to consider only registrant's own employees and those of their consolidated subsidiaries when identifying the median employee, and the exemption for employees in foreign jurisdictions in which it is not possible for a registrant to obtain or process information necessary to comply with the rule without violating the data privacy laws or regulations of that jurisdiction. We expect that these changes will further reduce the costs of compliance.

In contrast to these estimates, a significant number of the commenters, generally the same commenters that perceived the benefits of the rule, asserted that the rule would not impose high costs and burdens. The majority of these commenters indicated that the

[505] *See* letter from KBR.

[506] *See* letter from Avery Dennison.

[507] *See* letter from Intel.

[508] *See* letter from NRF. We note that this commenter did not indicate the number of employees of such mid-sized retail corporations.

[509] *See* letter from FEI.

[510] *See* letter from FuelCell Energy.

[511] *See* letter from NACCO.

[512] *See* letter from General Mills.

[513] *See* letter from ExxonMobil.

[514] *See* letter from Eaton.

[515] *See* letter from Hyster-Yale.

[516] *See* letter from ASA.

[517] *See* letter from Dover Corp.

[518] *See* letters from Dover Corp. and Intel.

[519] *See* letter from Hyster-Yale (commenting that ''of the 4,967 people who received Form W–2s (or similar documents) for 2012, 2,375 (48%) resided outside the U.S. and were paid on twenty different payroll systems (none of which are integrated with our U.S. system or any other system)''). This commenter, however, did not comment on the expected cost of integrating these payroll systems.

[520] *See* letter from Avery Dennison (estimating that they will use 10–15 internal staff members with 100–150 hours of internal work), FEI (estimating 1,000 hours of internal time to develop the database and methodology to derive the data and 500 hours to maintain this database in the following years), and ExxonMobil (estimating 3,000 work hours by internal personnel in the first year and 850 work hours per year thereafter).

[521] *See* letter from ExxonMobil (stating ''are not able to provide a specific estimate, but expect that a significant work effort would also be required on the part of each of our 60 third-party vendors'').

[522] *See* letters from Avery Dennison (estimating that they will use two or three external advisors (*e.g.,* legal counsel, human resources consultants) and 20–40 hours of external consulting time,) and Hyster-Yale (stating that it will need to hire an outside consulting firm to assist with the process).

[523] *See* letter from General Mills (providing a list of steps it will take). However, the commenter did not provide detailed cost estimates for these steps.

[524] A few commenters addressed this point, and the estimates they provided were very different. *See, e.g.,* letters from ExxonMobil (expecting a 72% drop), FEI (estimating a 60% drop in compliance costs from the first year to the next year), and General Mills (indicating that most of the costs for the first year would also apply to subsequent years of compliance). *But see* letter from Business Roundtable I (asserting that 42% of respondents to a survey it conducted indicated that they would have to update their methodology every year).

[525] *See, e.g.,* letter from NACCO (stating that consulting companies were unable to provide quotes about the cost to assist with statistical sampling until they are able to test their various payroll systems). This commenter also stated that the actual cost is indeterminable but could exceed $500,000, as it will depend on (i) the availability and accuracy of employee data, (ii) the scope of the final rule and (iii) whether registrants choose to disclose the minimum required disclosure or if they decide to provide various alternative disclosures that would provide shareholders with more context.

permitted flexibility in complying with the proposed rule would reduce costs,[526] and that the registrants already have the data necessary to make their pay ratio calculations.[527] While we agree that the permitted flexibility should lower costs for many registrants, we recognize that registrants who operate in various geographic and business segments may need to reconcile their systems to compile and provide the required information at a potentially significant cost.[528]

c. Quantification of Compliance Costs

While our overarching consideration of the costs of the rule takes into account the information provided by a broad range of commenters, the most useful frameworks for considering costs were provided by commenters that provided data on company-wide potential costs. Other commenters provided certain valuable insights into how our rule would be implemented, but were either not as transparent in their analytical frameworks or not easily generalizable in terms of aggregating the costs across multiple registrants.

Some commenters indicated that the most important driver for the compliance costs of the required disclosure is the presence of foreign operations and the complexity of dealing with, or the need to create compatible employee data and payroll systems that track the compensation of employees of such foreign operations.[529] Underscoring the importance of foreign operations for the costs of compliance with the rule, one commenter's survey results indicate that the compliance costs for registrants would decrease by a median of 50% or on average by 40% if only U.S. employees were included in the calculation of the median compensation.[530] In addition, most of the survey participants appear to have had at least some international operations. The participants in the commenter's survey on average operate in 34 countries (including the United States) [531] and have about 38% of all employees and 44% of their full-time employees outside of the United States. The survey reflected predominantly larger registrants and therefore may not reflect the characteristics of a large number of registrants subject to Section 953(b) requirements. Another commenter suggested that the cost of implementing the final rule would be 20–30 times higher if foreign employees are included in the calculation of the median compensation.[532] Based on these comments and survey results, we acknowledge that there may be significant differences in the potential costs of the rule between registrants with foreign operations and registrants without foreign operations.

Commenters have pointed out other potential cost drivers, such as including part-time, seasonal, and temporary employees in the calculation of the median. However, the effect of these other factors seems to be less significant. For example, one commenter's survey results suggest that the compliance costs for registrants would decrease by a median of 10% and on average by 11% if only full-time permanent employees are included in the determination of the median compensation, compared to an expected median reduction of 50% or average reduction of 40% if no foreign employees are included in the determination.[533]

Some of the compliance costs outlined above may be ameliorated by the *de minimis* exemption in the final rule that allows for some flexibility in identifying the median employee for registrants that have employees in multiple countries. The final rule also provides a foreign data privacy law exemption that should help to reduce the burden on registrants that operate in certain foreign jurisdictions. For some registrants with small foreign operations, the *de minimis* exemption and the foreign data privacy law exemption might greatly reduce the importance of foreign operations as a driver of compliance costs.

Several commenters subject to the proposed rule provided compliance costs estimates specific to their particular situation. Other commenters provided cost estimates for what appear to be anonymous but real companies.[534] For all estimates received, we have used data available from Standard and Poor's Compustat,[535] to obtain or confirm information about the number of employees at the registrant. Because, as noted above, certain registrants were not specifically identified, we could not confirm or obtain their number of employees or use them to construct a reliable cost-per-employee estimate, which is a key factor in our analysis below. Accordingly, we decided to focus our analysis on those estimates where the registrant was identified, although we have noted below what the impact on our estimates would be if we were to include the estimates from the unidentified registrants whose employment data we cannot verify.

To estimate the potential compliance costs of the final rule, we analyze the detailed information on compliance costs provided in comment letters from 10 registrants [536] and provide an assessment, below, of how their estimates might relate more broadly to other affected registrants. The reported expected costs vary in nature, but the common element among the commenters is the cost associated with modifying current payroll or accounting systems to compile the information necessary for the identification of the median employee and the calculation of the employee's compensation. In quantifying these and other reported potential costs, when registrants presented a range of cost estimates, we use the mid-range value (*i.e.,* if a registrant indicated that its costs would range from $0.5 million to $1 million, we use $0.75 million in the analysis).[537]

[526] *See e.g.,* letters from AFR, Bricklayers International, CalPERS, Calvert, Capital Strategies, Chicago Teachers Fund, Cummings Foundation, First Affirmative, ICCR, IL Bricklayers and Craftworkers Union, LIUNA, Marco Consulting, Novara Tesija, NY Bricklayers and Craftworkers Union, Oxfam, Pax World Funds, Prof. Ravenscroft I, Public Citizen I, Rep. Ellison *et al. I* (referring specifically to sampling), Sen. Menendez *et al.* I, Sen. Menendez *et al.* II, and US SIF.

[527] *See, e.g.,* letters from AFR, Allied Value, CalPERS, LAPFF, LIUNA, Pax World Funds, and Theodore.

[528] *See, e.g.,* letters from American Benefits Council, Aon Hewitt, Avery Dennison, BCIMC, Business Roundtable I, Business Roundtable (Jul. 21, 2015) (''Business Roundtable II''), Chamber I, COEC I, Corporate Secretaries, Cummins Inc., Eaton, ExxonMobil, FEI, Freeport-McMoRan, FuelCell Energy, IBC, KBR, MVC Associates, NACCO, NAM I, NAM II, NIRI, Semtech, SHRM, and Tesoro.

[529] *See id.*

[530] *See* letter from COEC I. The survey was conducted jointly by COEC, Human Resource Policy Association, and Corporate Secretaries. *See supra* note 494.

[531] *See id.* The Chamber II survey participants were similarly international in operation. Over 68% of the participants in the Chamber II survey operate in more than 10 countries.

[532] *See* letter from American Benefits Council.

[533] *See* letters from COEC I.

[534] One commenter mentioned that ''Company B,'' a U.S. multinational manufacturer with approximately 130,000 employees in about 275 locations worldwide, including 30,000 employees in the United States and 100,000 overseas expects that the cost to build the global human resources information system needed to comply with the proposed rule would exceed $18 million. *See* letters from NAM I and NAM II. Another commenter mentioned that one survey respondent with over 50,000 employees across 69 countries described the costs of data gathering as over $10 million. *See* letter from Corporate Secretaries. The commenter only notes that the survey respondent has over a certain number of employees.

[535] The Standard and Poor's Compustat Database is a comprehensive database of company financials routinely used by us, academics, and practitioners in empirical assessments involving public companies.

[536] *See* letters from Avery Dennison, Dover Corp., Eaton, ExxonMobil, General Mills, Intel, NACCO, FEI, Hyster-Yale, and KBR.

[537] Since commenters provided no information on how likely it is that the costs would be close to the lower or upper bound of the range, we believe that using the midpoint of the range would provide a reasonable cost estimate.

When registrants indicated that they expect to incur at least a certain dollar amount of costs, we use that value in our estimation, and, as such, this represents a lower bound because we have no way of estimating the top of their range (*i.e.,* if a registrant indicated that its costs would be at least $0.5 million, we use $0.5 million in the analysis).

One commenter provided costs in terms of the number of hours rather than in dollar value terms.[538] In this case, we converted the hours into a dollar amount using the hourly rates reported in one commenter's survey,[539] according to which the median respondent expected to incur the cost of $700 per hour to comply with the proposed rule. This rate is higher than our estimate of $400 per hour for professional costs in the PRA section of the Proposing Release, and we believe it may overestimate the costs of compliance with the final rule. We continue to believe that $400 per hour is the appropriate rate to use for PRA purposes as this reflects the average cost for outside professional services for all registrants, including smaller and mid-sized registrants. Nevertheless, we have used the $700 per hour rate here to be conservative in our estimates and because the commenter in question is a large registrant with globally diversified operations. The estimate of $700 per hour for outside compliance counsel may be justified for a certain type of registrant with certain size and characteristics but may not be representative of all registrants. We also note that we have monetized the commenter's entire hourly estimate using the $700 per hour rate. This likely overstates the actual dollar value of these costs, as we expect that some of the compliance burden of the final rule will be carried internally by the registrant (*e.g.,* using the registrant's existing workforce) and at rates significantly lower than $700 per hour.

The 10 registrants that quantified expected registrant-wide compliance costs tend to be large registrants (in terms of both assets and revenues) and have globally diverse operations, and as such, may not be representative of the costs incurred by smaller registrants or registrants that do not have foreign operations. Thus, we restrict the use of the information provided by them to estimate the expected compliance costs for only registrants subject to the requirements that we identify as having foreign operations. Since we believe that the compliance costs will be generally proportionate to the size of the registrant's work force, we calculate the cost per employee using the number of employees reported for fiscal year 2013.[540]

For the 10 registrants with compliance cost estimates, we estimate the ratio of ''Compliance cost estimates'' to ''Number of employees.'' We then take the median ratio and use it to estimate the expected initial compliance costs for registrants with U.S.-based operations and registrants with foreign operations. We use the median instead of the average to diminish the influence of outliers. The individual estimates and the average and median are presented in the table below. We estimate that the average cost-per-employee for these registrants would be $50.70 and the median cost-per-employee would be $38.04. The average cost per registrant is approximately $971,500, while the median is $750,000.[541] We note that the 10 registrants in this analysis are larger than the average and median registrant subject to the final rule. To adjust for differences in registrant size, we make the assumption that the compliance costs of the rule will be proportionate to the size of the registrant's work force, which enables us to use the cost-per-employee ratio to estimate the potential compliance costs of affected registrants.

TABLE 2—TOTAL INITIAL COMPLIANCE COSTS PER EMPLOYEE BASED ON COMMENTERS' ESTIMATES

Commenter	CIK	Total compliance cost estimates (dollars)	Revenue ($ millions)	Number of employees (thousands)	Estimated cost per employee (dollars)
Avery Dennison	0000008818	1,250,000	6,140.0	26	48.08
Dover Corporation	0000029905	2,000,000	8,729.8	37	54.05
Eaton Corporation	0000031277	1,600,000	22,046.0	102	15.69
ExxonMobil Corp.	0000034088	2,100,000	390,247.0	75	28.00
General Mills	0000040704	750,000	17,909.6	43	17.44
Intel	0000050863	15,000	52,708.0	107.6	0.14
NACCO	0000789933	500,000	932.7	4.1	121.95
FEI Company	0000914329	250,000	927.5	2.61	95.79
Hyster-Yale Materials Handling	0001173514	500,000	2,666.3	5.1	98.04
KBR	0001357615	750,000	7,214.0	27	27.78
Average					50.70
Median[542]					38.04

We estimate the aggregate costs for the 3,571 registrants to whom the rule will apply, including both registrants with U.S.-based operations and registrants with foreign operations, using data from Standard and Poor's Compustat. We

[538] *See* letter from ExxonMobil.

[539] *See* letter from COEC I.

[540] This assumption implies that all compliance costs are variable. It is possible that some compliance costs have a fixed component (*i.e.,* payroll system configuration costs and training), and thus compliance costs per employee may be higher for small and mid-size firms with globally diversified operations than for globally diversified large firms, which may result in adverse effects on competition to the extent that the former are not SRCs and are not covered by the *de minimis* or foreign data privacy exemptions. Data on the number of employees and revenues is taken from Standard and Poor's Compustat.

[541] Our estimate of the cost per registrant aggregates the cost of outside professional services and monetized internal burden hours. One commenter referred to an average cost of $311,800 per registrant to comply with the pay ratio provision. The commenter also estimated that the median registrant would require 1,825 internal burden hours to comply with the rule. These estimates are based on companies with operations in more than 50 countries that averaged 90 different employee data systems. *See* letter from Chamber II.

[542] If we were to include the data for the anonymous registrants in the NAM I/NAM II letters and the Corporate Secretaries letter, the median would be $51.07. We note that the data for the anonymous registrant in the Corporate Secretaries letter did not specify a single number of employees, indicating instead that registrant had over 50,000 employees, thus making it difficult to compute a cost per employee ratio without additional assumptions. We assume that the number of employees of that anonymous registrant was 50,000 and its compliance cost was $10 million.

classify registrants as having foreign operations if they report having at least one geographical segment outside the United States. If they report only U.S.-based segments, then we classify them as having U.S.-based operations only. We note several challenges in calculating these estimates. First, 13 of both the registrants with foreign operations and the registrants with U.S.-based operations only do not report the total number of employees. For these registrants, we impute the total number of employees by using the median number of employees for the registrants with foreign operations and the registrants with U.S.-based operations, respectively. Second, about 37% of affected registrants do not report geographic segment data, so we cannot classify them as registrants with U.S.-based operations or registrants with foreign operations.[543] We compare the total assets and total revenues of these to the group of registrants with U.S.-based operations or registrants with foreign operations. These registrants tend to more closely resemble the registrants with U.S.-based operations, so we classify them as such. We recognize that this may underestimate the compliance cost for registrants with non-U.S. operations that choose not to report geographic segments.

We estimate the initial compliance costs for the registrants with foreign operations by first aggregating the number of employees across all such registrants and then multiplying that number by the median estimated cost per employee, calculated as $38.04 in Table 2 above.

To estimate the expected costs for registrants with U.S.-based operations only, we rely on one commenter's survey results that indicate that the median decrease in registrants' compliance costs would be 50% if only U.S. employees are included in the determination of the median employee compensation.[544] Thus, we assume that the expected compliance costs for registrants with U.S.-based operations only will be 50% lower than the expected compliance costs for registrants with foreign operations. Accordingly, we estimate the compliance costs for registrants with only U.S.-based operations by multiplying the total number of employees across such registrants by the (median estimated costs per employee * $(1-0.5)$), which is $19.02 per employee.[545]

Lastly, to estimate the total compliance costs for registrants that do not report geographic segment data, which we reclassify as registrants with U.S.-based operations only, we first determine whether we have information on their number of employees.[546] For the 973 registrants that we reclassify as registrants with U.S.-based operations and for which we have information as to their number of employees, we aggregate the total number of employees for those registrants and multiply it by $19.02. For the other 335 registrants that we reclassify as registrants with U.S.-based operations, we do not have information on the number of employees. As mentioned above, these registrants are similar to registrants with U.S.-based operations with respect to total assets and total revenues. Thus, to estimate the compliance cost for those registrants, we estimate the median cost per registrant with U.S.-based operations only and multiply it by the number of such registrants (335). To estimate the median cost per registrant with U.S.-based operations only, we first multiplied $19.02 per employee by the number of employees of each of the 793 registrants with U.S.-based operations only. We then found the median of those 793 amounts, which was $27,008.40. Multiplying this number by the total number of registrants with missing employee data (335), we reached a total cost estimate of $9,047,814. Consistent with other estimates in our analysis, we used median costs rather than average costs to reduce the significance of outliers. We believe that our approach to the estimate is more appropriate because, by using median numbers, we reduce the significance of outliers, but we acknowledge that had we instead estimated based on average numbers, a significantly higher cost estimate for this group would result. Our cost estimates are presented in Table 3 below.

TABLE 3—TOTAL INITIAL COMPLIANCE COST ESTIMATES FOR AFFECTED REGISTRANTS

Type of registrant	Estimates	Calculation
Registrants with foreign operations:		
Registrants affected	1,470	
Total number of employees	27,595,305	
Cost/employee ratio	$38.04	
Total cost	$1,049,725,402	27,595,305*$38.04
Average cost per registrant	$714,099	$1,049,725,402/1,470
Registrants with U.S.-based operations only:		
Registrants affected	793	
Total number of employees	6,522,626	
Cost/employee ratio	$19.02	$38.04*(1–0.5)
Total cost	$124,060,347	6,522,626*$19.02
Average cost per registrant	$156,444	$124,060,347/793
Median cost per registrant	$27,008.40	This number represents the median of (number of employees * $19.02) across the 793 U.S.-based registrants
Registrants with missing data, reclassified as registrants with U.S.-based operations only:		
Registrants affected	1,308	
Registrants with available employee data	973	
Total number of employees for the 973 registrants	6,932,754	
Cost/employee ratio	$19.02	$38.04*(1–0.5)
Total cost for the 973 registrants	$131,860,981	6,932,754*$19.02
Registrants with no employee data	335	1,308–973
Total cost for the 335 registrants	$9,047,814	335 * $27,008.4

[543] Compustat, like most other databases, has incomplete coverage of small companies, and reporting companies that do not trade on national exchanges.

[544] *See* letters from COEC I.

[545] $38.04*(1 − 0.5) = $19.02

[546] For about a third of registrants with missing segment data, Compustat reports no employee data.

TABLE 3—TOTAL INITIAL COMPLIANCE COST ESTIMATES FOR AFFECTED REGISTRANTS—Continued

Type of registrant	Estimates	Calculation
Total cost	$140,908,795	131,860,981 + 9,047,814
Total	$1,314,694,544[547]	$1,049,725,402 + $124,060,347 + $140,908,795

Based on our calculations, the average initial cost of compliance for a registrant with foreign operations is expected to be approximately $714,099 and for a registrant with U.S.-based operations only is expected to be approximately $156,444. The total initial cost of compliance for all 3,571 registrants affected by the Section 953(b) requirements is expected to be approximately $1,315 million, which includes both internal company costs as well as the costs of outside professionals.[548] Thus, we estimate the initial cost of compliance for the average registrant to be approximately $368,159.[549]

It is important to note that this estimate does not reflect the *de minimis* and foreign data privacy exemptions, or the change to include only employees of consolidated subsidiaries, which would lead to some cost reductions for some registrants and which we are not able to fully quantify. Our cost estimate is higher than the survey estimate of $187 million for the cost of outside professionals provided by one commenter, although we note that the commenter also estimated, but did not monetize, an internal company burden of 800,870 hours.[550] Similarly, our estimated cost is higher than the other commenter's survey estimate of over $710 million, although that commenter also estimated, but did not monetize, an annual compliance time of 3.6 million hours.[551]

Next, we estimate the ongoing compliance costs. Unlike in the case of the initial compliance costs, we received very few specific estimates of the ongoing compliance costs from commenters. One commenter suggested that ongoing annual costs would be approximately 28% of the initial compliance costs.[552] Another commenter reported expected ongoing compliance costs of 40%.[553] One commenter's survey results suggest that the ongoing costs are expected to be about 80% (mid-range) or 72% (average) of the initial compliance costs.[554] We note that some compliance costs of the final rule, such as burden hours and professional costs associated with making the disclosure, may remain consistent from year to year. Other compliance costs, however, will largely be upfront fixed costs, such as those associated with the modification of payroll or accounting systems to allow a registrant to compile the information and costs associated with developing the methodology needed to identify the median employee and calculate his or her pay.[555] Given these upfront fixed costs, it is likely that that part of the initial compliance costs would decline after the first year.

The specific estimates provided by commenters (28% to 72%) [556] yield a range of ongoing compliance cost estimates of between $368 million and $947 million per year, with the median of the estimates provided by these commenters (40%) yielding an ongoing compliance cost of approximately $526 million per year.[557] We note, however, that the Proposing Release did not provide registrants with the flexibility to identify the median employee every three years. We assume these three estimates are based on the commenters' reading of the Proposing Release, and hence include the requirement that the median employee be identified every year.

d. Indirect Costs

Registrants covered by the final rule also could be affected by indirect costs.[558] They could be at a competitive disadvantage to registrants (including private companies, foreign private issuers, smaller reporting companies and emerging growth companies) that are outside the scope of the final rule. Some commenters suggested that the proposed rule would cause competitive disadvantages for public companies,[559] U.S. companies, especially those with overseas employees,[560] issuers with subsidiaries,[561] and issuers with low-wage workers.[562] In addition, we understand from commenters that some registrants covered by the final rule would likely incur higher costs of compliance based on size, business type, and level of integration of payroll and benefits systems—such as large, multinational registrants that do not maintain integrated employee compensation information on a global basis.[563] Therefore, the competitive impact of compliance with the disclosure requirements prescribed by Section 953(b) could disproportionately fall on U.S. registrants with large workforces and global operations, although the *de minimis* exemption and the foreign data privacy law exemption in the final rule would likely reduce some of these compliance costs and the competitive effects of the final rule. While we expect that the incremental

[547] If we had included the cost estimates of the anonymous registrants provided by two commenters in calculating the median cost per employee ratio, as referenced above, the median cost per employee would be $51.07, and the total compliance cost for all 3,571 registrants would have been $1,765 million. *See* letters from NAM I, NAM II (providing the same estimate as in the NAM I letter), and Corporate Secretaries.

[548] If average cost per registrant with U.S.-based operations ($156,444) were used in lieu of median for the 335 registrants with missing employee data ($27,008.40), the total cost would instead be estimated as $1,049,725,402 + $124,060,347 + $131,860,981 + (335*$156,444) = $1,358 million.

[549] $1,314,694,544/3,571 = $368,159.

[550] *See* letter from COEC I.

[551] *See* letter from Chamber II.

[552] *See* letter from ExxonMobil. The commenter stated that it expects 3,000 work hours for initial compliance costs and 850 work hours for ongoing compliance costs. This suggests the ongoing compliance cost is approximately 28.3% (850/3000) of the initial compliance costs.

[553] *See* letter from FEI. According to this commenter, the initial compliance costs would be approximately $250,000, while the ongoing compliance costs would be approximately $100,000, suggesting that the latter is 40% of the former ($100,000/$250,000).

[554] *See* letter from COEC I.

[555] *But see* letter from Business Roundtable I (asserting that 42% of respondents to a survey indicated that they would have to update their methodology every year). We note that ongoing costs of compliance may represent a higher percentage of the initial costs of compliance for these respondents.

[556] Other commenters made more general assertions about ongoing compliance costs, but because they did not provide specific cost estimates, we did not include them in this calculation. *See, e.g.,* letters from General Mills (asserting that ''most of the costs would also apply to subsequent years of compliance'') and Business Roundtable I.

[557] $1,315 million * 0.28 = $368 million; $1,315 million * 0.72 = $947 million; $1,315 million * 0.4 = $526 million.

[558] We cannot precisely quantify the indirect costs because they depend on the registrant's business structure and competitive environment.

[559] *See, e.g.,* letters from ABA, Prof. Angel, Former Assistant Secretary Campbell, Chamber I, COEC I, Corporate Secretaries, NAM I, NAM II.

[560] *See, e.g.,* letters from ABA, Chamber I, COEC I, and Corporate Secretaries.

[561] *See* letter from COEC I.

[562] *See, e.g.,* letters from IBC and Prof. Ray.

[563] *See supra* note 528.

impact of the fixed components of compliance costs will have a lower impact on larger registrants than on smaller registrants, as discussed in the previous section, the overall compliance costs will likely lessen after systems are in place to gather and verify the underlying data, reducing the competitive effects of the final rule over the years.[564]

Registrants subject to the final rule could also face a competitive disadvantage if their competitors are able to infer proprietary or sensitive information from the disclosure of the median of the annual total compensation of all employees.[565] For example, it could be possible in some instances for a competitor to infer sensitive information about a registrant's cost structure based on information about median levels of employee compensation, especially for small registrants operating in a single industry. While the final rule does not apply to smaller reporting companies and emerging growth companies, we still estimate that at least 131 affected registrants operated in a single business segment and had book value of assets less than $100 million in 2014.[566] As we noted above, a registrant subject to Section 953(b) could potentially be at a competitive disadvantage when hiring or retaining a PEO if there is pressure to limit PEO wages based on the pay ratio disclosure while non-covered registrants are not subject to the same pressure. However, there may be other factors affecting the ability of a registrant to attract and retain executive talent.

One of the commenters indicated that 55% of the respondents in a survey of members it conducted anticipated indirect costs (*i.e.,* adverse impact on sales, brand damage, increased public relations costs etc.)[567] Although we acknowledge the possibility of these indirect costs, we cannot quantify them and lack sufficient data to analyze them.

3. Other Economic Effects

Several commenters indicated that the pay ratio rule would promote economic efficiency.[568] In contrast, one commenter argued the rule would inhibit economic efficiency without providing specific details.[569] As noted above, the pay ratio disclosure is not well suited to compare pay practices across registrants, and thus, it is unclear whether the final rule would affect economic efficiency. Some commenters suggested that registrants may decide to alter their pay structure or workforce structure in ways that are different from their efficient labor market decisions.[570] For example, one commenter suggested that registrants may decide to shift their labor force to workers employed by a third party or reduce their foreign operations.[571] Also, the same commenter asserted that registrants may change the relative wages of employees in a way that increases the median employee pay while reducing the pay of employees below the median employee in the pay distribution.[572] Another commenter asserted that pressure for a registrant to maintain a low pay ratio could also curtail the expansion of business operations into lower cost geographies.[573] We expect that such changes, if they were to occur, would move the registrant away from efficient business practices and could result in inefficient outcomes. Other commenters suggested, however, that workforce restructuring in response to the pay ratio disclosure was not likely.[574] While we believe that registrants are unlikely to make critical labor decisions solely to impact the pay ratio disclosure, we cannot assess the prevalence of such effects at this time because these commenters did not quantify or otherwise provide data relevant to the expected changes in business practices.

D. Economic Effects From Exercise of Discretion

1. General

In this section, we discuss the choices we have made in implementing the statutory requirements and the associated economic effects, including the likely benefits and costs and the likely impact on efficiency, competition, and capital formation. In addition to the statutory benefits and costs described above, we believe that the use of our discretion in implementing the statute could result in benefits and costs to registrants and users of the pay ratio disclosure.

In general, the final rule implementing Section 953(b) is designed to comply with the statutory mandate. In light of the significant potential costs that commenters attribute to the requirements of Section 953(b),[575] we believe that it is appropriate for the final rule to permit registrants certain flexibility in calculating the pay ratio, which we believe should help lower the costs of compliance generally while still providing the information directed by Section 953(b). In addition, the final rule generally seeks to implement Section 953(b) without imposing additional requirements that are not mandated by the Dodd-Frank Act. In this respect, the final rule reflects our consideration of the relative costs and benefits of a more flexible approach as opposed to a more prescriptive approach.

In evaluating alternatives, we considered whether to adopt a rule that would be prescriptive enough that the

[564] *But see* letters from Business Roundtable I (noting that 42% of respondents to a survey ''indicated that they expect having to update their pay ratio methodology every year because of changes to their business organization or structure'') and COEC I (arguing that the burden hours and professional costs may decrease after the first year but not by the estimated 50% in the Proposing Release).

[565] *See* letter from Prof. Ray. *But see* letter from Capital Strategies (stating, on the contrary, that competitors will not be able to decipher any proprietary or sensitive information from the pay ratio disclosure).

[566] This estimate is based on data from the Standard and Poor's Compustat Segments database as of the end of December 2014.

[567] *See* letter from Corporate Secretaries.

[568] *See, e.g.,* letters from Capital Strategies (asserting that ''The proposed rules would promote market efficiency as they would steer investors to the best value CEO, that is, the one producing the most returns for the least pay, when compared to peers.''), Change to Win (asserting that CEO pay increases have been driven by rent seeking behavior and ''if in fact the disclosures provided by Section 953(b) do induce more investors to insist on limiting executive pay, this will result in increased, rather than reduced, economic efficiency''), and Form Letter D (''Disclosure of the pay ratios will help the capital markets better allocate capital to those companies that invest in their workforces.'').

[569] *See* letter from NIRI.

[570] *See, e.g.,* letters from CEG (stating that the rule can be ''gamed by outsourcing lower wage jobs''), NIRI (stating that the rule will adversely impact ''U.S. states and cities with lower labor costs''), and Prof. Ray (arguing that employers will change their corporate structure or employment arrangements as a response to the pay ratio rule).

[571] *See* letter from Lou (''[S]ome companies will be incentivized to outsource poorly paid jobs to increase the median payment number. The flip side is the increase of administrative cost and losses of profits generated by the to-be-outsourced department. Or companies will reduce workforce in their foreign subsidiaries where the labor cost is relatively low. But obviously this reduction sacrifices the low labor cost advantage. Therefore the proposal does not motivate CEOs to maximize companies' interests.'').

[572] *Id.*

[573] *See* letter from Prof. Ray (providing the example of a firm that might prefer to hire in the U.S. rather than in India because a strong exchange rate of the U.S. dollar against the Indian rupee will make the Indian wages appear low and can lead to high pay ratio if the firm hires employees in India).

[574] *See* letters from ABA (asserting that registrants would not incur the related costs to alter their organizational structure or workforce in order to improve their pay ratio disclosure), Capital Strategies (asserting that the definition of ''all employees'' would not cause registrants to alter their corporate structure or employment arrangements), and WorldatWork I (same).

[575] *See, e.g.,* letters from Aon Hewitt, Avery Dennison, Business Roundtable I, Chamber II, Chesapeake, COEC I, COEC II, COEC III, Corporate Secretaries, Eaton, FEI, FuelCell Energy, Garmin, General Mills, Hyster-Yale, IBC, KBR, NACCO, NACD, NAM I, NAM II, NIRI, PNC Financial Services, and Semtech.

resulting pay ratio disclosure would be more directly comparable across registrants. As noted above, we believe that comparability of the ratio across registrants has significant limits, due to the variety of factors that could influence the ratio. We believe that providing a flexible approach would not significantly diminish the potential benefits of the mandated disclosure and would achieve the purposes that Congress intended at a significantly reduced burden for registrants. In this respect, we note that some commenters indicated that the expected benefits of pay ratio disclosure derive from its ability to facilitate a company-specific assessment, by providing a metric by which a PEO's compensation can be evaluated within the context of that particular company.[576] We also acknowledge that some commenters that support the pay ratio disclosure suggested that it could be used to compare compensation practices between registrants and/or for the same registrant over time.[577] We note, however, that using the ratios to compare compensation practices between registrants, and for a registrant over time (*e.g.,* in the case of business acquisitions or significant structural or business model changes), without taking into account inherent differences in business models between registrants and for a registrant over time, which may not be readily available information, could potentially lead to unwarranted conclusions.

2. Implementation Choices and Alternatives

a. Filings Subject to the Pay Ratio Disclosure Requirements

Commenters suggested that the final rule should apply only to those filings for which the applicable form requires Item 402 disclosure.[578] Some commenters stated that requiring pay ratio disclosure in every filing would be unnecessary and even confusing.[579] The final rule follows the proposed approach to require pay ratio disclosure in filings described in Item 10(a) of Regulation S–K that require executive compensation disclosure under Item 402 of Regulation S–K. We believe that requiring pay ratio disclosure in filings that do not contain other executive compensation information would not present this information in the most meaningful context. Some commenters asserted that the pay ratio disclosure would provide another metric to evaluate executive compensation disclosure,[580] and we believe that the intended purpose of the disclosure is to provide new data points that shareholders can use when exercising their new voting rights under Section 951. We believe that the pay ratio disclosure would be presented in a more meaningful context if it were accompanied by other Item 402 information, such as the Summary Compensation Table required by Item 402(c) and the Compensation Discussion and Analysis required by Item 402(b). Therefore, we believe that this choice preserves the intended benefits of Section 953(b) while reducing reporting costs relative to a requirement to include pay ratio disclosure in every filing, including in filings that do not require other Item 402 information.

b. Registrants Subject to the Pay Ratio Disclosure Requirements

We recognize that the reference to ''each issuer'' in Section 953(b) could be interpreted to apply to all registrants. However, as a result of the specific reference in Section 953(b) to the definition of ''total compensation'' contained in Item 402(c)(2)(x) and the absence of Congressional direction to apply this requirement to registrants not previously subject to Item 402(c) requirements, the final rule does not apply to registrants that are not subject to Item 402(c) requirements. Thus, smaller reporting companies, foreign private issuers, and MJDS filers are excluded. In addition, Congress exempted emerging growth companies from the requirement in the JOBS Act.

We considered a number of alternative approaches. We considered whether a broader reading of the statute was warranted in the context of SRCs as suggested by some commenters.[581] However, most commenters agreed with the approach to exclude SRCs from the requirements.[582] Commenters either argued that these registrants are not currently required to provide a Summary Compensation Table under Item 402(c) and therefore should not be required to comply with the pay ratio rule[583] or cited high costs of compliance.[584] Requiring SRCs to provide the pay ratio disclosure consistent with the requirement for other registrants would require them to collect data and calculate compensation for the PEO in a manner they otherwise would not do, and there would be some incremental costs in doing so. However, these incremental costs may be limited to the extent that smaller reporting companies are less likely to have defined benefit and actuarial pension plans.[585] In contrast, the costs of complying with the other requirements prescribed by Section 953(b)—namely, identifying the median employee and calculating annual total compensation for that employee—are more extensive. We can estimate those costs using the approach and estimates we made in the ''Quantification of Compliance Costs'' section above. We identify 2,958 registrants as SRCs that are not EGCs as of the end of fiscal year 2014. Of these, 494 have data on segments and number of employees in Compustat. Following the approach in the ''Quantification of Compliance Costs'' section above, we use information on international geographic segments reported in Compustat to identify registrants with and without international operations. Of the 2,958 SRCs, 212 have foreign operations and 282 have U.S.-based operations only; the rest does not have

[576] *See, e.g.,* letters from Bâtirente *et al.,* Bricklayers International, CalSTRS, Calvert, Domini, FS FTQ, Pax World Funds, Walden, and WA State Investment Board.

[577] *See, e.g.,* letters from Bâtirente *et al.,* Bricklayers International, CalPERS, CalSTRS, Calvert, Domini, EnTrust Capital (Nov. 20, 2013) (''EnTrust''), FS FTQ, LIUNA, Pax World Funds, Public Citizen I, RPMI, Walden, and WA State Investment Board.

[578] *See* letters from ABA, AFL–CIO I, CalPERS, Calvert, Capital Strategies, CII, CT State Treasurer, Davis Polk, Intel, Johnson & Johnson, McGuireWoods, NIRI, NRF, Pax World Funds, PM&P, Prof. Ray, and WorldatWork.

[579] *See, e.g.,* letters from ABA (''In our view, it is neither reasonable nor sensible to mandate the inclusion of pay ratio disclosure in filings where no other executive compensation disclosure required by Item 402 will appear to provide meaningful context.'') and PM&P (''Providing such information in multiple filings (*e.g.,* registration statements, annual reports or other filings) throughout the year is unnecessary and would dilute the usefulness, if any, of the disclosure.'').

[580] *See supra* note 34.

[581] *See, e.g.,* letters from CII (indicating that two of three CII members that commented on the proposed rule ''were 'not comfortable' with the proposed exemption from the pay ratio disclosure requirements for emerging growth companies, smaller reporting companies, foreign private issuers, and MJDS filers''), Ray (''To support Congress's demand for greater pay-related disclosures, I strongly suggest for the Commission to expand the disclosure requirement to ensure that all smaller reporting companies disclose their pay ratio.''), and US SIF (''While we understand the SEC's reasons for several exemptions from the proposed rule for emerging growth companies, smaller companies and foreign private issuers, we are, nonetheless, uncomfortable with these proposed exemptions.'').

[582] *See, e.g.,* letters from ABA, Prof. Angel, CalPERS, Capital Strategies, Davis Polk, Hay Group, NIRI, NY State Comptroller, PM&P, Vivient, and WorldatWork.

[583] *See, e.g.,* letters from CalPERS and WorldatWork (''Smaller companies would face a double compliance burden if asked to publish summary compensation tables and calculate the pay ratio.'').

[584] *See, e.g.,* letters from Prof. Angel and Vivient.

[585] *See supra* note 92.

segment data in Compustat.[586] We next obtain the total number of employees for SRCs with foreign operations and SRCs with U.S.-based operations only from Compustat. We apply the respective ''compliance cost per employee'' ratios for registrants with foreign and U.S.-based operations only estimated in section ''Quantification of Compliance Costs'' above to estimate the average and total compliance costs for SRCs with foreign operations and SRCs with U.S.-based operations only. We reclassify the remaining 2,464 registrants as SRCs with U.S.-based operations only because our analysis suggests that registrants that are not covered by Compustat are usually smaller companies without foreign operations. Consistent with our methodology for Table 3, to estimate the total compliance costs for SRCs that do not report segment data, which we reclassify as SRCs with U.S.-based operations only, we estimate their total number of employees and multiply it by $19.02. For those SRCs we reclassify as SRCs with U.S.-based operations only that do not have employee data available, we estimate the median cost per SRC with U.S.-based operations only and multiply it by the number of such registrants. The table below presents our estimates of the compliance costs of SRCs with foreign operations and SRCs with U.S.-based operations only, as well as total compliance costs for SRCs.

TABLE 4—TOTAL INITIAL COMPLIANCE COST ESTIMATES FOR SRCS

Type of registrant	Estimates	Calculation
Registrants with foreign operations:		
Registrants affected	212	
Total number of employees	60,280	
Cost/employee ratio	$38.04	
Total cost	$2,293,051	60,280*$38.04
Average cost per registrant	$10,816	2,293,051/212
Registrants with U.S.-based operations only:		
Registrants affected	282	
Total number of employees	89,625	
Cost/employee ratio	$19.02	$38.04*(1–0.5)
Total cost	$1,704,668	89,625 *$19.02
Average cost per registrant	$6,045	1,704,668/282
Median cost per registrant	$1,103	This number represents the median of (number of employees * $19.02) across the 282 U.S.-based registrants
Registrants with missing data, reclassified as U.S.-based operations only:		
Registrants affected	2,464	
Registrants with available employee data	1,150	
Total number of employees for the 1,150 registrants	245,752	
Cost/employee ratio	$19.02	$38.04*(1–0.5)
Total cost for the 1,150 registrants	$4,674,203	245,752*$19.02
Registrants with no employee data	1,314	2,464–1,150
Total cost for the 1,314 registrants	$1,449,342	1,314 * $1,103
Total cost	$6,123,545	4,674,203+1,449,341
Total	$10,121,264	2,293,051 +1,704,668 +6,123,545

Our decision not to require SRCs to comply with the pay ratio disclosure requirements prescribed by Section 953(b) would save the average SRC with foreign operations approximately $10,816, and the average SRC with U.S.-based operations only approximately $6,045. We note that these cost savings are the savings from not having to identify the median employee and calculate the total compensation for that employee. Those cost savings from exercise of our discretion with respect to SRCs total approximately $10 million.[587] We expect there also would be cost savings from not having to calculate PEO compensation pursuant to Item 402, but we are unable to quantify those savings.

To the extent that these costs have a fixed component that does not depend on the registrant's size of operations, the compliance burden for small registrants may be disproportionately large.[588] Moreover, small companies are more likely to operate in a single geographic or business segment, making the disclosure of the median employee pay more likely to reveal sensitive or proprietary information that can put these registrants at a competitive disadvantage.

We also considered expanding the coverage of the final rule to registrants, such as foreign private issuers and MJDS filers, which are not currently required to provide Item 402 disclosure. Most commenters agreed with the exclusion of foreign private issuers and MJDS filers,[589] but other commenters expressed concerns about excluding them.[590] Although quantifying the costs to these registrants of calculating PEO compensation under Item 402(c)(2)(x) or of complying with the requirements

[586] For approximately 60% of SRCs with missing segment data, Compustat reports no employee data.

[587] If average cost per SRC with U.S.-based operations were used in lieu of median for registrants with missing data, the total cost savings would instead be estimated as $2,293,051 + $1,704,668 + $4,674,203 + 1,314*$6,045 = $16.62 million.

[588] *See* letter from Vivient (''From a cost standpoint, requiring smaller reporting companies to disclose the pay ratio would create a significant cost and administrative burden. Given the size of their employee population and administrative budget, very few smaller reporting companies employ full-time senior level human resource professionals who could be assigned the responsibility of complying with the proposed ruling.'').

[589] *See* letters from ABA (stating that Section 953(b) does not require expanding the scope of Item 402 of Regulation S–K to apply to registrants not currently required to comply with the Item 402 disclosure, such as foreign private issuers and MJDS filers, so the Commission should not expand its rules to do so), Capital Strategies, Davis Polk, Hay Group, and PM&P.

[590] *See* letters from CalPERS, CII, and US SIF.

prescribed by Section 953(b) is not currently feasible because of lack of data, we assume that these costs (and in particular the costs of computing the median employee) could be significant. In particular, these costs may be higher for foreign private issuers and MJDS than for SRCs because these registrants are not currently required to provide any Item 402 disclosure. Based on a review of EDGAR filings for calendar year 2014, we estimate that there are approximately 677 foreign private issuers filing on Form 20–F and 143 MJDS filers filing on form 40–F that will benefit from the exclusion from the pay ratio disclosure requirements.

c. Employees Included in the Determination of the Median

Section 953(b) requires disclosure of the median of the annual total compensation of ''all employees of the issuer.'' Consistent with that mandate, the final rule includes in the definition of ''employee'' or ''employee of the registrant'' any U.S. and non-U.S. full-time, part-time, seasonal, or temporary worker (including officers other than the PEO) employed by the registrant or any of its subsidiaries as of the last day of the registrant's last completed fiscal year. Additionally, as set forth above, we are excluding from the determination of the median employee any workers who are not employed by the registrant or its consolidated subsidiaries, such as independent contractors and ''leased'' workers who are employed by, and whose compensation is determined by, an unaffiliated third party.

i. Types of Employees

Commenters were generally split on whether the rule should include part-time, seasonal, or temporary employees. A number of commenters agreed with the proposed requirements to include part-time, temporary, and seasonal workers because of Section 953(b)'s reference to ''all employees'' and believed that excluding these employees would distort the pay ratio by rendering it incomplete or misleading.[591] Other commenters suggested that the final rule should exclude part-time, seasonal, or temporary employees. These commenters asserted that compensation for these employees is not comparable to full-time employees, so their inclusion would distort the pay ratio.[592] Some commenters believed that the final rule should exclude part-time, seasonal, or temporary employees because the potential benefits from including them would not justify the high costs.[593] Another commenter recommended that the final rule should exclude part-time, seasonal, and temporary employees unless a majority of a registrant's employees work on a part-time, temporary, and/or seasonal basis.[594]

The final rule requires registrants to include part-time, temporary, and seasonal employees when identifying the median employee. We could have chosen an alternative approach, namely to allow registrants to base their pay ratio disclosure on full-time employees only. This approach would have led to a lower cost of compliance. According to one survey, such flexibility would have generated median savings of approximately 10% in compliance costs.[595] Applying this estimate to our compliance cost estimate of $1,315 million, had we chosen this alternative the total compliance costs would have been approximately $1,183.5 million, or savings of approximately $131.5 million. According to another commenter, excluding part-time employees could reduce costs of compliance by 20%, which would raise the estimate of potential cost savings to approximately $263 million.[596] Another commenter noted that more than 30 percent of respondents to its survey believe that limiting the median employee calculation to full-time employees would yield cost savings of more than 10 percent and an additional 18 percent of respondents believe that limiting the median employee calculation to full-time employees will yield cost savings of more than 20 percent.[597] Despite these potential cost savings, we are not adopting this alternative. Several commenters argued that excluding part-time, temporary, and seasonal workers from the definition of ''employee'' would make the disclosure incomplete and/or not representative of the registrant's actual workforce.[598] We agree and have concluded, as discussed more fully in section B.1.a. above, that this approach could significantly undermine the intent of the rule to allow a company-specific assessment of a registrant's compensation practices with respect to ''all employees''.

ii. Workers Not Employed by the Registrant (*i.e.,* Leased Workers)

The final rule, as proposed, excludes independent contractors and ''leased'' workers who are employed by, and whose compensation is determined by, an unaffiliated third party. Commenters generally supported this approach.[599] As discussed, we believe excluding such workers is appropriate because registrants generally do not control the level of compensation that these workers are paid.

We recognize that it is possible that a registrant could alter its corporate structure or its employment arrangements to reduce the number of employees covered by the final rule and, therefore, reduce its costs of compliance or alter its pay ratio disclosure to achieve a particular objective. For example, a registrant could choose to use only independent contractors or ''leased'' workers instead of hiring employees. A registrant could also choose to outsource some aspects of its business to achieve similar objectives. Although one commenter asserted that registrants would change their corporate structure or employment arrangements based on the definition of ''employee,'' [600] other commenters questioned the likelihood of this behavior.[601] We cannot quantify the expected prevalence of this behavior. However, given the inherent complexities involved in altering a registrant's corporate structures or employment arrangements, we do not expect that many registrants would undertake such changes merely for the

[591] *See* letters from AFL–CIO I, AFR, Bâtirente *et al.,* Bricklayers International, CII, CT State Treasurer, FS FTQ, Public Citizen I, and Theodore.

[592] *See* letters from AAFA I, AAFA II, American Benefits Council, COEC I, Corporate Secretaries, and Davis Polk.

[593] *See* letters from COEC I (''Nearly all firms, 122 of 128, have part-time and/or seasonal employees. With this in mind, two-thirds of survey respondents to the survey indicated that limiting the application of the proposed pay ratio rules to full-time employees only would reduce their costs. The average savings for these respondents would be approximately 20 percent.''), General Mills (which estimated that approximately 13% of their employees are part-time, seasonal or temporary), and WorldatWork II (recommending exclusion of part-time, seasonal, and temporary employees from the pay ratio).

According to one of the commenters, the average percentage of full-time employees reported by survey respondents was 86% (mid-range was 95%). *See* letter from COEC I. Another commenter estimates the average (median) percentage of full-time employees to be 87% (95%). *See* letter from Corporate Secretaries. Based on BLS data, approximately 81% of workers were employed full time as of 2014. *See* BLS Labor Force Statistics from the Current Population Survey, available at *http://www.bls.gov/cps/cpsaat12.htm.* We note that BLS data incorporates workers at a broader range of firms, including privately held firms and small firms, which may not be representative of the composition of the workforce at the registrants subject to the final rule.

[594] *See* letter from ABA.

[595] *See* letter from Corporate Secretaries.

[596] *See* letter from COEC III.

[597] *See* letter from WorldatWork I.

[598] *See, e.g.,* letters from AFL–CIO I, AFR, Bâtirente *et al.,* Bricklayers International, CII, CT State Treasurer, FS FTQ, and Public Citizen I.

[599] *See supra* note 114.

[600] *See* letter from Prof. Ray.

[601] *See, e.g.,* letters from ABA, Capital Strategies, and WorldatWork I.

purposes of lowering compliance costs or achieving a particular pay ratio.

iii. Employees of Consolidated Subsidiaries

As discussed above, of the commenters that discussed whether to include employees of a subsidiary, the majority recommended that the final rule require registrants to include only employees of certain types of subsidiaries, in particular consolidated or wholly-owned subsidiaries.[602] One of those commenters claimed that there would be a median increase in compliance costs of approximately 20% if the final rule included employees of all minority-owned subsidiaries and joint ventures.[603] Another commenter argued that limiting the final rule to consolidated subsidiaries would reduce costs and burdens and is consistent with Rule 405 of the Securities Act and Rule 12b-2 of the Exchange Act.[604]

The final rule defines ''employee'' to include only the employees of the registrant and its consolidated subsidiaries rather than employees of subsidiaries that were affiliates it controlled directly or indirectly through one or more intermediaries, as set forth in the definition of ''subsidiary'' under both Securities Act Rule 405 and Exchange Act Rule 12b–2. This change will affect registrants that have unconsolidated subsidiaries with a significant number of workers.

We believe that excluding employees of unconsolidated subsidiaries may provide a better representation of the compensation practices of the registrant itself since the compensation provided by unconsolidated subsidiaries may be beyond the control of the registrant covered by Section 953(b).

Based on our analysis of Compustat firms for calendar year 2014, excluding firms identified as emerging growth companies, smaller reporting companies, foreign private issuers, and MJDS filers, approximately 23% of firms reported positive equity investments in unconsolidated subsidiaries,[605] with the median investment of approximately 1.7% of the book value of total assets. The majority of the firms were in the financial, regulated utilities, and oil and gas industries. We lack information on the number of employees at unconsolidated subsidiaries to quantify the potential magnitude of their effect on the pay ratio disclosure.

We also reviewed Exhibit 21 to the annual reports on Form 10–K, which contains subsidiary information, for a sample of 24 firms that submitted individual unique comment letters pertaining to the proposal. The median number of subsidiaries in that set of firms was approximately 31. Only three registrants explicitly identified the number of consolidated subsidiaries, with the median being approximately 36. The registrants we studied may not be random as firms with more subsidiaries may be more likely to submit a comment letter. The information in the exhibits indicates that some firms have complex organizational structures but it does not allow us to systematically differentiate between consolidated and unconsolidated subsidiaries.

The final rule allows registrants to exclude employees from unconsolidated subsidiaries when identifying the median employee. This change from the proposed rule could lead to significant cost savings.[606] First, limiting the definition in this way will result in a smaller pool of employees from which to identify the median employee, thereby helping to reduce compliance costs associated with this step. Second, registrants are more likely to maintain integrated systems with their consolidated subsidiaries because these subsidiaries have to consolidate their financial statements with those of the registrant, which should make it easier to collect and analyze the relevant data.[607] Finally, as the consolidated subsidiary standard is commonly applied in other disclosures, there may be less cost for registrants to identify subsidiaries relevant for the disclosure. In summary, the final rule could provide a potential competitive advantage to registrants with a significant percentage of the workforce at unconsolidated subsidiaries over registrants with consolidated subsidiaries due to lower compliance costs associated with having fewer workers covered by the rule.

We have attempted to quantify the expected decrease in compliance costs from the revised definition of subsidiaries of the registrant, but did not obtain estimates on what these costs would be. One commenter's survey results suggested that compliance costs would increase by approximately 20% (median) compared to the proposal if the final rule required registrants to include employees of all minority-owned subsidiaries and joint ventures.[608] However, the effect of allowing registrants to exclude employees of unconsolidated subsidiaries on compliance costs relative to the proposed rule is not clear from this estimate. In light of this uncertainty and because we do not have other data available on the effects on the compliance cost estimate of the exclusion of employees of unconsolidated subsidiaries versus the exclusion of ''minority-owned subsidiaries and joint ventures,'' we are not reducing our initial cost estimates to account for the change to only include employees of consolidated subsidiaries. We acknowledge that our estimates may therefore overstate the compliance cost for companies with unconsolidated subsidiaries. Although we are unable to estimate the magnitude of this cost savings, as noted above, and consistent with the views of commenters, we believe that it could be significant for some companies.

iv. Employees Located Outside the United States

As discussed above, a number of commenters asserted that non-U.S. employees should be included in the final rule.[609] Some who supported this view argued that the failure to include foreign workers would substantially affect the pay ratio disclosure.[610] On the other hand, many commenters indicated that including those employees would lead to significantly higher costs and suggested that the final rule allow registrants to use only their U.S. employees when identifying the median

[602] *See* letters from ABA, Best Buy *et al.,* Business Roundtable I, COEC I, Corporate Secretaries, CT State Treasurer, Davis Polk, Eaton, ExxonMobil, General Mills, Mercer I, Meridian, NACCO, NAM I, and NAM II.

[603] *See* letter from Corporate Secretaries.

[604] *See* letter from ABA.

[605] Our analysis excludes investments in unconsolidated subsidiaries accounted for by the cost method as those are not identified separately by filers in the data available to us.

[606] *See, e.g.,* letters from ABA, COEC I (claiming that there would be a 91% increase on average in costs if registrants were required to include all minority-owned subsidiaries and joint ventures in the definition of ''employee''), and Corporate Secretaries (survey reporting a median increase in costs of 20% if the definition of ''employee'' included all minority-owned subsidiaries and joint ventures of the registrants).

[607] *See* letter from COEC I. The letter indicates that in the majority of cases, a registrant's access to the information necessary to calculate the pay ratio will only extend to wholly-owned subsidiaries that consolidate their financial statements with those of the registrant.

[608] *See* letter from Corporate Secretaries. *See also* letter from COEC I.

[609] *See, e.g.,* letters from AFL–CIO I, AFSCME, Bricklayers International, CalPERS, Calvert, Chicago Teachers Fund, Corayer, CT State Treasurer, Cummings Foundation, CUPE, Estep, Fedewa, First Affirmative, Gould, ICCR, IL Bricklayers and Craftworkers Union, Marco Consulting, Matteson, McMorgan Co., Sen. Menendez *et al.* I, Novara Tesija, NY Bricklayers and Craftworkers Union, NY State Comptroller, Oxfam, Pax World Funds, C. Phillips, Public Citizen I, Rand, S. Spofford, Socially Responsive Financial Advisors, Teamsters, Trillium I, Trustee Campbell, US SIF, and Walden.

[610] *See, e.g.,* letters from AFR, Bâtirente *et al.,* CII, Domini, and FS FTQ.

employee.[611] One commenter indicated that costs would be 20 to 30 times higher, or hundreds of thousands of dollars higher if non-U.S. employees are included.[612] Other commenters asserted that costs would decrease by over 50% [613] or 90% [614] if non-U.S. employees are excluded. Another commenter indicated that nearly half of respondents to its survey expected a U.S.-employee -only ratio to reduce compliance costs by more than 20 percent, while 29 percent of respondents expected it would reduce compliance costs by more than 40 percent.[615]

Comment letters addressing costs associated with including non-U.S. employees often noted that multinational registrants have multiple payroll systems and databases for their employees' compensation that are difficult if not impossible to reconcile.[616] One commenter indicated that it has 15 payroll systems that are not integrated, and those payroll systems would have to be manually reconciled with ''substantial costs'' and ''extensive staff hours.'' [617] Another commenter stated that it used 30 payroll systems that are not connected.[618] Yet another commenter cited a Human Resource Policy Association survey indicating that 84% of respondents could not easily calculate worldwide enterprise cash compensation for all their employees.[619]

The final rule does not allow registrants to exclude their non-U.S. employees when identifying the median employee, other than the limited exceptions described below. One commenter [620] estimated that the average company in a survey it conducted had 40% of its workforce located outside the United States and recommended a principles-based approach that would permit registrants to exclude up to and exceeding 40% of their employee population. This commenter estimated that permitting registrants to exclude non-U.S. employees would reduce compliance costs by 47%. Another commenter estimated that the median decrease in the compliance costs for registrants with foreign operations would be approximately 50% if the final rule excluded non-U.S. employees.[621] Given our estimate of aggregate initial compliance costs for registrants with foreign operations of approximately $1,050 million, had we instead excluded non-U.S. employees, the survey results suggest such registrants' initial compliance costs would instead be $525 million.

v. Foreign Data Privacy Law Exemption

The final rule also provides a foreign data privacy exemption that gives registrants the ability to exclude from their median employee computation non-U.S. employees in jurisdictions in which data privacy laws or regulations prohibit the use or transfer of the necessary information required to comply with the final rule. According to one commenter's survey, 45.8% of respondents anticipated ''being prohibited or limited by non-U.S. data privacy laws'' in their efforts ''to access information necessary to collect data to identify the median employee or make the pay ratio calculation.'' [622] The foreign data privacy exemption may lower the costs of calculating the pay ratio for registrants with employees in such jurisdictions, although we do not have data from which to estimate the magnitude of the cost savings. We recognize that it may also affect the median employee compensation determination. For example, based on the latest available Bureau of Economic Analysis (BEA) data for 2012, U.S. multinational companies were estimated to have approximately 11.5% of their employees at foreign affiliates in the EU, 3.2% in Canada, 4.2% in China, 3.7% in Mexico, 1.4% in Japan, and 2.6% combined in Switzerland, Australia, Argentina, Russia, and Singapore. Lower estimates are obtained when only majority-owned foreign affiliates are considered. Each of these jurisdictions was identified by commenters as having laws that may prohibit or restrict the transfer of information necessary to make the pay ratio calculation.[623] To the extent that data privacy restrictions may be present both in high-income and low-income jurisdictions, the direction of the effect of the exemption on the pay ratio is ambiguous and may vary from registrant to registrant. To the extent that registrants with non-U.S. workers in jurisdictions with data privacy laws would have experienced a significantly higher cost of calculating the pay ratio than registrants with the same percentage of non-U.S. workers but in jurisdictions without such laws, this change from the proposed rule mitigates the potential adverse competitive effects of the pay ratio disclosure requirement on registrants with non-U.S. workers in jurisdictions with data privacy laws. Consistent with a commenter's suggestion,[624] the final rule requires registrants to obtain a legal opinion from counsel in that jurisdiction on the inability of the registrant to obtain or process the information necessary for compliance with the final rule without violating that jurisdictions' laws or regulations governing data privacy, including the registrant's inability to obtain an exemption or other relief under any governing laws or regulations. The legal opinion must be

[611] *See, e.g.,* letters from ABA, American Benefits Council, Business Roundtable I, Business Roundtable II, Chamber I, Corporate Secretaries, ExxonMobil, Frederick W. Cook & Co., RILA, Semtech, and SHRM.

[612] *See* letter from American Benefits Council.

[613] *See* letter from Business Roundtable I.

[614] *See, e.g.,* letters from ExxonMobil and FEI.

[615] *See* letter from WorldatWork I.

[616] *See, e.g.,* letters from American Benefits Council, Aon Hewitt, BCIMC, Business Roundtable I, COEC I, Cummins, Eaton, ExxonMobil, Freeport-McMoRan, MVC Associates, NIRI, Semtech, SHRM, and Tesoro.

[617] *See* letter from Freeport-McMoRan. Similarly, a different commenter stated that it does not have a single payroll system that can easily analyze the type of data required for the calculation. *See* letter from Tesoro.

[618] *See* letter from Cummins Inc.

[619] *See* letter from MVC Associates (citing to COEC I).

[620] *See* letter from COEC III.

[621] *See* letter from Corporate Secretaries.

[622] *See* letter from COEC I.

[623] *See, e.g.,* letters from ABA (''The best known of these data privacy regimes is the European Union's Directive 95/46/EC of the European Parliament and the Council of 24 October 1995 on the Protection of Individuals with Regard to the Processing of Personal Data and the Free Movement of Such Data, 1995 O.J. L 281 . . . . Other jurisdictions, including Argentina, Canada, Japan, and Switzerland, have also adopted strong data privacy laws.''), American Benefits Council (''Among other things, the EU data privacy regime prohibits 'the transfer of personal data to a third country which does not ensure an adequate level of protection.' We also understand that many other countries, including China, Japan, Mexico, Canada, Peru, and Singapore, have or are in the process of implementing similar data privacy rules.''), Business Roundtable I (''Finally, countries outside of the EU, including Japan and Singapore, either already have developed domestic data privacy regimes similar to the EU Directive or are in the process of doing so.''), Business Roundtable II, COEC I (stating that, ''in addition to the 27 jurisdictions which have implemented the EU Directive, our survey respondents noted that there are several other countries which have restrictive data privacy laws including China, Japan and Mexico''), Corporate Secretaries (indicating that ''there are 27 countries in the EU that have implemented the EU Privacy Law. . .other countries such as Japan and Singapore have developed or are in the process of developing domestic data privacy regulations''), NAM I (''More specifically, compliance with the data protection laws of each European Union member country, as well as data protection laws of Australia, will be a significant obstacle to collection of necessary information. . . . Indeed, a Manufacturer operating in Russia found that, according to that nation's data privacy laws, the company will need to get the personal sign-off from every Russian employee to share the data with the corporate headquarters.''), and WorldatWork I (''Aside from the EU's laws, there are other countries that have confidentiality laws which may impact this information gathering, such as Argentina's confidentiality laws concerning equity awards.'').

[624] *See* letter from AFL–CIO II.

filed as an exhibit with the filing in which the pay ratio disclosure is included.

The exemption could potentially provide a competitive advantage to registrants with a significant overall percentage of the workforce located in jurisdictions with data privacy laws over other registrants due to lower compliance costs associated with having fewer workers covered by the rule. However, the limited and tailored nature of the exemption, as well as the reduction or elimination of the *de minimis* exemption for registrants that exclude employees under the foreign data privacy exemption, as discussed below, mitigates this possibility.

vi. *De Minimis* Exemption

While we define the term ''employee'' to include any U.S. and non-U.S. employee of a registrant, the final rule provides for a *de minimis* exemption for employees in foreign countries, up to 5% of a registrant's workforce, under certain conditions.[625] This type of exemption was suggested by several commenters,[626] and it should provide cost savings to eligible registrants. The suggested *de minimis* amount varied significantly across commenters.[627]

In the June 4 Memorandum and June 30 Memorandum, staff attempted to quantify the effects of the exemption. However, because staff lacked more specific information about potentially affected registrants, including comprehensive data on the intra-company distribution of compensation of these categories of employees at companies that may be subject to the rule, the analyses necessarily relied on certain assumptions. Commenters also did not provide this data.

The projections in the two staff memoranda were based on evidence obtained from other studies, aggregate statistics, and other assumptions that may result in over- or underestimating the magnitude of the effect on the pay ratio calculation. The memoranda made the following assumptions: companies have excluded the percent of employees equal to the specified percentage threshold; the distribution of pay is described by a lognormal distribution[628] (with various estimates of the standard deviation of the log of pay[629] that broadly incorporate the ranges of estimates from the studies cited in the June 4 Memorandum, 0.25, 0.35, 0.45, and 0.55[630]); and the level of PEO pay is independent of the exclusion threshold. The estimates of the effect on the pay ratio calculation of excluding different percentages of employees were sensitive to the above assumptions.[631]

The June 4 Memorandum, under the assumptions above evaluated the effects on the pay ratio calculation of excluding different percentages (between 1% and 20%) of pay observations from a lognormal distribution for each set of assumptions about intra-company standard deviation of the log of pay (σ) and for each of the two scenarios below concerning excluded pay observations: Scenario I (all excluded observations are below the median for the underlying distribution of pay); and Scenario II (all excluded observations are above the median for the underlying distribution of pay). Under these scenarios, for a given standard deviation level, the effect on the pay ratio is larger in magnitude when a larger percentage of employees are excluded. For example, the exclusion of 5% of employees may cause the pay ratio to decrease by up to 3.4% in Scenario I or to increase by up to 3.5% in Scenario II (an aggregate range of 6.9%). Under a 20% threshold, the pay ratio may decrease by up to 13% or increase by up to 15% (an aggregate range of 28%), depending on the scenario considered.

The June 30 Memorandum extended the analysis contained in the June 4 Memorandum by showing, under the same assumptions, the potential effects of excluding percentages greater than 20% and up to 95%. As expected, under the same assumptions, excluding a broader range of exclusion thresholds (between 20% and 95%) yielded a larger magnitude of the effect on the pay ratio for Scenarios I and II. In addition, the June 30 Memorandum included different intermediate scenarios between Scenarios I and II, with some observations excluded from above the median and some from below the median of the underlying

[625] *See* Section II.B.1.c.iii.

[626] *See* letters from American Benefits Council, ExxonMobil, FSI, FSR, NYC Bar, and PNC Financial Services.

[627] *See, e.g.,* letters from American Benefits Council (suggesting that a registrant be permitted to exclude non-U.S. employees in any foreign jurisdiction that comprises less than 5% of the issuer's aggregate global workforce), ExxonMobil (indicating that a registrant be permitted to exclude non-U.S. employees in a foreign jurisdiction if the number of employees in that jurisdiction is less than 1% of the issuer's total workforce), FSR (recommending that non-U.S. employees be excluded if they account for less than 5% of the registrant's total workforce or employees in any single foreign jurisdiction if they comprise less than 2% of total employees with an aggregate cap of 5% (if the registrant's non-U.S. employees account for more than 5% of all employees)), and NACCO (suggesting that a registrant be permitted to exclude non-U.S. employees if they make up less than 20% of the employee population).

[628] A commenter noted that a lognormal distribution may be inadequate for actual firms. *See* letter from Public Citizen II. As we noted in the Proposing Release, registrants that have multiple business or geographical segments may not necessarily have a lognormal distribution of pay. However, a distributional assumption is necessary for the analysis because staff could not observe the actual distribution of wages within the affected firms in the data available to them. This assumption is motivated by the positive skewness in dollar wages and the distribution of log of wages approximating normal distribution. *See, e.g.,* Blundell, R., Reed, H., Stoker, T., 2003, *Interpreting aggregate wage growth: The role of labor market participation*, AMERICAN ECONOMIC REVIEW, Vol. 93(4), pp. 1114–1131; Measuring the distribution of wages in the United States from 1996 through 2010 using the Occupational Employment Survey, BLS Monthly Labor Review, May 2014, *http://www.bls.gov/opub/mlr/2014/article/measuring-the-distribution-of-wages-in-the-united-states-from-1996-through-2010-using-the-occupational-employment-survey-1.htm*). The assumptions used in this analysis are for illustration purposes only. As we note, while the lognormal assumption may be appropriate for some registrants, it may not be appropriate for all registrants. While one commenter suggested that the final rule permit a registrant to determine the median employee based on an assumption that compensation is lognormally distributed within a company or segment, we believe that registrants can and thus should determine for themselves whether the use of a lognormal assumption is appropriate given their own compensation distributions. *See* letter from TCA. The final rule does not specify any required methodology for registrants to use in identifying the median employee and permits registrants the flexibility to choose a method to identify the median employee based on their own facts and circumstances so long as a registrant's methodology uses reasonable estimates. Indeed, more generally, we believe that it is appropriate for registrants to make their own determinations about whether a particular methodological assumption constitutes a reasonable estimate for their particular firms.

[629] As we noted in the Proposing Release, each registrant would have a company-specific compensation variance, which is impossible to be generally assumed.

[630] Two commenters noted that these assumptions may understate the variability of employee pay within actual publicly-traded companies, particularly companies with part-time, seasonal or temporary employees. *See* letters from AFL–CIO II and Public Citizen II. As discussed in the June 4 memorandum, the above standard deviation assumptions could understate intra-firm wage variation in employee pay, which would in turn potentially understate the effects of the exclusion on the pay ratio. However, the staff lacked data on the actual intra-firm distribution of wages for registrants affected by the final rule to perform additional analysis.

[631] The letter from COEC III cites additional research on wage dispersion within and between firms not cited in the June 4 Memorandum. *See* Jae Song, David J. Price, Fatih Guvenen, Nicholas Bloom, and Till von Wachter, Firming Up Inequality, NBER Working Paper 21199, May 2015, available at *http://www.nber.org/papers/w21199* (''Song et al. (2015)''). The estimates of within-firm wage variation in this paper are in a format from which the staff cannot directly infer the standard deviation estimates required for its analysis, and the staff lacks access to the source data to compute these standard deviation estimates. The paper concludes that within-firm wage inequality changed little over time, which is broadly similar to the conclusion in Barth *et al.* (2014) based on a different dataset, cited in the June 4 Memorandum. The staff analysis utilizes a range of standard deviation assumptions to illustrate the effects of various potential levels of within-firm wage variability.

distribution.[632] As expected, under the same assumptions, including these intermediate scenarios yielded effects within the range delineated by Scenarios I and II.[633]

As the memoranda indicate, under the assumptions considered, excluding 5% of employees yields an effect on the pay ratio in the range between −3.4% and 3.5%.[634]

We further recognize that the estimates of the effects of the *de minimis* exemption on the pay ratio are sensitive to the assumptions made and may understate or overstate the actual magnitude of the effect if any of the above assumptions, for instance, the assumptions about lognormal distribution or magnitude of intra-firm variation in wages, do not hold. If the affected registrant's true intra-firm distribution of the log of employee pay is not normal, depending on the shape of the true distribution, the actual effects on the median may significantly differ from the estimated effects reported in the memoranda. Importantly, if the true intra-firm distribution of pay at an affected registrant deviates from the lognormal assumption, estimates of the effects under these scenarios may correspondingly decrease in accuracy as the percentage of the excluded observations increases.

We note that the *de minimis* exemption may not affect some registrants because not all registrants will be eligible to use it or choose to use it to exclude up to 5% of the total workforce. We also note that, in some instances, this exemption may result in the exclusion of employees from jurisdictions with low pay, which may increase the difficulty of interpreting the pay ratio. The requirements to disclose the jurisdiction(s) and the approximate number of employees from each jurisdiction being excluded should mitigate this concern.

We have considered several reasonable alternatives to the final rule's 5% *de minimis* exemption. One alternative would be to apply a different *de minimis* threshold. A lower *de minimis* percentage may increase registrants' costs of calculating the ratio for workers in non-U.S. jurisdictions. Lowering the *de minimis* threshold below 5% would not meaningfully reduce the impact on the pay ratio under the assumptions in our analysis. A higher *de minimis* threshold could yield potentially larger savings in the costs of calculating the ratio for registrants with workers in non-U.S. jurisdictions. However, as seen in Table 1 in the June 4 Memorandum, such a threshold would have a potentially larger effect on the pay ratio than the 5% threshold. Specifically, as discussed above, under the assumptions made and depending on the scenario considered, the exclusion of 10% of employees may decrease the pay ratio by up to 6.7% or increase it by up to 7.2%; the exclusion of 15% of employees may decrease the pay ratio by up to 9.9% or increase it by up to 11%; the exclusion of 20% of employees may decrease the pay ratio by up to 13% or increase it by up to 15%. Each of these alternatives thus could result in an impact on pay ratio that is greater than the impact under the *de minimis* threshold.[635]

Under alternative *de minimis* exemptions suggested by commenters, registrants would be permitted to exclude non-U.S. employees in every foreign country that comprises less than 1% [636] or less than 5% [637] of the registrant's aggregate global workforce. These alternative definitions of the *de minimis* exemption can reduce calculation costs for U.S. multinational registrants with a high level of international diversification in their workforce. However, they may potentially result in the exclusion of a large percentage of employees at registrants with a large percentage of non-U.S. employees diversified across countries, which may affect the pay ratio considerably, as we indicate in the discussion above. These alternatives may also offer a larger relative competitive advantage to internationally diversified U.S. registrants compared to U.S. registrants with the same total percentage of non-U.S. employees concentrated in fewer countries and thus ineligible for the exemption under these alternatives.

A different alternative exemption proposed by a commenter would permit registrants to exclude all employees in any single foreign jurisdiction if they comprise less than 2% of total employees, with an aggregate cap of 5% (if the registrant's foreign employees account for more than 5% of all employees).[638] The exemption in our final rule is defined more broadly than this alternative definition and enables savings in calculation costs for a potentially larger fraction of registrants with non-U.S. workers.

Registrants that are eligible for the *de minimis* exemption and choose to use it may have lower compliance costs than registrants that do not use the exemption.[639] By excluding foreign workers, the exemption makes eligible registrants with foreign operations more similar to registrants with U.S.-based operations only and reduces the number of employees considered in the identification of the median employee, with the effect of reducing compliance costs for the eligible registrants. Relying on some reasonable assumptions, we are able to quantify some of the cost savings from the *de minimis* exemption. First, we assume that all registrants with foreign operations will use the exemption and eliminate 5% of their workforce. We also assume that the savings in compliance costs are directly proportionate to the number of employees excluded and that the compliance cost per excluded foreign employee is equal to the estimate for firms with some foreign employees, $38.04. Using these assumptions and our estimates of the number of registrants with foreign operations and the total number of employees for these registrants from Table 3, the total savings from the use of the *de minimis*

[632] Specifically, the June 30 Memorandum included the following three scenarios: Scenario I(a) (75% of the excluded observations are below the median, with the remaining 25% of the excluded observations above the median); Scenario I(b) (50% of the excluded observations are below the median, with the remaining 50% of the excluded observations above the median); and Scenario I(c) (75% of the excluded observations are above the median, with the remaining 25% of the excluded observations below the median). *See* June 30 Memorandum. *One commenter noted that* non-random exclusion of low-paid employees would cause the pay ratio estimate to decline more than random exclusion. *See* letter from Public Citizen II. Consistent with the commenter, as the staff analysis demonstrates, exclusion scenarios in which over half of the excluded workers are paid below the true median cause the pay ratio estimate to decline. As noted in the June 4 Memorandum, non-U.S. employees of U.S. multinational firms outside the United States on average receive lower compensation than employees located inside the United States. *See* June 4 Memorandum. However, for some firms with employees outside the United States in highly skilled occupations or firms with employees in jurisdictions with high labor costs, some employees outside the United States may receive higher compensation than U.S. employees.

[633] We note that, if observations are equally excluded from either side of the median, the estimated effect is zero regardless of the percentage of employees excluded from the distribution.

[634] As mentioned above, we lack information about the actual intra-firm distribution of pay for affected registrants but, even if the true distribution is lognormal, we do not have information to know where the effect may fall within the range.

[635] *See* Section II.B.1.c.iii(c) for the definition of the *de minimis* threshold at 5%.

[636] *See* letter from ExxonMobil.

[637] *See* letter from American Benefits Council.

[638] *See* letter from FSR.

[639] Some commenters noted that the staff analysis did not incorporate a cost-benefit analysis. *See* letters from COEC III and WorldatWork II. Potential cost savings from the *de minimis* exemption are discussed in this section. *See* Section III.D.2.c.iv, above, for a discussion of potential cost savings from the exclusion of all non-U.S. employees. Commenters did not provide more detailed estimates of the cost savings from excluding some but not all non-U.S. employees.

exemption would be approximately $52.5 million.[640]

We note that actual cost savings incrementally attributed to the *de minimis* exemption are likely to be lower. Some registrants may have less than 5% of the total workforce outside the United States. Other registrants may have more than 5% of the total workforce outside the United States but less than 5% of the total workforce in aggregate across foreign jurisdictions in which it can exclude employees under the *de minimis* exemption (with no more than 5% of the total workforce in each such jurisdiction). The incremental cost savings from the *de minimis* exemption are further reduced or potentially eliminated for registrants that exclude some employees under the foreign data privacy exemption as such registrants may be ineligible for the *de minimis* exemption or eligible for the exemption but unable to exclude employees at the maximum level under the *de minimis* exemption due to the concurrent use of the foreign data privacy exemption, concentrated nature of their non-U.S. workforce, or a combination of the two factors.[641] Other registrants with non-U.S. workers may elect not to use the exemption. We also note that the actual cost savings could vary significantly depending on whether cost savings increase uniformly with the percent of employees excluded and whether registrants can exclude any employees outside the United States under the foreign data privacy law exemption.

To the extent that registrants with non-U.S. workers experience a higher cost of calculating the pay ratio than registrants with U.S. workers only and that the *de minimis* exemption reduces such costs, it reduces the potential adverse competitive effects of the pay ratio disclosure requirement on registrants with non-U.S. workers eligible for the exemption. Registrants with non-U.S. workers concentrated in fewer foreign jurisdictions are more likely to exceed the 5% threshold for any single foreign jurisdiction and thus be ineligible for the exemption than registrants with the same total percentage of non-U.S. workers diversified across more foreign jurisdictions. If the inability to use the *de minimis* exemption increases the costs of calculating the pay ratio significantly (for instance, when the overall percentage of non-U.S. workers is higher than but relatively close to 5%), registrants with geographically concentrated non-U.S. workers may be at a relative competitive disadvantage.

vii. Calculation Date

The final rule permits registrants to choose any date within three months of the end of registrant's fiscal year to identify the median employee for that year and requires registrants to disclose the date used. Compared with prescribing a given date, such as the last day of the completed fiscal year, as proposed, this approach may reduce compliance costs by providing flexibility to registrants that may not have enough time to collect and report on their pay ratio information at year-end. Commenters suggested that allowing registrants to select the date would allow them to pick a date that does not coincide with other required reporting or that better utilizes the internal resources of the registrants.[642] This approach also might reduce compliance costs for registrants that use many employees at the end of the calendar year by permitting those registrants to choose a date on which those seasonal or temporary employees are not employed.[643] Registrants in industries with more fluctuations in employment within the year due to seasonality may realize larger benefits from this approach.[644] Hence, it is possible that registrants could choose a date and structure their employment arrangements around that date to reduce the number of workers employed on the calculation date or to alter the reported ratio to achieve a particular objective with the pay ratio disclosure. One commenter specifically addressed this issue and noted its belief that this concern ''is unwarranted, particularly if the choice is restricted to a limited time period (such as the last fiscal quarter), since in general the employee population of a registrant would not vary significantly over such a period.'' [645] Another commenter suggested that not allowing such an adjustment will produce ''artificially low'' median employee pay for registrants that have many temporary and seasonal workers at year-end.[646] Yet another commenter recommended allowing flexibility with respect to the measurement date but requiring that the calculation include annual compensation of all employees employed at any time over the preceding 365 days.[647] However, we note that such an alternative would increase the cost for registrants with significant fluctuations in the number of employees within the year relative to the final rule. Based on the comments we received, we believe that the rule as adopted will reduce compliance costs compared to the proposed rule. However, we did not receive data that would allow us to quantify the cost reduction.

d. Adjustments to the Compensation of Employees

The final rule includes an instruction that permits a registrant to annualize the compensation for all permanent employees (full-time or part-time) employed on the calculation date who did not work for the registrant for the full fiscal year. The final rule does not permit annualization for employees in temporary or seasonal positions. The final rule also does not permit the use of full-time-equivalent adjustments for any of a registrant's employees in the required pay ratio disclosure, although such adjustments are permitted to derive an additional ratio if the registrant chooses. We believe that our approach provides appropriate accommodations to registrants to represent the annual composition of

[640] The savings are calculated as 5% * (27,595,305 * $38.04) for firms with some foreign employees. Under similar assumptions, if companies with foreign operations were permitted to exclude 10%, 20%, 30%, and 40% of their employees, respectively, potential cost savings could amount to that percentage multiplied by (27,595,305 * $38.04) or $105 million, $210 million, $315 million, and $420 million, respectively. Actual cost savings may differ if there are fixed costs associated with the inclusion of non-U.S. employees in the pay ratio calculation. Another commenter estimated from a survey that the mid-range percentage of non-U.S. employees was 40% and that the mid-range cost savings from excluding all non-U.S. employees would be 50%. *See* letter from COEC.

[641] The final rule does not limit a registrant's ability to rely on the foreign data privacy exemption, provided the conditions of the exemption are met.

[642] *See, e.g.,* letters from Chamber I, COEC I, COEC II, and Microsoft.

[643] *See, e.g.,* letters from American Benefits Council, NACCO, and PM&P.

[644] For example, analysis by staff in the Division of Economic and Risk Analysis of BLS employment statistics by industry for 2014 revealed that the following sectors appear to have the largest employment fluctuations due to seasonality, as proxied by the average magnitude of the percentage difference between seasonally adjusted and not seasonally adjusted employment: arts, entertainment and recreation, educational services, and construction, as well as administrative and support services, accommodation and food services (when data for all months is used) and retail trade and warehousing and storage (when data for the final three months is used, to account for the fiscal year end being December for the majority of registrants). *See http://www.bls.gov/data/#employment.* Agricultural employment is excluded from the above calculations. It is also likely to be subject to significant fluctuations within the year due to seasonality. We note that BLS data may not be representative of the employment fluctuations within the year for the registrants subject to the final rule and that the value of the flexibility to select the calculation date will vary across registrants.

[645] *See* letter from Davis Polk.

[646] *See* letter from PM&P.

[647] *See* letter from AFL–CIO II.

their workforce without significantly diminishing the potential usefulness of the disclosure mandated by Section 953(b).

We believe that by permitting annualization adjustments for permanent employees but not seasonal or temporary ones, our approach more closely captures the composition of a registrant's workforce and compensation practices. For these annualizing adjustments to have any significant impact on the reported pay ratio, both the fraction of permanent new hires to all employees of the registrant and their annualized compensation would have to be relatively large. We also note that some commenters were supportive of allowing annualizing adjustments.[648] One commenter suggested that this adjustment will make the ratio more representative of the registrant's labor arrangements.[649] This procedure is purely optional and registrants do not need to annualize compensation, such as if they believe that the additional cost of the adjustment does not warrant the perceived benefit.

By permitting registrants to annualize compensation for these employees, the comparability of disclosure across registrants could be reduced compared to an alternative of either requiring or prohibiting such annualization. As noted above, however, we believe that precise comparability of disclosure from registrant to registrant could be difficult to achieve due to the variety of factors that could cause the ratio to differ. Accordingly, we do not believe that the costs associated with promoting precise comparability would be justified.

Another alternative would have been to permit a registrant to annualize the compensation for all temporary and seasonal employees who were employed for less than the full fiscal year and to use that annualized compensation in the mandated pay ratio disclosure. Some commenters supported this alternative and indicated that not allowing an annualizing adjustment for these employees would distort the pay ratio.[650] Some commenters urged us to permit the use of full-time equivalent adjustments for part-time employees, temporary, and seasonal employees.[651] The final rule does not permit the mandated pay ratio disclosure to include either the use of annualized adjustments for seasonal or temporary employees or the use of full-time-equivalent adjustments for part-time employees. We believe that such adjustments would reflect a different workforce composition and compensation structure than that utilized by the registrant. To the extent that a registrant relies primarily on part-time, temporary, or seasonal workers, computing a ratio based on their annualized compensation of temporary and seasonal workers or the full-time-equivalent of a part-time worker, unlike annualizing adjustments for permanent employees, could have a significant impact on the ratio.

Although we are not permitting full-time-equivalent adjustments or annualization adjustments for seasonal and temporary employees to be made for purposes of calculating the annual total compensation in the mandated pay ratio disclosure, the final rule does permit registrants to provide additional disclosure. For example, registrants can report additional ratios, including ratios that reflect one or more of those adjustments, if they choose, provided that any additional ratio is clearly identified, not misleading, and not presented with greater prominence than the required ratio.

The final rule permits but does not require registrants to adjust compensation to the cost of living in the PEO's jurisdiction of residence. While some commenters stated that international differences in the cost of living can distort the reported pay ratio,[652] one commenter suggested that compensation is more directly comparable to the total compensation of a registrant's PEO without a cost-of-living adjustment.[653] Moreover, as some commenters suggested,[654] the cost-of-living adjustment may alleviate concerns about pay comparability between U.S. employees and those non-U.S. employees that are located in foreign countries where the purchasing power of the average foreign pay in dollar terms deviates significantly from the purchasing power of the average domestic pay in dollar terms.

Providing the option to use a cost-of-living adjustment is not expected to increase the compliance cost for registrants. Country-level cost-of-living data is widely available. The incremental cost of identifying the median employee based on pay without the cost-of-living adjustment and calculating the pay ratio without the cost-of-living adjustment is expected to be small once pay data for all employees or for samples of employees from individual countries have been obtained. Thus, registrants that believe the cost-of-living adjusted ratio to be more meaningful given the structure of their workforce may benefit from the option to present the pay ratio with the cost-of-living adjustment as the ratio required by Item 402(u)(1)(iii).

The cost-of-living adjustment of the compensation of a registrant's employees may have an effect on the determination of the median employee and on the calculation of the pay ratio for registrants with employees in countries whose cost of living differs from the cost of living in the PEO's country of residence. We are limited in our ability to quantify the impact of this adjustment on the pay ratio calculation by our lack of data on the intra-firm distribution of pay of employees outside the PEO's country of residence for the affected registrants and by limited data available to us on the distribution of employees by country at the individual registrant level. As noted elsewhere, because we lack data regarding intra-firm distributions, we cannot predict the effects of a cost-of-living adjustment on those distributions, as the adjustment may, in some cases, have an effect on the combined employee pay distribution at the individual registrant level by potentially changing the median employee within the same country or by locating the median employee in a different country. We therefore analyze qualitatively the main factors that may contribute to more significant effects of the cost-of-living adjustment on the determination of the median employee and on the calculation of the pay ratio.

The cost-of-living adjustment option could affect the pay ratio calculation for registrants with some employees located outside the PEO's country of residence that elect to use this option. The effect of the cost-of-living adjustment could be potentially larger for registrants with a larger percentage of employees outside the PEO's country of residence and for registrants with employees in countries with a cost of living that differs significantly from the PEO's country of residence.

[648] *See, e.g.,* letters from ABA, Corporate Secretaries, Intel, NACCO, PM&P, SH&P, and WorldatWork I.

[649] *See* letter from Corporate Secretaries (''We believe that allowing annualizing adjustments effectuates the Dodd-Frank Act requirement that each registrant disclose the median of the annual total compensation of its employees. Such adjustments would result in a calculation that is closer to a fair and reasonable representation of the registrant's actual compensation practices and labor costs. The adjustment also would help eliminate the potential distorting effects of mid-year hires, including those that result from a merger or acquisition'').

[650] *See, e.g.,* letters from AAFA II, American Benefits Council, Brian Foley & Co., Corporate Secretaries, Hay Group, KBR, NIRI, and NYC Bar.

[651] *See supra* note 108.

[652] *See, e.g.,* letters from AAFA I, American Benefits Council, Corporate Secretaries, and ExxonMobil.

[653] *See* letter from ABA.

[654] *See* letters from NAM I, NAM II, and SH&P.

According to the results of one commenter's survey, the average (median) respondent had 62% (60%) of its employees located in the United States.[655] According to another commenter's survey, approximately 55% of respondents reported having the majority of their employees located in the United States.[656] As set forth in Table 3 above, out of the registrants potentially subject to the final rule for which we have data on the presence of geographic segments,[657] approximately a third are estimated to have U.S.-based operations only and two-thirds are estimated to have some non-U.S. operations. Based on aggregate BEA data on U.S. multinational companies for 2012,[658] employees at foreign affiliates and at majority-owned foreign affiliates of U.S. multinational companies comprised approximately 38% and 33–34%, respectively, of the total employment of U.S. multinational companies. We note that the respondents in the surveys cited above, companies that report geographic segments, and companies in the BEA sample may not be representative of the full set of registrants subject to the final rule, and the PEO's country of residence may be different than the United States.

Based on aggregate BEA data on the distribution of employees of U.S. multinational companies by country for 2012,[659] the majority of employees at foreign affiliates of U.S. multinational companies were estimated to be located in the following regions: Europe (34%, including 30% in the EU); Asia and Pacific (34%); and Latin America (20%). Looking at individual jurisdictions, the most employees of foreign affiliates of U.S. multinational companies were estimated to be located in the following ten countries: China (11.2%); the United Kingdom (10.3%); Mexico (9.8%); Canada (8.4%); India (6.9%); Germany (4.9%); Brazil (4.6%); Japan (3.7%); France (3.5%); and Australia (2.5%), which in aggregate accounted for 65.8% of foreign employees of U.S. multinational firms.[660]

However, these aggregate statistics on the location of employees by country do not capture the distribution of employees by countries at individual registrants. While these aggregate statistics may offer an average perspective across all firms with a non-U.S. workforce in the BEA sample, they do not enable us to draw strong conclusions about the ultimate effects on the pay ratio for those registrants that are subject to final rule and decide to opt for the cost-of-living adjustment. We believe that registrants anticipating an increase in the pay ratio after the adjustment may be less likely to opt for the cost-of-living adjustment. Based on 2014 data from the International Monetary Fund (''IMF''),[661] we note that the E.U. on aggregate had a cost of living similar to the U.S. level. Based on 2014 data on PPP conversion factors from the World Bank,[662] of the above locations, the United Kingdom, Canada, Germany, Japan, France, and Australia had a cost of living similar to or above the U.S. level. Based on the same measure, of the above locations, India, China, Mexico, and Brazil had a cost of living below the U.S. level.[663] As we noted above, the actual effects of cost-of-living adjustment on the pay ratio calculation will depend on the countries where employees are located, the actual distribution of employee pay, and the specific cost-of-living measure used.

Below we illustrate the potential effect of the cost-of-living adjustment on the pay ratio for a hypothetical registrant.[664] In this example, we make the following assumptions: We assume that the registrant has 70% of employees in the country of residence of the PEO and 30% of employees in another country; the pay of the registrant's employees in the PEO's country, expressed in the currency of the PEO's country, is lognormally distributed (with mean log of pay of 10.5 and standard deviation of log of pay of 0.5); the pay of the registrant's employees in the other country, expressed in the currency of the PEO's country, is lognormally distributed (with mean log of pay of 9 and standard deviation of log of pay of 0.5); and the cost of living is two times higher in the country of residence of the PEO than in the other country. In this hypothetical example, a cost-of-living adjustment would cause the pay ratio to decrease by approximately 6.4%. If the cost of living were three times higher in the country of residence of the PEO than in the other country, holding other assumptions unchanged, a cost-of-living adjustment would cause the pay ratio to decrease by approximately 14.9%.

Some commenters[665] suggested that a cost-of-living adjustment could introduce an element of subjectivity into the pay ratio calculation or permit registrants to alter the reported ratio to achieve a particular objective with the ratio disclosure. In the final rule, the requirements to apply a consistent methodology, to disclose the use of the adjustment, and to provide disclosure of the registrant's pay ratio calculated without the cost-of-living adjustment should address these concerns.

e. Frequency of Identifying the Median Employee

Unlike the proposed rule, which required registrants to identify the median employee every year, the final rule allows registrants to identify the median employee once every three years unless there has been a change in the registrant's employee population or employee compensation arrangements that it reasonably believes would result in a significant change in the pay ratio disclosure. Registrants must still provide annual disclosure of their pay ratio by recalculating the previously identified median employee's annual total compensation each year.

Under this approach, a registrant may identify its median employee for year one and then use that employee or one who has substantially similar compensation as its median employee in the following two years for calculating the employee's annual total compensation and the registrant's pay ratio. A couple of commenters suggested this approach, noting that it would still result in a registrant providing a pay ratio disclosure on an annual basis while reducing the burden and costs required to identify the median employee annually when there have not been any interim changes in the

[655] *See* letter from Corporate Secretaries.

[656] *See* letter from COEC I.

[657] Compustat segments database reports data on the presence of geographic segments for approximately 63% of registrants potentially subject to the final rule.

[658] *See* U.S. BEA data on Direct Investment & Multinational Enterprises (MNEs) available at *http://bea.gov/iTable/index_MNC.cfm.*

[659] *Id.*

[660] *Id.*

[661] We lack PPP estimates for the E.U. in aggregate. An indirect proxy is the PPP conversion factor implied by the E.U. gross domestic product (''GDP'') reported in dollar terms and PPP-adjusted dollar terms. *See* IMF World Economic Outlook data by country groups, available at *http://www.imf.org/external/pubs/ft/weo/2015/01/weodata/weoselagr.aspx.*

[662] PPP conversion factor is the ratio of the PPP exchange rate to the nominal dollar exchange rate, available at *http://data.worldbank.org/indicator/PA.NUS.PPPC.RF.* This ratio makes it possible to compare the cost of the bundle of goods that make up GDP across countries. It measures how many dollars are needed to buy a dollar's worth of goods in the country as compared to the United States.

[663] *Id.* PPP conversion factors calculated based on the 2011 International Comparison Program round and 2014 market exchange rates for the countries above are: China (0.6); the United Kingdom (1.2); Mexico (0.6); Canada (1.1); India (0.3); Germany (1.0); Brazil (0.7); Japan (1.0); France (1.1); and Australia (1.4).

[664] This is intended only as a hypothetical example for illustration purposes and not as an indication of the effects at an actual or representative registrant. The effects are highly sensitive to the assumptions described. The estimates are obtained numerically.

[665] *See* letters from Prof. Ray and WorldatWork I.

registrant's workforce or compensation structure.[666]

Choosing this approach is likely to result in lower ongoing compliance costs for affected registrants. We expect that some registrants will identify the median employee every three years, while others may identify it every year or every two years. Thus, depending on how frequently registrants would have to identify the median employee, and on whether the identification of the median employee is the main ongoing cost of compliance, with the change in the final release, the ongoing compliance costs could range approximately from $123 million to $947 million per year.[667]

f. Method of Identifying the Median Employee

In order to allow the greatest degree of flexibility while maintaining consistency with the statutory provision, the final rule does not specify a particular methodology for identifying the median. Instead, it allows registrants a choice of multiple methods, including several with significant flexibility.

We are adopting this flexible approach because we believe that the appropriate and most cost-effective methodology for identifying the median employee necessarily depends on a registrant's particular facts and circumstances, including, among others, such variables as size and nature of the workforce, complexity of the organization, the stratification of pay levels across the workforce, the types of compensation the employees receive, the extent that different currencies are involved, the number of tax and accounting regimes involved, the number of payroll systems the registrant has, and the degree of difficulty involved in integrating payroll systems to readily compile total compensation information for all employees. We believe that these are likely the same factors that would cause substantial variation in the costs of compliance. By not prescribing specific methodologies that must be used, the final rule allows registrants to choose a method to identify the median employee that is appropriate to the size, structure, and compensation practices of their own businesses, including permitting a registrant to identify the median employee using any consistently applied compensation measure.

In addition, the final rule's flexibility could enable registrants to manage compliance costs more effectively than a more prescriptive approach would allow.[668] We also believe that, by allowing registrants to minimize direct compliance costs, a flexible approach could mitigate, to some extent, any potential negative effects of the mandated requirements on competition. We recognize, however, that a flexible approach could increase uncertainty for registrants that prefer more specificity on how to comply with the final rule, particularly for registrants that do not use statistical analyses in the ordinary course of managing their businesses. In light of this potential uncertainty, the final rule establishes certain parameters on the use of this flexibility, such as by specifying that the use of statistical sampling or other reasonable estimates in identifying the median is permitted, as is identifying the median employee based on any consistently applied compensation measure.

We believe that a flexible approach would not significantly diminish the potential benefits of the disclosure mandated by Section 953(b). As discussed above, we believe that the intended purpose of the pay ratio disclosure is to provide shareholders with a company-specific metric to evaluate the PEO's compensation, rather than a benchmark for compensation arrangements across registrants. Also as discussed above, we are not persuaded that mandating a particular methodology will necessarily improve the comparability of pay ratio disclosure across registrants because of the numerous other factors that could also cause the ratios to be less meaningful for registrant-to-registrant comparison. Even if such comparability could be marginally enhanced by mandating a specific method for identifying the median, we do not believe this marginal improvement in comparability would be justified in light of the costs that would be imposed on registrants by a more prescriptive rule. We also note that some commenters expressed the view that greater comparability across registrants could increase the likelihood that a registrant's competitors could infer proprietary or sensitive information about the registrant's business. This in turn could increase the indirect costs to registrants of the adopted requirements, such as competitive harms in labor markets discussed in the previous section or general costs arising from the mandated disclosure requirement.

Finally, we recognize that allowing registrants to select a methodology to identify the median, rather than prescribing a methodology or set of methodologies, could reduce the benefits for shareholders if that flexibility results in a pay ratio statistic that is less useful than a more precisely and consistently calculated ratio. In particular, some commenters claimed that permitting flexibility in the rule would allow registrants to manipulate the ratio in their favor.[669] While we acknowledge that the flexibility we are providing creates some risk that registrants will attempt to use this flexibility to produce a more favorable pay ratio, we think that this risk is mitigated by the disclosures we are requiring with respect to the methodologies and assumptions used to identify the median employee, as discussed below. The final rule specifically discusses two particular permitted methods of identifying the median employee—using a consistently applied compensation measure and using statistical sampling. For all of these reasons, we believe the benefits of the final rule's flexibility outweigh those of a more prescriptive approach.

i. Consistently Applied Compensation Measure

We proposed to allow registrants to use any consistently applied compensation measure, such as amounts derived from the registrant's payroll or tax records, to identify the median employee and then calculate that median employee's annual total compensation in accordance with Item 402(c)(2)(x). We are adopting this approach as proposed.

Allowing registrants this flexibility is likely to reduce registrants' compliance costs significantly, compared to the alternative of requiring registrants to calculate total compensation in accordance with Item 402(c)(2)(x) for all employees, or for a statistically valid sample, and then identify the median.

[666] *See, e.g.,* letters from ABA, COEC I, and COEC II.

[667] Ongoing costs without this adjustment are estimated to be between $368 million and $947 million. *See* Section III.C.2.c. Ongoing costs with the adjustment are estimated as follows. The $123 million is estimated as $368 million divided by three, based on the lowest of the estimates of ongoing compliance costs and the assumptions that all registrants identify the median employee every three years and the identification of the median employee accounts for the entirety of the ongoing cost. This estimate represents the aggregate annual cost in this scenario averaged over three years. The $947 million is based on the highest of the estimates of ongoing compliance costs and the assumption that all registrants incur the full ongoing cost every year.

[668] For example, one commenter estimated that using all elements of compensation rather than the sum of salary earned, incentive cash earned, and stock awards granted to identify the median employee in a worldwide workforce would increase the initial expense and ongoing workload by a factor of more than five times. *See* letter from Microsoft.

[669] *See, e.g.,* letters from Bupp, Corayer, Fedewa, Fox, Friend, Grotzke, Hlodnicki, Kizzort, Maly, Petricoin, and Van Pelt.

This view was shared by commenters.[670] Registrants that choose this approach will be able to identify a median employee from employee compensation data that they may already track or record or that may be less expensive for them to acquire than obtaining and computing all of the Item 402(c)(2)(x) compensation information for each employee. Using one commenter's survey results,[671] we can estimate the potential savings resulting from our exercise of discretion. According to the survey, which provided both average and median cost increase estimates, costs would increase on average by 4,689% if registrants were required to calculate total compensation in accordance with Item 402(c)(2)(x) for all employees. The median increase in compliance costs would be 175%.[672] Applying this median percentage to our initial compliance cost estimate of $1,315 million, this alternative would increase the total compliance costs to approximately $3,616 million. Thus, we estimate that allowing registrants flexibility in identifying the median employee could result in a total savings of approximately $2,301 million.

We acknowledge, however, that some registrants will still incur costs if they have to combine or sample from separately maintained payroll systems across segments and/or geographic locations.

ii. Statistical Sampling

The final rule, as proposed, also allows registrants to use statistical sampling in their determination of the median employee. The size of the reduction in compliance costs that can be achieved by using statistical sampling or other reasonable estimates in identifying the median employee ultimately depends on a registrant's particular facts and circumstances. Below we provide an illustration of how various registrants' characteristics might affect the sampling size. We note that these numbers are intended to provide examples and should not be treated as recommendations about the appropriate sampling size. For example, in the following figure and tables, we show that the variance of underlying wage distributions can materially affect the appropriate sample size for statistical sampling.[673] Industries characterized by the BLS as having low wage variances, such as electric power generation, coal mining, and metal ore mining, have estimated minimum appropriate sample sizes for an accurate median estimate of less than 135 employees. In contrast, industries characterized by high wage variances, such as offices of physicians, health and personal care stores, and spectator sports, have estimated minimum appropriate sample sizes of more than 1,263 employees. Figure 2 shows the distribution of estimated minimum appropriate sample sizes for registrants operating in each of the 290 4-digit NAICS industries tracked by the BLS.[674]

TABLE 6—THE INDUSTRIES WITH THE SMALLEST AND LARGEST APPROPRIATE SAMPLE SIZES

Industry	Average wage ($)	Median wage ($)	Example of registrant sample size
10 Industries With Smallest Variance in Wage Distribution			
Electric Power Generation, Transmission and Distribution	72,800	70,380	84
Coal Mining	55,740	53,310	116
Metal Ore Mining	58,000	55,060	135
Software Publishers	96,730	90,390	160
Wired Telecommunications Carriers	65,580	61,510	162
Natural Gas Distribution	74,270	69,350	170
Rail Transportation	59,990	56,120	172
Computer and Peripheral Equipment Manufacturing	94,850	88,160	174

[670] *See, e.g.,* letters from CalPERS (''By offering companies a number of alternatives, companies will be able to determine which methodology works best for their company and/or tailor it for their special circumstances. Moreover, this flexibility will allow companies to select a methodology that is most cost effective for them. Finally, since companies will already have the dataset necessary for this calculation (in order to prepare their financial statements and tax returns), we do not envisage costs will be a barrier to compliance.'') and COEC I (''The value of this flexibility appears to be significant in terms of cost. Indeed, survey respondents were asked how their compliance costs would be affected in the event they were required to calculate median employee compensation using the same method employed in the 'Summary Compensation Table.' This method is currently used to calculate total primary executive officer compensation and is equivalent to the first approach offered by the SEC. 99 percent of respondents answered that their costs would increase if they were forced to calculate median employee compensation using the Summary Compensation Table approach. Including all responses, the median increase is reported as 100 percent. The data strongly indicate that adhering to the Summary Compensation Table approach would lead to additional significant increases in compliance costs relative to the Proposed Rule'').

[671] *See* letter from Corporate Secretaries.

[672] Another commenter, based on survey results, argued that the average increase in costs would be 4,592%, but did not provide a median estimate. *See* letter from COEC I.

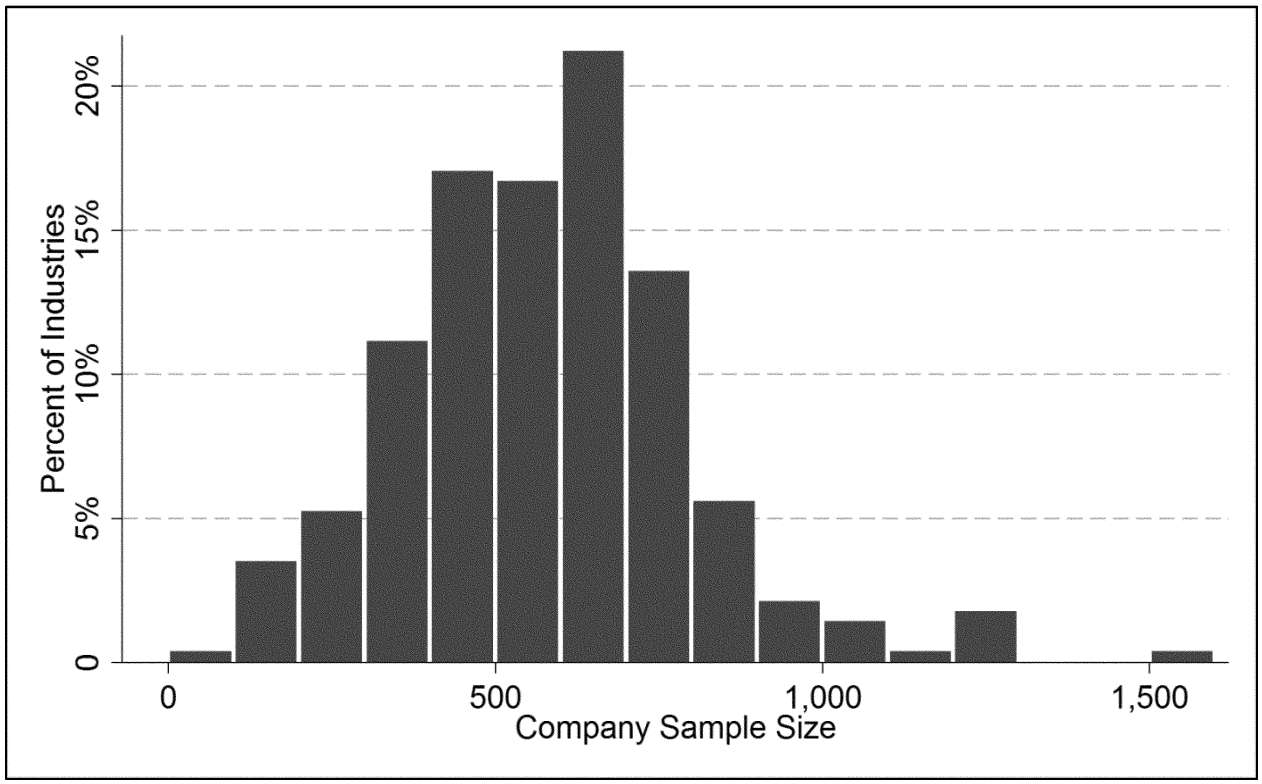
[673] The analysis uses average and median wage estimates from the BLS at the 4-digit NAICS industry level (290 industries) and assumes a lognormal wage distribution. We use a 95% confidence interval with relative 0.5% margin of error in the estimate of the average of the logarithm of wage. We estimate the median wage by taking the exponential of the sample average of the logarithm of wage, which is the sample geometric average. This median estimator is the maximum likelihood estimator (''MLE'') of the population median for lognormal distribution, and it is an unbiased estimator when the sample size is large. The 95% confidence interval for the population wage median can be obtained by taking the exponential of the endpoints of the 95% confidence interval for the sample average of logarithm of wage (E.L. Crow and K. Simizu, *Lognormal Distributions: Theory and Applications* 29, (Marcel-Dekker: New York, 1988), R. Serfling, *Efficient and Robust Fitting of Lognormal Distributions*, NORTH AMERICAN ACTUARIAL JOURNAL 6, 95–109 (2002), G. Casella & R. L. Berger, *Statistical Inference* 320 (Duxbury, 2nd ed. 2002), T. B. Parkin, and J. A. Robinson, *Statistical Evaluation of Median Estimators for Lognormally Distributed Variable*, SOIL SCIENCE SOCIETY OF AMERICA JOURNAL 57, 317–323 (1993). The lognormal wage distribution assumption is supported by the following studies: F. Clementi, and M. Gallegati, *Pareto's Law of Income Distribution: Evidence for Germany, the United Kingdom, and the United States*. ECONOPHYSICS OF WEALTH DISTRIBUTIONS, NEW ECONOMIC WINDOW. 3–14 (2005), and J. López and L. Servén, *A Normal Relationship? Poverty, Growth and Inequality.* World Bank Policy Research Working Paper 3814 (2006). *See also* M. Pinkovskiy and X. Sala-i-Martin, *Parametric Estimations of the World Distribution of Income*, NBER WORKING PAPER 15433, (2009). It is common in practice to control the relative margin of error (instead of absolute margin of error) to determine the sample size. Accordingly, the sample size depends on the coefficient of variation (CV) of the underlying distribution. The square of the CV, also known as ''relative variance,'' is often more stable and easier to guess in advance than variance (W. G. Cochran, *Sampling Techniques* 77, (New York: Wiley, 3rd ed. 1977); S. L. Lohr, *Sampling: Design and Analysis* 46–47, (Cengage Learning, 2nd ed. 2009). This analysis also assumes that when the sampling is implemented, the sampling method would be a true random sampling (*i.e.,* it would not be biased by region, occupation, rank, or other factor).

[674] Our analysis excludes the *Motor Vehicle Manufacturing* and *Postal Service* industries from our sample because, for these industries, mean wage was lower than median wage in dollar terms, appearing to contradict our lognormal distributional assumption.

TABLE 6—THE INDUSTRIES WITH THE SMALLEST AND LARGEST APPROPRIATE SAMPLE SIZES—Continued

Industry	Average wage ($)	Median wage ($)	Example of registrant sample size
Interurban and Rural Bus Transportation	35,950	33,690	184
School and Employee Bus Transportation	33,440	31,200	199
10 Industries With Largest Variance in Wage Distribution			
Offices of Physicians	72,040	40,510	1,572
Health and Personal Care Stores	41,890	27,060	1,290
Spectator Sports	42,540	27,680	1,263
Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures	71,960	45,100	1,251
Motion Picture and Video Industries	56,540	36,420	1,226
Home Health Care Services	37,780	25,100	1,225
Cut and Sew Apparel Manufacturing	34,800	23,580	1,180
Amusement Parks and Arcades	29,580	20,800	1,095
Apparel, Piece Goods, and Notions Merchant Wholesalers	52,350	35,800	1,063
Other Professional, Scientific, and Technical Services	48,140	33,150	1,059

Figure 2. The distribution of registrant sample sizes for different industries



Because these estimated minimum appropriate sample sizes are based on wage distributions measured by the BLS in standardized industries, they may not correspond to the appropriate minimum sample size at registrants with an employee base that does not correspond precisely to one of these industries. Even for registrants whose operations are wholly within one of these standardized industries, their appropriate sample size may also be different to the extent that their distribution of employee wages is different than that of the industry. In these instances, a registrant's appropriate sample size could be higher or lower than that estimated for its industry.

In 2014, of the nearly 3,571 registrants that we believe will be subject to the final rule, we estimate that approximately 68% and 63% report business and geographic segments, respectively. Approximately 50% and 65% of the potentially affected registrants that self-report business and geographic segments, respectively, report a single segment of that type.[675] Of the registrants that self-report a single business segment for which we have industry classifications that match the BLS data, Table 7 shows estimated minimum appropriate sample sizes assuming that each registrant's wage

[675] This estimate is based on data from Standard and Poor's Compustat Segment database. We note that the segment information is self-reported by the companies, so it is not based on standardized definitions of geographic areas such as states, countries, or regions.

distribution is similar to the BLS-measured industry distribution.

TABLE 7—NUMBER OF REGISTRANTS ACCORDING TO SAMPLE SIZE RANGES

Sample size(n) ranges	Number of registrants
n<100	30
100≤n<250	113
250≤n<500	260
500≤n<750	664
750≤n<1000	127
n≥1000	20
Total	1,214

The example in Table 7 is simplified by the assumptions that registrants have employees in a single industry and that employee pay is described by a lognormal distribution with parameters based on aggregate statistics for that industry. We recognize that statistical sampling may be more complicated for registrants with different types of pay distributions or multiple business and geographic segments, each of which may have different parameters of the distribution. While one commenter suggested simple random sampling could be used for these registrants,[676] other approaches, such as stratified cluster sampling,[677] may yield more efficient estimates in some instances. We also recognize that the implementation of statistical sampling for registrants with multiple payroll systems may require additional steps. While we believe that statistical sampling can produce reasonable estimates of the median for these types of registrants, we lack information on intra-firm employee pay distributions and registrants' costs of sampling to estimate the proportion of registrants for which specific sampling approaches may most efficiently produce reasonable estimates of median pay.

While some commenters argued that statistical sampling will not lead to significant reductions in compliance costs,[678] the majority of commenters supported using statistical sampling for calculating the median employee, implying that this approach can reduce costs for some registrants.[679] In light of the comments received, we continue to believe that permitting registrants to use statistical sampling will lead to an overall reduction in compliance costs as compared to not permitting this method of identifying the median.

g. Disclosure of Methodology, Assumptions, and Estimates

The final rule requires registrants to briefly describe and consistently apply any methodology used to identify the median employee and disclose any material assumptions, adjustments, or estimates used to identify the median or to determine total compensation or any elements of total compensation. Registrants also must clearly identify any estimates used. Registrants' disclosure of the methodology and material assumptions, adjustments, and estimates used must be designed to provide information for a reader to be able to evaluate the appropriateness of the methodologies used.

This disclosure is intended to aid shareholders and investors in their use of the pay ratio disclosure and alert them to any material changes in the methodology that might change the reported pay ratio. Many commenters indicated that the rule should require registrants to provide this narrative information,[680] but a number of these commenters indicated that the rule should clarify that the narrative be brief.[681]

Alternatively, we could have required registrants to provide a detailed description of every operational step and methodological assumption used in identifying the median employee. Because we are concerned that disclosure about methodology, assumptions, adjustments, and estimates could become dense and overly technical,[682] which we believe would limit its usefulness, the final rule asks for a brief overview and makes clear that it is not necessary to provide technical analyses or formulas. We do not believe that a detailed, technical discussion (such as statistical formulas, confidence levels, or the steps used in data analysis) would appreciably enhance shareholders' understanding of how the pay ratio was calculated. We recognize, as commenters noted, that registrants will incur some costs in developing and reviewing the appropriate language to describe the approach taken. However, we expect that the costs of this disclosure will be marginal, as these additional disclosures are intended to simply describe what has already been done or assumed in the calculations, and therefore will not require additional analysis by registrants.

h. Determination of Total Compensation

As mandated by Section 953(b), the final rule defines ''total compensation'' by reference to Item 402(c)(2)(x). We received comments supporting the use of estimates in calculating the annual total compensation or any elements of total compensation for employees other than the PEO.[683] As proposed, the final rule permits registrants to use reasonable estimates to determine elements of ''total compensation.''

We acknowledge that, to the extent that the use of estimates causes the disclosure to present a less precise measure of the ''total compensation'' of the registrant's median employee than if we prohibited the use of estimates, it could diminish the potential usefulness of the disclosure. However, commenters did not suggest that allowing for the use of reasonable estimates in determining the ''total compensation'' would diminish the potential usefulness of the disclosure and we likewise believe it is not likely to have such an effect.[684]

i. Defining ''Annual''

As proposed, the final rule defines ''annual total compensation'' to mean total compensation for the last completed fiscal year, consistent with the time period used for the other Item 402 disclosure requirements.

Some commenters agreed that the pay ratio disclosure should be calculated based on data from the last completed fiscal year.[685] Other commenters, however, recommended that the rule permit registrants to use another period, such as the fiscal year preceding the registrant's last completed fiscal year.[686] Commenters also asked that registrants be permitted to choose the period.[687] We understand that these suggestions are intended to reduce compliance costs for registrants by giving registrants extra time to comply with the rule or the ability to use information in the form

[676] *See* letter from Ohlrogge II.

[677] *See, e.g.,* S. Gross. *Median estimation in sample surveys.* In Proceedings of the Section on Survey Research Methods. American Statistical Association, 181–184. (1980).

[678] *See, e.g.,* letters from Business Roundtable I, Chamber I, COEC I, COEC II, ExxonMobil, Freeport-McMoRan, FuelCell Energy, Garmin, Johnson & Johnson, Microsoft, NAM I, NAM II, NIRI, and WorldatWork I.

[680] *See, e.g.,* letters from AFL–CIO I, Barnard, Business Roundtable I, CalPERS, CalSTRS, Calvert, CII, COEC I, COEC II, CT State Treasurer, Domini, Hermes, Kasner, LAPFF, Meridian, Microsoft, Somers, Sze, UAW Trust, US SIF, and WorldatWork I.

[681] *See, e.g.,* letters from ABA, AFL–CIO I, Business Roundtable I, COEC I, COEC II, Domini, Meridian, Microsoft, and WorldatWork I.

[682] *See, e.g.,* letter from Business Roundtable I (commenting that the disclosure could not be brief because of the issuer's need to use many estimates and assumptions).

[683] *See, e.g.,* letters from ABA, COEC I, COEC II, Davis Polk, Prof. Angel, and Vectren Corp.

[684] *But see* letter from Dennis T (''No estimates. [N]o sampling. We demand the actual data.'').

[685] *See, e.g.,* letters from ABA, CalPERs, and UAW Trust.

[686] *See, e.g.,* letters from Aon Hewitt, Business Roundtable I, Corporate Secretaries, and Eaton.

[687] *See, e.g.,* letters from Davis Polk and WorldatWork I.

that would best suit their particular facts and circumstances. We believe, however, that it is appropriate for the time period used for the pay ratio disclosure to be the same as the time period used for the registrant's other executive compensation disclosures, although the flexibility in identifying the median employee could help to address the concerns raised by these commenters. In particular, using the same time period as for other executive compensation disclosure will avoid any possible confusion for shareholders using this disclosure.

j. Updating the Pay Ratio Disclosure for the Last Completed Fiscal Year

The final rule includes instructions to clarify the timing for updating pay ratio disclosure after the end of a registrant's fiscal year. Without this provision, a registrant could be required to include pay ratio disclosure in a filing after the end of the fiscal year, but before it has compiled the executive compensation information for that fiscal year for inclusion in its proxy statement relating to its annual meeting of shareholders. This could impose additional costs on registrants that elect to provide executive compensation disclosure in their annual proxy statement rather than in their annual report and for registrants that are conducting registered offerings at the beginning of their fiscal year.

To address this concern, we considered the recommendation of commenters that pay ratio disclosure not be required to be updated for the most recently completed fiscal year until the registrant files its proxy statement for its annual meeting of shareholders. The final rule generally follows this recommended approach and also provides a similar accommodation for registrants that do not file annual proxy statements.[688] It also aligns the final rule to the filing deadlines for providing Item 402 disclosure in annual reports and proxy and information statements. We believe that such an approach will reduce costs to registrants without diminishing the potential usefulness of the disclosure.

We also believe that this approach could reduce costs for registrants in connection with filings made or required to be made before the filing of the proxy or information statement for the annual meeting of shareholders (or written consents in lieu of such a meeting) that would typically contain the registrant's other Item 402 disclosure covering the most recently completed fiscal year. In addition, under the final rule, updating the pay ratio disclosure is not an additional impediment for a registrant that requests effectiveness of a registration statement after the end of its fiscal year and before the filing of the proxy statement for its annual meeting of shareholders. In this regard, this approach could alleviate some of the final rule's potential impact on capital formation.

k. Status of Disclosure as ''Filed''

Under the final rule, the pay ratio disclosure will be considered ''filed'' for purposes of the Securities Act and Exchange Act, like other Item 402 information. A number of commenters recommended that the pay ratio disclosure be ''furnished'' rather than ''filed'' [689] because registrants will have to review a large amount of data and make a significant number of estimates, assumptions, and judgment calls, which will necessarily lead to imprecision.[690] This, in turn, could subject registrants to potential liability and litigation,[691] make it difficult to validate the information sufficiently for Sarbanes-Oxley Act certification purposes,[692] and/or not permit the information to be audited (or greatly increase the costs of the audits).[693] We recognize that some registrants could have more difficulty in gathering and verifying the information than others. We believe, however, that the flexibility afforded to registrants in connection with identifying the median employee could reduce some of the difficulties of compiling the required information because registrants will be able to tailor the methodology to reflect their own facts and circumstances. In addition, we believe that the final rule's transition periods, which are discussed below, could mitigate some concerns about compiling and verifying the information because they are designed to give registrants sufficient time to develop and implement compliance procedures.

Requiring registrants to ''file'' their pay ratio information may make the final rule more costly for registrants than the alternative of allowing them to ''furnish'' such information. Treating the pay ratio disclosure as ''filed'' will mean that registrants could potentially be subject to litigation under Section 18 of the Exchange Act, although, as mentioned earlier, Section 18 does not create strict liability for misstatements in ''filed'' information and requires that a plaintiff establish that it relied on the misleading information in purchasing or selling a security and suffered damages caused by that reliance. On the other hand, under the final rule, this potential liability for misleading pay ratio disclosure could make registrants more accountable for the disclosure than if we instead permitted the disclosure to be 'furnished' and result overall in fewer inaccuracies in the required pay ratio disclosure. To the extent that registrants perceive there to be a greater likelihood of private litigation under the final rule than if they were permitted to ''furnish'' the information, registrants may decide to apply a more costly process to identify the median employee, or retain additional counsel, thus increasing compliance costs.

l. Compliance Date

Section 953(b) does not specify a date when registrants must begin to comply with the final rule. In a change from the Proposing Release, the final rule requires that a registrant must begin to comply with Item 402(u) with respect to compensation for the registrant's first full fiscal year commencing on or after January 1, 2017.

As discussed above, the change from the proposal provides calendar year-end filers and registrants with fiscal years beginning January 1, 2015 until the day before the final rule's effectiveness one additional year to provide their pay ratio disclosure relative to the proposal. The final rule also changes the compliance schedule for registrants with fiscal years starting on or after effectiveness through December 30, 2015. These registrants will receive two additional years to provide their pay ratio disclosure relative to the proposal. Assuming a hypothetical effective date of November 1, 2015, we estimate that this change will lead to a one-time cost deferral of approximately $147 million for two years and to savings of approximately between $27.3 million and $212 million for 223 registrants subject to the final rule that have fiscal

[688] Based on a review of EDGAR filings in calendar year 2013, approximately 250 registrants that would be subject to the final rule do not file proxy or information statements in connection with annual meetings of shareholders, including 15D filers (other than SRCs and ABS issuers) and registrants that are not corporate entities required to hold annual meetings of shareholders.

[689] *See, e.g.,* letters from AAFA II, ABA, American Benefits Council, Aon Hewitt, Best Buy *et al.,* Bill Barrett Corp., Business Roundtable I, Business Roundtable II, Chamber I, Chesapeake Utilities, COEC I, COEC II, Corporate Secretaries, Eaton, Freeport-McMoRan, General Mills, Intel, Mercer I, NAM I, NAM II, NIRI, NRF, PM&P, RILA, SHRM, and Vectren Corp.

[690] *See, e.g.,* letters from AAFA II, ABA, Business Roundtable I, Chesapeake Utilities, COEC I, COEC II, Corporate Secretaries, Eaton, General Mills, NRF, RILA, and Vectren Corp.

[691] *See, e.g.,* letters from ABA, American Benefits Council, Aon Hewitt, Bill Barrett Corp., Chamber I, General Mills, Mercer I, and PM&P.

[692] *See, e.g.,* letters from ABA, Best Buy *et al.,* Corporate Secretaries, Freeport-McMoRan, Intel, NAM I, and SHRM.

[693] *See, e.g.,* letters from COEC I, COEC II, Corporate Secretaries, and NIRI.

years that end from October 31, 2015, through December 30, 2015 [694] and a one-time cost deferral of approximately $1,169 million for one year and to savings of approximately between $109 million and $842 million for the remaining 3,348 registrants subject to the final rule.[695] For this estimation, we identified the fiscal year ends for all affected registrants. We found that 223 registrants have fiscal years that end between October 31 and December 30, of which 130 are multinational registrants and 93 are registrants with U.S.-only segments. We found that of the remaining 3,348 registrants estimated to be subject to the final rule, 1,340 are multinational registrants and 2,008 are registrants with U.S.-only segments.[696]

m. Transition Periods

The final rule also includes a transition period for new registrants because we are sensitive to the impact that the rule could have on capital formation. We note that the requirements of Section 953(b), as amended by the JOBS Act, distinguish between certain newly public companies and all other registrants by providing an exemption for emerging growth companies. We also note that the incremental time needed to compile pay ratio disclosure could cause registrants that are not emerging growth companies to delay an initial public offering, which could have a negative impact on capital formation.[697] In this regard, we expect that registrants that are not emerging growth companies are likely to be businesses with more extensive operations and a greater number of employees than many emerging growth companies, which could increase the initial efforts needed to comply with the final rule. We believe that providing a transition period for these newly public companies could mitigate this potential impact on capital formation.

To address these concerns, the final rule also includes instructions that would permit new registrants to delay compliance, so that pay ratio disclosure would not be required in a registration statement on Form S–1 or S–11 for an initial public offering or a registration statement on Form 10. Instead, such a registrant would be required to first comply with Item 402(u) with respect to compensation for the first fiscal year commencing on or after the year in which the registrant first becomes subject to the requirements of Section 13(a) or Section 15(d) of the Exchange Act, but no earlier than the year commencing January 1, 2017. Additionally, in response to comments, the final rule provides that a registrant that ceases to be a smaller reporting company or an emerging growth company will not be required to provide pay ratio disclosure until the first fiscal year after exiting such status, but no earlier than the year commencing January 1, 2017. This change from the proposed rule allows registrants exiting smaller reporting company or an emerging growth company status to delay their initial compliance by a year, and will give them additional time to decide how they will identify their median employee and prepare the necessary disclosure. Further, the final rule permits registrants that engage in business combinations and/or acquisitions to not include in the median employee determination employees of a newly-acquired entity for the fiscal year in which the business combination or acquisition occurs. We believe that the exercise of discretion used in allowing these additional transitional periods will result in cost savings for the affected registrants and will further mitigate any effects of the rule on capital formation.

IV. Paperwork Reduction Act

A. Background

Certain provisions of the final amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (the ''PRA'').[698] We published a notice requesting comment on the collection of information requirements in the Proposing Release for the rule amendments, and we submitted these collections of information requirements to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[699] The titles for the collections of information are:

- ''Regulation S–K'' (OMB Control No. 3235–0071);
- ''Form 10–K'' (OMB Control No. 3235–0063);
- ''Regulation 14A and Schedule 14A'' (OMB Control No. 3235–0059);
- ''Regulation 14C and Schedule 14C'' (OMB Control No. 3235–0057);
- ''Form 8–K'' (OMB Control No. 3235–0060);
- ''Form S–1'' (OMB Control No. 3235–0065);
- ''Form S–4'' (OMB Control No. 3235–0324);
- ''Form S–11'' (OMB Control No. 3235–0067);
- ''Form 10'' (OMB Control No. 3235–0064); and
- ''Form N–2'' (OMB Control No. 3235–0026).

These regulations, schedules and forms were adopted under the Securities Act and the Exchange Act, and in the case of Form N–2,[700] the Investment Company Act of 1940.[701] The regulations, forms and schedules set forth the disclosure requirements for periodic reports, registration statements,

[694] For these registrants, the initial compliance cost is assumed to be deferred for two years. There are 130 multinational registrants and 93 registrants with U.S.-only segments. The annual cost for the 130 multinational registrants is equal to the product of their cumulative number of employees (3,354,869) and the cost per employee ($38.04), or a total of approximately $128 million. The annual cost for the 93 registrants with U.S.-only segments is equal to the product of their cumulative number of employees (1,018,780) and the cost per employee ($19.02), or a total of approximately $19 million. Thus, the total initial compliance cost for the 223 registrants that is deferred for two years is approximately $147 million. These registrants also will not have to incur two years of ongoing compliance costs. Assuming the ongoing cost as a percentage of the initial cost is between one-third of 28% (9.3%) and 72% of the initial cost, the cost savings are estimated to be between ($147 million*9.3%)*2 = $27.3 million and ($147 million*72%)*2 = $212 million. *See* Sections III.C.2.c and III.D.2.e.

[695] For these registrants, the initial compliance cost is assumed to be deferred for one year. Of the 3,348 registrants, 1,340 are multinational registrants with 24,240,445 employees in total and a total annual cost of $922 million; 1,691 are registrants with U.S.-only segments with 12,530,180 employees in total and a total annual cost of $238 million; and 317 are registrants with U.S.-only segments with missing employee data and a total annual cost of $9 million. Thus, the total cost for the 3,348 registrants is approximately $1,169 million over one year. These registrants also will not have to incur one year of ongoing compliance costs. Assuming the ongoing cost as a percentage of the initial cost is between one-third of 28% (9.3%) and 72% of the initial cost, the cost savings are estimated to be between ($1,169 million*9.3%) = $109 million and ($1,169 million*72%) = $842 million. *See* Sections III.C.2.c and III.D.2.e.

[696] For registrants without segment or employee data, we followed the same approach as in Table 3.

[697] *See, e.g.,* letters from ABA (''Although we doubt that a company considering an initial public offering of its securities would decide to forego such a transaction simply because of the pay ratio disclosure obligation, in some situations, the time and costs associated with Item 402(u) compliance could certainly weigh in the timing of the offering.''), Lou (''The competitive disadvantages raise the costs of raising capital through public trading markets and thereafter discourage companies to go public. The additional monetary cost obviously makes an initial public offering ('IPO') [a] less attractive mean[s] to raise capital though the negative impact might not constitute a fatal factor that would kill the IPO. However a CEO would feel reluctant to list the company because of the threatening embarrassment of pay ratio disclosure. Therefore the pay ratio exerts a negative effect on IPOs.''), and PM&P (''We agree with the proposed transition period that new registrants should not be required to include pay ratio disclosure in their initial registration statements, and that to do so could significantly delay the IPO.'').

[698] 44 U.S.C. 3501 *et seq.*

[699] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[700] 17 CFR 239.14 and 274.11a–1.

[701] 15 U.S.C. 80a–1 *et seq.*

and proxy and information statements filed by companies to help investors make informed investment and voting decisions. The hours and costs associated with preparing, filing and sending the form or schedule constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Our amendments to the forms and regulations are intended to satisfy the requirements of Section 953(b) of the Dodd-Frank Act, which directs the Commission to amend Item 402 of Regulation S–K to add the pay ratio disclosure requirements specified by that provision. Compliance with the final rule will be mandatory for affected registrants. Responses to the information collections will not be kept confidential, and there will be no mandatory retention period for the information disclosed.

B. Summary of Information Collections

In order to satisfy the legislative mandate in Section 953(b), we are adopting new paragraph (u) to Item 402 of Regulation S–K. This new paragraph (u) will require registrants to disclose:

- the median of the annual total compensation of all employees of the registrant (excluding the PEO);
- the annual total compensation of the registrant's PEO; and
- the ratio between these two amounts.

For this purpose, Section 953(b) specifies that total compensation is to be determined in accordance with Item 402(c)(2)(x). Item 402 already requires registrants to disclose the annual total compensation of the PEO in accordance with Item 402(c)(2)(x).[702] The median of the annual total compensation of all employees and the ratio are new, incremental disclosure burdens and will require affected registrants to collect compensation information for employees that is not currently required to be disclosed.

The additional disclosure under new paragraph (u) of Item 402 will be required in any annual report, proxy or information statement, or registration statement that requires executive compensation disclosure pursuant to Item 402 of Regulation S–K.[703] In addition, the requirements will allow certain registrants to omit the disclosure otherwise required by Item 402(u) from filings made during a specified transition period.

Finally, in order to conform the amendments to current rules for the disclosure of PEO compensation when certain elements of compensation are not yet known, we are adopting a conforming amendment to Item 5.02 of Form 8–K. New paragraph (1) of Item 5.02(f) will also require registrants that are disclosing PEO total compensation in accordance with Item 5.02 of Form 8–K to provide in that filing the updated pay ratio disclosure required by Item 402(u). Because Item 5.02 of Form 8–K provides a delayed method of filing information that would otherwise be required in the registrant's proxy or information statement or annual report, the PRA analysis assumes that the burden and cost of compliance with new Item 402(u) would be associated primarily with those forms and schedules rather than Form 8–K.

C. Summary of Comment Letters and Revisions to Proposals

In the Proposing Release, we requested comment on the PRA analysis. We received letters from two commenters that directly addressed the PRA estimates,[704] as well as a number of other comment letters and submissions that discussed the costs and burdens to issuers that would have an effect on the PRA analysis.[705] A detailed discussion of these comments is included in the Section III above.[706]

One of the two commenters analyzed data from a survey of 118 companies to conclude that it would take registrants an average of 952 hours per year to comply with the pay ratio disclosure requirement at an average labor cost of $185,600, which we assume refers to external costs only.[707] The other commenter disagreed with the our assumption in the Proposing Release that ongoing compliance costs in the second and third year would significantly decrease from the initial compliance costs in the first year.[708] Based on the proposed rule, which did not include several accommodations adopted in the final rule, that commenter estimated that ongoing compliance costs would be 80% (mid-range) or 72% (average) of the initial compliance costs for each successive year. This commenter also cited a survey completed by 128 public companies, the majority of which were large companies with assets well over $2 billion, to assert that the average cost of outside securities compliance counsel is $700 per hour, rather than the $400 per hour used in the PRA estimates.[709]

Several companies submitted estimates of burdens and costs without commenting on the our estimates. One company estimated that compliance with the proposed rule would require 100–150 hours of work by internal staff and 20 to 40 hours of external consulting time at a total ''internal cost'' of $1 million to $1.5 million.[710] Another company estimated that it would take over 1,000 internal burden hours to develop the database and methodology to derive the pay ratio information, and that ongoing burden hours would be approximately 50% (500 hours) of the initial compliance burden hours.[711] It also asserted that this represents an approximate cost of over $250,000 on an initial basis and $100,000 on an ongoing

[702] As of the date of this release, the requirements for the calculation of total compensation under Item 402(c)(2)(x) are the same as those in effect on July 20, 2010. Therefore, for purposes of this PRA analysis, we have assumed that registrants would not need to recalculate the annual total compensation for the PEO in connection with the pay ratio disclosure.

[703] Consistent with the scope of Section 953(b), the new requirements will not apply to the annual reports and proxy and information statements of emerging growth companies, smaller reporting companies or foreign private issuers. In addition, consistent with the instructions J and I of Form 10–K, the new requirements will not apply to the annual reports of issuers of asset-backed securities or to wholly-owned subsidiary registrants.

[704] *See* letters from COEC I, COEC II, and Chamber II.

[705] *See* letters from Avery Dennison, ExxonMobil, FEI and KBR.

[706] *See* Section III.C.2.b.

[707] *See* letter from Chamber II. This commenter estimated that the annual cost of compliance would be $710.9 million and an annual compliance time of 3.6 million hours. The commenter also stated that we may have underestimated costs by more than 870% and underestimated compliance time by 560%. From this information, we infer that the average labor cost of $185,600 refers to external costs, as multiplying the number of registrants estimated to be subject to the proposed rule (3,830) by the average labor cost estimated by this commenter ($185,600) equals $710,848,000.

[708] *See* letters from COEC I and COEC II.

[709] As noted in our Economic Analysis, we continue to believe that $400 per hour is the appropriate rate to use for PRA purposes. This is the rate we typically estimate for outside legal services used in connection with public company reporting and is intended to represent an average to cover all registrants of varying sizes. In addition, some commenters indicated that they would retain external advisors such as payroll specialists, human resource consultants, and compensation consultants. *See* letters from Avery Dennison (stating that it expects to retain two to three external advisors, including legal advisers and HR consultants) and General Mills (indicating that it expects to hire outside advisors, such as compensation consultants and payroll specialists). Generally, we expect the hourly fees for such external advisors to be much lower than those of legal counsel.

[710] *See* letter from Avery Dennison. Although this commenter used the phrase ''internal cost'' of compliance, we assume that this cost includes more than internal staff time. Otherwise, the internal cost of compliance could range from approximately $6,667 to $15,000 per hour ($1 million divided by 150 hours or $1.5 million divided by 100 hours).

[711] *See* letter from FEI.

basis.[712] Another large corporate commenter asserted that it would require up to approximately 3,000 internal burden hours to comply with the proposed rule in the initial year of compliance, and that ongoing compliance burdens after the initial compliance year would be approximately 28% of the initial burden hours (850 hours per year thereafter).[713] Another global issuer estimated that it may take between $500,000 and $1 million to establish and automate the process to comply with the proposed rule.[714]

We are adopting the final rule as proposed with modifications that may help mitigate compliance costs and burdens. First, we provide two tailored exemptions for non-U.S. employees from the definition of ''employee'': an exemption for circumstances in which a foreign jurisdiction's laws or regulations governing privacy are such that, despite its reasonable efforts to obtain or process the information necessary for compliance with the final rule, the registrant is unable to do so without violating such data privacy laws or regulations and a *de minimis* exemption. Second, the final rule defines ''employee'' to include only the employees of the registrant's consolidated subsidiaries, instead of all subsidiaries as proposed. Third, to provide consistency and flexibility, the final rule permits registrants to use any date within three months of the last day of their last completed fiscal year to identify the median employee. Fourth, the final rule allows registrants to identify the median employee every three years, instead of every year, if there has been no change in their employee population or employee compensation arrangements that they reasonably believe would result in a significant change in their pay ratio disclosure.

D. Revisions to PRA Reporting and Cost Burden Estimates

For purposes of the PRA, in the Proposing Release, we estimated that the total annual increase in the paperwork burden for all affected companies to prepare the disclosure that would be required under the adopted amendments would be approximately 545,792 hours of company personnel time and a cost of approximately $72,772,200 for the services of outside professionals. As discussed in more detail below, we are revising our PRA burden and cost estimates to reflect the responses of commenters, as well as the modifications we have made to the final rule to reduce compliance burdens.

For purposes of the PRA for the final rule, we estimate the total annual increase in the paperwork burden for all affected companies to comply with the collection of information requirements in our final rule is approximately 2,367,573 hours of company personnel time and approximately $315,390,720 for the services of outside professionals.[715] These estimates include the time and the cost of implementing data gathering systems and disclosure controls and procedures, compiling necessary data, preparing and reviewing disclosure, filing documents and retaining records.

In deriving these estimates, we have assumed that:

- Registrants subject to the final rule would satisfy the new requirements by either including the information directly in annual reports on Form 10–K or incorporating the information by reference from a proxy statement on Schedule 14A or information statement on Schedule 14C. Our estimates assume that substantially all of the burden relating to the new disclosure requirements would be associated with Form 10–K;
- For registrants that would be permitted to provide their pay ratio disclosure in a filing made in accordance with Item 5.02 of Form 8–K, rather than in Form 10–K, the burden relating to the new disclosure requirements would be associated primarily with Form 10–K rather than Form 8–K;[716] and
- 100% of new registrants would use the transition provisions allowing them to omit the required disclosure from their initial registration statements and, for follow-on offerings by these registrants, the burden relating to the new disclosure requirements would be associated primarily with Form 10–K rather than Forms S–1, S–11 or N–2 as applicable (because registrants would incorporate the disclosure from Form 10–K).

We understand from commenters that the burdens and costs of compliance will likely vary among individual companies based on a number of factors, including the size and complexity of their organizations, the nature of their operations and workforce, the location of their operations, and, significantly, the extent that their existing payroll systems collect the information necessary to identify the median of the annual total compensation of their employees. Because the final rule provides additional flexibility in identifying the median and the annual total compensation of employees, the actual burden could be lower if the methodology used is able to reduce the effort needed to collect the data or if the registrant is able to use information that it collects for other purposes.[717] We believe that the actual burdens will likely vary significantly among individual companies based on these factors. Our estimates in this PRA analysis reflect average burdens, and, therefore, some companies may experience costs in excess of our estimates and some companies may experience costs that are lower than our estimates.[718]

1. Estimated Internal Burden Hours

Commenters estimated that registrants would spend anywhere from 100 burden hours[719] to 3000 burden hours to prepare and review the pay ratio disclosure.[720] One commenter estimated that affected companies would on average spend 952 hours per year to comply with the new disclosure requirement.[721] This estimate was based on a survey of a range of companies, some with operations in more than 50 countries and others with operations in fewer than 10 countries, and did not take into account the modifications that were made to the rule to reduce compliance costs.

In our analysis of the economic costs and benefits of the rule, we estimated that the total initial compliance costs would be $1,314,694,544 or approximately $368,159 per registrant.[722] Our estimate did not break down the costs between internal burden hours and external costs, which is how the burdens and costs are described for PRA purposes. As discussed later in our analysis of the estimated cost and hour burdens for each collection of

[712] *Id.*

[713] *See* letter from ExxonMobil.

[714] *See* letter from KBR.

[715] We describe how we derived the three-year average hour and cost burdens per response below. The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the company internally is reflected in hours. For administrative convenience, the presentation of the totals related to the paperwork burden hours have been rounded to the nearest whole number and the cost totals have been rounded to the nearest dollar.

[716] Our PRA estimates for Form 8–K include an estimated one hour burden to account for the inclusion of the new pay ratio disclosure.

[717] *See* Section II of this release for a discussion of the requirements.

[718] As in our Economic Analysis, we estimated the PRA costs and burdens to reflect a broad range of registrants.

[719] *See* letter from Avery Dennison.

[720] *See* letter from ExxonMobil.

[721] *See* letter from Chamber II.

[722] *See* discussion in Section III.C.2.c. $1,314,694,544/3,571 = $368,159.

information,[723] we believe that substantially all of the burden relating to the new disclosure requirements will be associated with Form 10–K. For Exchange Act reports on Form 10–K, we estimate that 75% of the burden of preparation is carried by the company internally and that 25% of the burden of preparation is carried by outside professionals. Using that formula, we estimate that the average registrant will spend 1,105 internal burden hours preparing and reviewing the disclosure for the initial year of compliance.[724]

In the Proposing Release, we estimated that the internal burden hours would be greatest during the first year of compliance with the rule and would diminish in subsequent years. As discussed above, we received few estimates of ongoing compliance costs from commenters, and the estimates we received varied widely. Some commenters suggested that the internal burden hours and external professional costs would not decrease after the initial compliance year.[725] As discussed earlier, we believe that part of the initial compliance costs would decline after the first year.[726] Other commenters provided estimates of ongoing compliance costs that ranged from 28% to 80% of the initial compliance costs. For example, one commenter estimated that its burden would decrease by approximately 72%, from 3,000 internal hours during the first year to 850 internal hours in subsequent years, approximately 28% of the initial burden.[727] Another commenter suggested, based on results from a survey that it conducted, that ongoing costs could be about 80% (median) or 72% (average) of the initial compliance costs.[728] Yet another commenter estimated its initial burden at 1,000 internal hours and ongoing burden at 50% of the initial compliance costs (500 internal hours).[729] This commenter also estimated initial compliance costs at $250,000 with ongoing compliance costs of $100,000, or 40% of the initial compliance costs.

Because of the limited number of ongoing cost estimates and their wide dispersion, for the purposes of the PRA we assume that ongoing compliance burdens and costs will be approximately 40% (the median of the estimates) of the initial compliance burdens and costs. Thus, we used one commenter's estimated ongoing burden of 40% of the initial burden for our estimated three-year average burden. We utilize an estimated burden of 1,105 hours in the initial year and 442 [730] hours in the two years thereafter, for a three-year average burden of 663 hours.[731]

2. Estimated Cost Burdens

Commenters provided a wide range of estimated external cost burdens. Commenters provided estimates of $185,600 per year on average for each company,[732] $250,000 on an initial basis and $100,000 on an ongoing basis,[733] and 20–40 hours of external consulting time.[734] Another commenter estimated that it may cost between $500,000 and $1 million for each company to establish and automate the process to comply with the proposed rule, although it is not clear whether this includes both internal and external costs and burdens.[735] As discussed above, we estimate that total compliance burdens for the initial year of compliance will be $1,314,694,544 or $368,159 per registrant. Assuming that 25% of the burden of preparing the disclosure is carried by outside professionals, we estimate that the average registrant will incur $147,200 in outside professional costs in the first year to comply with the disclosure requirement.[736]

As with the estimated internal burden hours, we assume that the compliance costs after the initial year will be reduced because a substantial portion of the costs will be related to establishing systems and processes to collect the payroll data in the initial year of compliance. Applying the same assumption used above that the ongoing compliance costs will be approximately 40% of the estimate for the initial compliance year, we estimate that ongoing compliance costs will be approximately $58,880 per year on average for each affected company [737] so that the three-year average cost of compliance is $88,320.[738]

3. Estimated Cost and Hour Burdens for Each Collection of Information

For each collection of information, we estimate the following cost and hour burdens:

a. Regulation S–K

While the adopted amendments would make revisions to Regulation S–K, the collection of information requirements for that regulation are reflected in the burden hours estimated for the forms and schedules listed below. The rules in Regulation S–K do not impose any separate burden. Consistent with historical practice, we are retaining an estimate of one burden hour to Regulation S–K for administrative convenience.

b. Form 10–K

Only Forms 10–K that are filed by registrants that are not smaller reporting companies or emerging growth companies will be required to include the pay ratio disclosure. For purposes of our PRA estimates, we have assumed that 100% of asset-backed securities issuers will omit Item 402 disclosure from Form 10–K pursuant to Instruction J of Form 10–K and 100% of wholly-owned subsidiary registrants will omit Item 402 disclosure from Form 10–K pursuant to Instruction I of Form 10–K, and, accordingly, these registrants will also not be subject to the new disclosure requirements. Based on a review of EDGAR filings in calendar year 2014, we estimate that of the approximately 7,619 annual reports filed in that year, approximately 3,571 annual reports are filed by registrants that would be subject to the new disclosure requirements.[739] We estimate that the new disclosure requirements will add an average of 663 burden hours [740] to the total burden hours required to produce each Form 10–K that is subject to the new requirements and approximately $88,320 for outside professionals.[741]

[723] *See* discussion in Section IV.D.3.

[724] We did not receive any estimates of the cost per hour related to preparation of disclosures by the company internally, but expect that such costs will be less than the cost of hiring outside professionals. For ease of analysis, we assume that internal hourly costs will be approximately half the cost of hiring outside professionals ($400/2 = $200). Assuming 75% of burden hours are carried internally and 25% are carried externally, the average compliance cost of $368,159 per registrant corresponds to $368,159/((.75)$200 + (.25)$400) = 1,473 hours, of which 1,105 hours (1,473(.75)) are internal and 368 hours (1,473(.25)) are external.

[725] *See* letters from Chamber II and Intel.

[726] *See* discussion in Section III.C.2.c.

[727] *See* letter from ExxonMobil.

[728] *See* letter from COEC I.

[729] *See* letter from FEI.

[730] 1,105 × 40% = 442 burden hours.

[731] (1,105 + 442 + 442)/3 = 663 burden hours.

[732] *See* letter from Chamber II.

[733] *See* letter from FEI.

[734] *See* letter from Avery Dennison.

[735] *See* letter from KBR.

[736] 368 x $400 = $147,200.

[737] $147,200x 40% = $58,880.

[738] ($147,200 + 58,880 + 58,880)/3 = $88,320.

[739] Based on a review of EDGAR filings in 2014, approximately 678 annual reports were filed by EGCs, 2,958 by SRCs, and 412 by ABS issuers. *See* Section III.D.2.b above.

[740] As we discuss below, we estimate that 10 of the Forms 8–K filed in a given year would require one additional hour for preparing the disclosure required by the amendments. Thus, substantially all of the internal burden of the pay ratio disclosure is allocated to Form 10–K: 663(3,571)-(110) = 2,367,563 or approximately 663 (2,367,563/3,571) per response. Burden hours are rounded to the next hour.

[741] As discussed below, we estimate that the requirement to provide updated pay ratio disclosure on Form 8–K will result in one additional burden

Continued

We estimate that the preparation of annual reports currently results in a total annual compliance burden of 12,198,095 hours and an annual cost of outside professionals of $1,627,400,000. Under the final rule, we estimate that the total incremental cost of outside professionals for annual reports will be approximately $315,389,390 per year and the total incremental internal burden will be approximately 2,367,563 hours per year.

c. Form 8–K

As described in this release, the final rule will require a registrant that is filing its PEO total compensation on a delayed basis due to the unavailability of certain components of compensation on Form 8–K (in accordance with Instruction 1 to Items 402(c)(2)(iii) and (iv) of Regulation S–K and Item 5.02(f) of Form 8–K) to provide the pay ratio disclosure at the same time. The final rule also includes a conforming amendment to Item 5.02 of Form 8–K that will require a registrant to include updated pay ratio disclosure in the Form 8–K that it files to disclose its PEO total compensation information.[742] We estimate that the burden for adding the pay ratio disclosure to that Form 8–K filing will be one hour per registrant.[743] We also estimate that the Form 8–K amendment will not result in additional Form 8–K filings because registrants who omit disclosure in reliance on Instruction 1 to Items 402(c)(2)(iii) and (iv) are already required to file a Form 8–K. The amendments will, however, add pay ratio disclosure requirements to that Form 8–K filing.

Based on a review of EDGAR filings for calendar years 2012 and 2013, we estimate that on average approximately 11 Forms 8–K are filed pursuant to Item 5.02(f) annually and approximately 10 of these relate to disclosure of PEO compensation. As a result, we estimate that 10 of the Forms 8–K filed in a given year will require one additional hour for preparing the disclosure required by the amendments, in addition to the total burden hours required to produce each Form 8–K.

We estimate that the preparation of current reports on Form 8–K currently results in a total annual compliance burden of 507,675 hours and an annual cost of outside professionals of $67,688,700. As result of the rule, we estimate that the incremental company burden will be approximately 10 hours per year and approximately $1,330 in the incremental cost of outside professionals for current reports on Form 8–K.

d. Proxy Statements on Schedule 14A

Only proxy statements on Schedule 14A that are required to include Item 402 information, and that are not filed by smaller reporting companies or emerging growth companies, will be required to include the new pay ratio disclosure. For purposes of our PRA estimates, consistent with past amendments to Item 402,[744] we have assumed that all of the burden relating to the new disclosure requirements will be associated with Form 10–K, even if registrants include the new disclosure required in Form 10–K by incorporating that disclosure by reference from a proxy statement on Schedule 14A.

e. Information Statements on Schedule 14C

Only information statements on Schedule 14C that are required to include Item 402 information, and that are not filed by smaller reporting companies or emerging growth companies, are required to include the pay ratio disclosure. For purposes of our PRA estimates, consistent with past amendments to Item 402, we have assumed that all of the burden relating to the disclosure requirements will be associated with Form 10–K, even if registrants include the disclosure required in Form 10–K by incorporating that disclosure by reference from an information statement on Schedule 14C.

f. Form S–1

Because we have assumed that all new registrants will take advantage of the transition period afforded to them under the final rule, so that all of the registration statements on Form S–1 that will be required to include the pay ratio disclosure will incorporate by reference the registrant's disclosure contained in its annual report, we have assumed that all of the burden relating to the new disclosure requirements will be associated with Form 10–K.

g. Form S–4

We have assumed that registrants filing on Form S–4 for whom executive compensation information under Item 402 is required pursuant to Items 18 or 19 of Form S–4 will incorporate by reference the pay ratio disclosure contained in the registrant's annual report. Thus, we have assumed that all of the burden relating to the new disclosure requirements will be associated with Form 10–K.

h. Form S–11

Because we have assumed that all new registrants will take advantage of the transition period afforded to them under the final rule, so that all of the registration statements on Form S–11 that will be required to include the pay ratio disclosure will incorporate by reference the registrant's pay ratio disclosure contained in its annual report, we have assumed that all of the burden relating to the new disclosure requirements will be associated with Form 10–K.

i. Form N–2

Only Forms N–2 filed by business development companies (BDCs) will be subject to the new disclosure requirements. Furthermore, the final rule will apply only to BDCs internally managed such that they compensate their own employees. Rather, such employees are generally compensated by the BDC's investment adviser. Because we assume that all of the Forms N–2 that will be filed by internally managed BDCs will incorporate by reference the registrant's disclosure contained in its annual report, we have assumed that all of the burden relating to the new disclosure requirements would be associated with Form 10–K.

j. Form 10

Because we have assumed that all new registrants would take advantage of the transition period afforded to them under the final rule, we estimate no annual incremental increase in the paperwork burden associated with Form 10 as a result of the new requirements.

E. Summary of Changes to Annual Compliance Burden in Collection of Information

Tables 1 and 2 below illustrate the total annual compliance burden of the collection of information in hours and in cost under the final rule for annual reports on Form 10–K and current reports on Form 8–K under the Exchange Act. [745] The burden estimates

hour for that form. We attribute the external costs of the required pay ratio disclosure proportionately between Form 10–K and Form 8–K based on the estimated internal burden hours for each form. [1/(663+1)] x $88,320 = $133 per Form 8–K response. The remaining costs have been attributed to Form 10–K: $88,320)3,571—$133(10) = $315,389,390 in aggregate or $88,320 ($315,389,390/3,571) per response. Costs are rounded up to the next dollar.

[742] *See* Section II.B.6.b.

[743] As noted above, we have assumed that the burden relating to the new pay ratio requirements would remain associated with the registrant's proxy or information statement or annual report, and, therefore, our PRA estimates for those forms reflect that burden.

[744] We took a similar approach in connection with the rules for Summary Compensation Table disclosure required by the 2006 amendments to Item 402. *See* 2006 Adopting Release, *supra* note 9.

[745] Figures in both tables have been rounded to the nearest whole number.

were calculated by multiplying the estimated number of annual responses by the estimated average number of hours it would take a company to prepare and review the new disclosure.

As discussed above, there is no change to the estimated burden of the collection of information under Forms S–1, S–4, S–11 or N–2 or under Schedule 14A and 14C because we have assumed that the burden relating to the new disclosure requirements would be associated primarily with Form 10–K. In addition, there is no change to the estimated burden of the collection of information under Form 10 because we have assumed that all new registrants would take advantage of the transition period. There is no change to the estimated burden of the collection of information under Regulation S–K because the burdens that Regulation S–K imposes are reflected in our revised estimates for the forms.[746]

TABLE 1—INCREMENTAL PAPERWORK BURDEN UNDER THE FINAL RULE

	Number of annual responses (A)	Hour burden per response (B)	Total incremental company burden hours (C) = (A) * (B)	Incremental professional costs (D)	Total incremental professional costs (E) = (A) * (D)
Form 10–K	3,571	663	2,367,563	$88,319.63	$315,389,390
Form 8–K	10	1	10	$133	$1,330
Total	.....	.....	2,367,573	.....	$315,390,720

TABLE 2—CALCULATION OF TOTAL PRA BURDEN ESTIMATES

	Current annual responses (A)[747]	Current burden hours (B)	Increase in burden hours (C) [748]	Burden hours (D) = (B) + (C)	Current professional costs (E)	Increase in professional costs (F)	Professional costs (G) = (E) + (F)
Form 10–K	8,137	12,198,095	2,367,563	14,565,658	$1,627,400,000	$315,389,390	$1,942,789,390
Form 8–K	74,911	507,665	10	507,675	$67,688,700	$1,330	$67,690,030
Total	83,048	12,705,760	2,367,573	15,073,333	$1,695,088,700	$315,390,720	$2,010,479,420

V. Final Regulatory Flexibility Act Certification

TheRegulatory Flexibility Act of 1980 (''RFA'')[749] requires us, in promulgating rules, to consider the impact of those rules on small entities. The Commission certified in the Proposing Release, pursuant to Section 605(b)[750] of the RFA, that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. We received no comments on this certification.

The final rule amends Item 402 by adding paragraph (u) to implement Section 953(b) of the Dodd-Frank Act. Specifically, the final rule requires registrants, other than emerging growth companies, smaller reporting companies and foreign private issuers, to disclose the median of the annual total compensation of all employees of the registrant (excluding the PEO), the annual total compensation of the registrant's PEO, and the ratio between these two amounts. The disclosure is required in any filing described in Item 10(a) of Reg. S–K that requires executive compensation disclosure pursuant to Item 402.

For purposes of the RFA, under our rules, an issuer, other than an investment company,[751] is a ''small business'' or ''small organization'' if it has total assets of $5 million or less as of the end of its most recent fiscal year and is engaged or proposing to engage in an offering of securities which does not exceed $5 million.[752] We believe that the final rule will affect some small entities that are business development companies that have a class of securities registered under Section 12 of the Exchange Act. We estimate that there are approximately five of those business development companies that may be considered small entities.[753] As discussed above, emerging growth companies and smaller reporting companies are excluded from the final rule. An ''emerging growth company'' is an issuer that had total annual gross revenues of less than $1 billion during its most recently completed fiscal year.[754] A smaller reporting company is an issuer, other than certain classes of issuers (including investment companies), that had a public float of less than $75 million as of the end of its most recently completed second fiscal quarter, or in the case of an initial registration statement under the Securities Act or Exchange Act for the shares of its common equity, had a public float of less than $75 million as of a date within 30 days of the date of filing of the registration statement.[755] To

[746] Estimates in columns C and E of Table 1 are affected by rounding to the next burden hour. *See* Section III.D.1. and 2. above for an analysis of the derivation of the estimated incremental burden hours and costs.

[747] For these forms, the number of current annual responses reflected in the table equals the three-year average of the number of forms filed with us and currently reported by us to OMB.

[748] The increase in burden hours reflected in the table is based on the aggregate incremental burden hours per form multiplied by the annual responses that will be required to include additional disclosure under the new rules as adopted. As explained in the discussion above, for purposes of determining the total increase in burden hours, we have reduced the current number of annual responses to reflect that the disclosure requirements will not apply to all forms filed. *See* Table 1 for estimates per response.

[749] 5 U.S.C. 601 *et seq.*

[750] 5 U.S.C. 605(b).

[751] For purposes of the RFA, an investment company is a ''small business'' or ''small organization'' that, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year. 17 CFR 270.0–10.

[752] *See* Securities Act Rule 157 [17 CFR 230.157] and Exchange Act Rule 0–10(a) [17 CFR 240.0–10(a)].

[753] We estimate that there are 13 business development companies that will be subject to the final rule, five of which may be considered small entities for purposes of the RFA.

[754] *See* Securities Act Section 2(a)(19) [15 U.S.C. 77b(a)(19)].

[755] *See* Securities Act Rule 405 [17 CFR 230.405]. In the case of an issuer whose public float was zero,

Continued

the extent that a small entity is a registrant, we believe that there are few, if any, small entities that do not qualify as emerging growth companies or smaller reporting companies because it is unlikely that an entity with total assets of $5 million or less would have total annual gross revenues of $1 billion or more, or would have a public float of $75 million or more. Because emerging growth companies and smaller reporting companies are excluded from the new disclosure requirement, we believe that the final rule applies to few, if any, small entities, other than the five business development companies.

For the above reasons, we again certify, pursuant to 5 U.S.C. 605(b), that the final rule will not have a significant economic impact on a substantial number of small entities.

VI. Statutory Authority

The amendments contained herein are being proposed pursuant to Sections 7, 10, 19(a), and 28 of the Securities Act, Sections 3(b), 12, 13, 14, 15(d), 23(a), and 36(a) of the Exchange Act, Section 953(b) of the Dodd-Frank Act, as amended, and Section 102(a)(3) of the JOBS Act.

List of Subjects

17 CFR Part 229

Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities.

17 CFR Part 249

Brokers, Reporting and recordkeeping requirements, Securities.

Text of the Amendments

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations, is amended as follows:

PART 229 —STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 1. The authority citation for part 229 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78j–3, 78*l*, 78m, 78n, 78n–1, 78o, 78u–5, 78w, 78*ll*, 78 mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11 and 7201 *et seq.;* 18 U.S.C. 1350; Sec. 953(b), Pub. L. 111–203, 124 Stat. 1904; and Sec. 102(a)(3), Pub. L. 112–106, 126 Stat. 309.

■ 2. Amend § 229.402 by:

■ a. In paragraph (l), removing ''(k) and (s)'' and adding in its place ''(k), (s), and (u)''; and

■ b. Adding paragraph (u) directly after the Instructions to Item 402(t).

The addition reads as follows:

§ 229.402 (Item 402) Executive compensation.

* * * * *

(u) *Pay ratio disclosure*—(1) *Disclose.* (i) The median of the annual total compensation of all employees of the registrant, except the PEO of the registrant;

(ii) The annual total compensation of the PEO of the registrant; and

(iii) The ratio of the amount in paragraph (u)(1)(i) of this Item to the amount in paragraph (u)(1)(ii) of this Item. For purposes of the ratio required by this paragraph (u)(1)(iii), the amount in paragraph (u)(1)(i) of this Item shall equal one, or, alternatively, the ratio may be expressed narratively as the multiple that the amount in paragraph (u)(1)(ii) of this Item bears to the amount in paragraph (u)(1)(i) of this Item.

(2) For purposes of this paragraph (u):

(i) *Total compensation* for the median of annual total compensation of all employees of the registrant and the PEO of the registrant shall be determined in accordance with paragraph (c)(2)(x) of this Item. In determining the total compensation, all references to ''named executive officer'' in this Item and the instructions thereto may be deemed to refer instead, as applicable, to ''employee'' and, for non-salaried employees, references to ''base salary'' and ''salary'' in this Item and the instructions thereto may be deemed to refer instead, as applicable, to ''wages plus overtime'';

(ii) *Annual total compensation* means total compensation for the registrant's last completed fiscal year; and

(iii) *Registrant* means the registrant and its consolidated subsidiaries.

(3) For purposes of this paragraph (u), *employee* or *employee of the registrant* means an individual employed by the registrant or any of its consolidated subsidiaries, whether as a full-time, part-time, seasonal, or temporary worker, as of a date chosen by the registrant within the last three months of the registrant's last completed fiscal year. The definition of employee or employee of the registrant does not include those workers who are employed, and whose compensation is determined, by an unaffiliated third party but who provide services to the registrant or its consolidated subsidiaries as independent contractors or ''leased'' workers.

(4) For purposes of this paragraph (u), an employee located in a jurisdiction outside the United States (a ''non-U.S. employee'') may be exempt from the definition of employee or employee of the registrant under either of the following conditions:

(i) The employee is employed in a foreign jurisdiction in which the laws or regulations governing data privacy are such that, despite its reasonable efforts to obtain or process the information necessary for compliance with this paragraph (u), the registrant is unable to do so without violating such data privacy laws or regulations. The registrant's reasonable efforts shall include, at a minimum, using or seeking an exemption or other relief under any governing data privacy laws or regulations. If the registrant chooses to exclude any employees using this exemption, it shall list the excluded jurisdictions, identify the specific data privacy law or regulation, explain how complying with this paragraph (u) violates such data privacy law or regulation (including the efforts made by the registrant to use or seek an exemption or other relief under such law or regulation), and provide the approximate number of employees exempted from each jurisdiction based on this exemption. In addition, if a registrant excludes any non-U.S. employees in a particular jurisdiction under this exemption, it must exclude all non-U.S. employees in that jurisdiction. Further, the registrant shall obtain a legal opinion from counsel that opines on the inability of the registrant to obtain or process the information necessary for compliance with this paragraph (u) without violating the jurisdiction's laws or regulations governing data privacy, including the registrant's inability to obtain an exemption or other relief under any governing laws or regulations. The registrant shall file the legal opinion as an exhibit to the filing in which the pay ratio disclosure is included.

(ii) The registrant's non-U.S. employees account for 5% or less of the registrant's total employees. In that circumstance, if the registrant chooses to exclude any non-U.S. employees under this exemption, it must exclude all non-U.S. employees. Additionally, if a registrant's non-U.S. employees exceed 5% of the registrant's total U.S. and non-U.S. employees, it may exclude

the issuer could qualify as a smaller reporting company if it had annual revenues of less than $50 million during the most recently completed fiscal year for which audited financial statements are available.

up to 5% of its total employees who are non-U.S. employees; *provided, however,* if a registrant excludes any non-U.S. employees in a particular jurisdiction, it must exclude all non-U.S. employees in that jurisdiction. If more than 5% of a registrant's employees are located in any one non-U.S. jurisdiction, the registrant may not exclude any employees in that jurisdiction under this exemption.

(A) In calculating the number of non-U.S. employees that may be excluded under this Item 402(u)(4)(ii) (''*de minimis''* exemption), a registrant shall count against the total any non-U.S. employee exempted under the data privacy law exemption under Item 402(u)(4)(i) (''data privacy'' exemption). A registrant may exclude any non-U.S. employee from a jurisdiction that meets the data privacy exemption, even if the number of excluded employees exceeds 5% of the registrant's total employees. If, however, the number of employees excluded under the data privacy exemption equals or exceeds 5% of the registrant's total employees, the registrant may not use the *de minimis* exemption. Additionally, if the number of employees excluded under the data privacy exemption is less than 5% of the registrant's total employees, the registrant may use the *de minimis* exemption to exclude no more than the number of non-U.S. employees that, combined with the data privacy exemption, does not exceed 5% of the registrant's total employees.

(B) If a registrant excludes non-U.S. employees under the *de minimis* exemption, it must disclose the jurisdiction or jurisdictions from which those employees are being excluded, the approximate number of employees excluded from each jurisdiction under the *de minimis* exemption, the total number of its U.S. and non-U.S. employees irrespective of any exemption (data privacy or *de minimis*), and the total number of its U.S. and non-U.S. employees used for its *de minimis* calculation.

Instruction 1 to Item 402(u)—Disclosing the date chosen for identifying the median employee. A registrant shall disclose the date within the last three months of its last completed fiscal year that it selected pursuant to paragraph (u)(3) of this Item to identify its median employee. If the registrant changes the date it uses to identify the median employee from the prior year, the registrant shall disclose this change and provide a brief explanation about the reason or reasons for the change.

Instruction 2 to Item 402(u)—Identifying the median employee. A registrant is required to identify its median employee only once every three years and calculate total compensation for that employee each year; *provided that,* during a registrant's last completed fiscal year there has been no change in its employee population or employee compensation arrangements that it reasonably believes would result in a significant change to its pay ratio disclosure. If there have been no changes that the registrant reasonably believes would significantly affect its pay ratio disclosure, the registrant shall disclose that it is using the same median employee in its pay ratio calculation and describe briefly the basis for its reasonable belief. For example, the registrant could disclose that there has been no change in its employee population or employee compensation arrangements that it believes would significantly impact the pay ratio disclosure. If there has been a change in the registrant's employee population or employee compensation arrangements that the registrant reasonably believes would result in a significant change in its pay ratio disclosure, the registrant shall re-identify the median employee for that fiscal year. If it is no longer appropriate for the registrant to use the median employee identified in year one as the median employee in years two or three because of a change in the original median employee's circumstances that the registrant reasonably believes would result in a significant change in its pay ratio disclosure, the registrant may use another employee whose compensation is substantially similar to the original median employee based on the compensation measure used to select the original median employee.

Instruction 3 to Item 402(u)—Updating for the last completed fiscal year. Pay ratio information (*i.e.,* the disclosure called for by paragraph (u)(1) of this Item) with respect to the registrant's last completed fiscal year is not required to be disclosed until the filing of its annual report on Form 10–K for that last completed fiscal year or, if later, the filing of a definitive proxy or information statement relating to its next annual meeting of shareholders (or written consents in lieu of such a meeting) following the end of such fiscal year; *provided that,* the required pay ratio information must, in any event, be filed as provided in General Instruction G(3) of Form 10–K (17 CFR 249.310) not later than 120 days after the end of such fiscal year.

Instruction 4 to Item 402(u)—Methodology and use of estimates. 1. Registrants may use reasonable estimates both in the methodology used to identify the median employee and in calculating the annual total compensation or any elements of total compensation for employees other than the PEO.

2. In determining the employees from which the median employee is identified, a registrant may use its employee population or statistical sampling and/or other reasonable methods.

3. A registrant may identify the median employee using annual total compensation or any other compensation measure that is consistently applied to all employees included in the calculation, such as information derived from the registrant's tax and/or payroll records. In using a compensation measure other than annual total compensation to identify the median employee, if that measure is recorded on a basis other than the registrant's fiscal year (such as information derived from tax and/or payroll records), the registrant may use the same annual period that is used to derive those amounts. Where a compensation measure other than annual total compensation is used to identify the median employee, the registrant must disclose the compensation measure used.

4. In identifying the median employee, whether using annual total compensation or any other compensation measure that is consistently applied to all employees included in the calculation, the registrant may make cost-of-living adjustments to the compensation of employees in jurisdictions other than the jurisdiction in which the PEO resides so that the compensation is adjusted to the cost of living in the jurisdiction in which the PEO resides. If the registrant uses a cost-of-living adjustment to identify the median employee, and the median employee identified is an employee in a jurisdiction other than the jurisdiction in which the PEO resides, the registrant must use the same cost-of-living adjustment in calculating the median employee's annual total compensation and disclose the median employee's jurisdiction. The registrant also shall briefly describe the cost-of-living adjustments it used to identify the median employee and briefly describe the cost-of-living adjustments it used to calculate the median employee's annual total compensation, including the measure used as the basis for the cost-of-living adjustment. A registrant electing to present the pay ratio in this manner also shall disclose the median employee's annual total compensation and pay ratio without the cost-of-living adjustment. To calculate this pay ratio, the registrant will need to identify the

median employee without using any cost-of-living adjustments.

5. The registrant shall briefly describe the methodology it used to identify the median employee. It shall also briefly describe any material assumptions, adjustments (including any cost-of-living adjustments), or estimates it used to identify the median employee or to determine total compensation or any elements of total compensation, which shall be consistently applied. The registrant shall clearly identify any estimates used. The required descriptions should be a brief overview; it is not necessary for the registrant to provide technical analyses or formulas. If a registrant changes its methodology or its material assumptions, adjustments, or estimates from those used in its pay ratio disclosure for the prior fiscal year, and if the effects of any such change are significant, the registrant shall briefly describe the change and the reasons for the change. Registrants must also disclose if they changed from using the cost-of-living adjustment to not using that adjustment and if they changed from not using the cost-of-living adjustment to using it.

6. Registrants may, at their discretion, include personal benefits that aggregate less than $10,000 and compensation under non-discriminatory benefit plans in calculating the annual total compensation of the median employee as long as these items are also included in calculating the PEO's annual total compensation. The registrant shall also explain any difference between the PEO's annual total compensation used in the pay ratio disclosure and the total compensation amounts reflected in the Summary Compensation Table, if material.

Instruction 5 to Item 402(u)—Permitted annualizing adjustments. A registrant may annualize the total compensation for all permanent employees (full-time or part-time) that were employed by the registrant for less than the full fiscal year (such as newly hired employees or permanent employees on an unpaid leave of absence during the period). A registrant may not annualize the total compensation for employees in temporary or seasonal positions. A registrant may not make a full-time equivalent adjustment for any employee.

Instruction 6 to Item 402(u)—PEO compensation not available. A registrant that is relying on Instruction 1 to Item 402(c)(2)(iii) and (iv) in connection with the salary or bonus of the PEO for the last completed fiscal year, shall disclose that the pay ratio required by paragraph (u) of this Item is not calculable until the PEO salary or bonus, as applicable, is determined and shall disclose the date that the PEO's actual total compensation is expected to be determined. The disclosure required by paragraph (u) of this Item shall then be disclosed in the filing under Item 5.02(f) of Form 8–K (17 CFR 249.308) that discloses the PEO's salary or bonus in accordance with Instruction 1 to Item 402(c)(2)(iii) and (iv).

Instruction 7 to Item 402(u)—Transition periods for registrants. 1. Upon becoming subject to the requirements of Section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)), a registrant shall comply with paragraph (u) of this Item with respect to compensation for the first fiscal year following the year in which it became subject to such requirements, but not for any fiscal year commencing before January 1, 2017. The registrant may omit the disclosure required by paragraph (u) of this Item from any filing until the filing of its annual report on Form 10–K (17 CFR 249.310) for such fiscal year or, if later, the filing of a proxy or information statement relating to its next annual meeting of shareholders (or written consents in lieu of such a meeting) following the end of such year; *provided that,* such disclosure shall, in any event, be filed as provided in General Instruction G(3) of Form 10–K not later than 120 days after the end of such fiscal year.

2. A registrant may omit any employees that became its employees as the result of the business combination or acquisition of a business for the fiscal year in which the transaction becomes effective, but the registrant must disclose the approximate number of employees it is omitting. Those employees shall be included in the total employee count for the triennial calculations of the median employee in the year following the transaction for purposes of evaluating whether a significant change had occurred. The registrant shall identify the acquired business excluded for the fiscal year in which the business combination or acquisition becomes effective.

3. A registrant shall comply with paragraph (u) of this Item with respect to compensation for the first fiscal year commencing on or after the date the registrant ceases to be a smaller reporting company, but not for any fiscal year commencing before January 1, 2017.

Instruction 8 to Item 402(u)—Emerging growth companies. A registrant is not required to comply with paragraph (u) of this Item if it is an emerging growth company as defined in Section 2(a)(19) of the Securities Act (15 U.S.C. 77(b)(a)(19)) or Section 3(a)(80) of the Exchange Act (15 U.S.C. 78c(a)(80)). A registrant shall comply with paragraph (u) of this Item with respect to compensation for the first fiscal year commencing on or after the date the registrant ceases to be an emerging growth company, but not for any fiscal year commencing before January 1, 2017.

Instruction 9 to Item 402(u)—Additional information. Registrants may present additional information, including additional ratios, to supplement the required ratio, but are not required to do so. Any additional information shall be clearly identified, not misleading, and not presented with greater prominence than the required ratio.

Instruction 10 to Item 402(u)—Multiple PEOs during the year. A registrant with more than one non-concurrent PEO serving during its fiscal year may calculate the annual total compensation for its PEO in either of the following manners:

1. The registrant may calculate the compensation provided to each person who served as PEO during the year for the time he or she served as PEO and combine those figures; or

2. The registrant may look to the PEO serving in that position on the date it selects to identify the median employee and annualize that PEO's compensation.

Regardless of the alternative selected, the registrant shall disclose which option it chose and how it calculated its PEO's annual total compensation.

Instruction 11 to Item 402(u)—Employees' personally identifiable information. Registrants are not required to, and should not, disclose any personally identifiable information about that employee other than his or her compensation. Registrants may choose to generally identify an employee's position to put the employee's compensation in context, but registrants are not required to provide this information and should not do so if providing the information could identify any specific individual.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 3. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78m, 78n, 78n–1, 78o, 78o–4, 78o–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–

11, and 7210 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5521(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

■ 4. Amend § 240.14a–101 by adding Item 25 at the end to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

SCHEDULE 14A INFORMATION

* * * * *

Item 25. Exhibits. Provide the legal opinion required to be filed by Item 402(u)(4)(i) of Regulation S–K (17 CFR 229.402(u)) in an exhibit to this Schedule 14A.

PART 249 — FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 5. The authority citation for part 249 is revised, in part, to read as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* 12 U.S.C. 5461 *et seq.;* 18 U.S.C. 1350; Sec. 953(b), Pub. L. 111–203, 124 Stat. 1904; and Sec. 102(a)(3), Pub. L. 112–106, 126 Stat. 309, unless otherwise noted.

* * * * *

■ 6. Form 8–K (referenced in § 249.308) is amended by redesignating paragraph (f) as (f)(1) and adding paragraph (f)(2) to read as follows:

Form 8–K

* * * * *

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

* * * * *

(f)(1) * * *

(2) As specified in Instruction 6 to Item 402(u) of Regulation S–K (17 CFR 229.402(u)), disclosure under this Item 5.02(f) with respect to the salary or bonus of a principal executive officer shall include pay ratio disclosure pursuant to Item 402(u) of Regulation S–K calculated using the new total compensation figure for the principal executive officer. Pay ratio disclosure is not required under this Item 5.02(f) until the omitted salary or bonus amounts for such principal executive officer become calculable in whole.

* * * * *

Note: The text of Form 8–K does not, and this amendment will not, appear in the Code of Federal Regulations.

By the Commission.

Dated: August 5, 2015.

Brent J. Fields,

Secretary.

[FR Doc. 2015–19600 Filed 8–17–15; 8:45 am]

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